

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 23049 of 2013

Date of Decision:- 04.05.2016

Sangeeta Bhattacharya

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest? **Yes**

**Present: Mr. Jangvir S. Hooda, Advocate
for the petitioner.**

Mr. Hitesh Pandit, Additional Advocate General, Haryana.

**Mr. Ram Bilas Gupta, Advocate
for respondent No.4.**

**Ms. Vriti Gujral, Advocate
for Mr. Manpreet Singh Longia, Advocate
for respondent No.5.**

RITU BAHRI, J. (Oral)

Petitioner is seeking directions to the respondents to consider her for selection and appointment against direct recruitment on regular basis for the post of Professor Bio-Chemistry Department as per the advertisement (Annexure P-1).

Petitioner applied for the post of Professor Bio-Chemistry as per advertisement (Annexure P-1). The essential qualifications prescribed for the said post are as under: -

“Academic Qualifications:	M.D. (Biochemistry)/ MSc (Med. Biochemistry/ with Ph.D. (Med. Biochemistry).
Experience:	Reader/Associate Professor in Biochemistry for four years in a recognized medical college along with Desirable Minimum of Four Research publications indexed in index Medicus/national journal.”

Respondent No.3 issued a no objection certificate and accorded the permission to the petitioner to apply for the post of Professor Biochemistry, vide certificate dated 12.06.2012 (Annexure P-3). Thereafter, the petitioner applied for the said post after getting no objection from respondent No.1, vide letter dated 26.09.2013 (Annexure P-5). The interview dates were uploaded on the website, vide schedule (Annexure P-6) and as per schedule, 24.10.2013 was the date for interview of Professor Biochemistry. Thereafter, vide corrigendum published on 05.10.2013, the respondent authority withdrew the post of Professor Biochemistry.

While issuing notice of motion on 21.10.2013, this Court has given a direction to provisionally interview the petitioner on 24.10.2013 and keep her result in sealed cover, to be produced by the next date of hearing after the declaration of the result. It has been observed in the order that the apprehension of the petitioner was that one Dr. Vijay Shanker, who was impleaded respondent No.4, was officiating on deputation as Professor in Biochemistry and he was not a medical doctor and had come through Ph.D. in Biochemistry and corrigendum (Annexure P-7) had been issued to

adjust the said respondent.

In compliance of above-said order, on 30.06.2015, the result of the petitioner was produced and opened in the Court. As per the result, it was found that the petitioner had not been selected on the premise that she was not found eligible for the post, as she does not have requisite four years experience as Associate Professor from MCI Recognized/Approved Medical College. The State was directed to file specific affidavit stating therein that all the Colleges in which the petitioner has rendered services as Associate Professor were/are recognized by the MCI or not.

Thereafter, in compliance of order dated 30.06.2015, an affidavit of S.K. Setia, Director Medical Education and Research, Haryana, dated 02.07.2015 was filed. In the said affidavit it was stated that the Government of Haryana established newly constructed Government Medical College, Nalhar (Mewat) during the year 2011-12. The posts of faculty i.e. Professor, Associate Professor, Assistant Professor, Senior Residents etc. were sanctioned and the staff were recruited including the petitioner to meet out the norms fixed by Medical Council of India in order to get its approval. Thereafter, MCI assessors visited the College and Hospital on 29/30.04.2013 to assess the physical and other teaching facilities to establish a new medical college. Medical Council of India, vide letter dated 02.07.2013, issued a letter of permission/approval for the first batch of 100 of MBBS students with prospective effect i.e. from the academic year 2013-14. In compliance of the order passed by this Court, the interview of the petitioner was conducted on 24.10.2013 and the selection committee gave its finding that she was not eligible for want of

short experience as the selection committee counted the experience of the petitioner from the date of approval/permission of this College i.e. 02.07.2013 although the petitioner had been recruited in this institution from 01.02.2012. As per the advertisement made for the post for Professor, the experience of the candidate should have been from the recognized Medical College, so the Committee counted the experience of the petitioner w.e.f. 02.07.2013.

Respondent No.4 was served but he did not put in appearance and was proceeded ex-parte vide order dated 03.02.2014. However, later on he has filed short reply on 09.12.2014 stating therein that he was eligible for the said post as per the minutes of the meeting dated 05.12.1998 (Annexure R-4/1). Respondent No.4 was appointed on deputation and his term was extended from 05.02.2014 to 04.04.2015.

In a separate written statement filed by respondent Nos.2 and 3, in which, it has been stated that Dr. Vijay Shankar Professor Department of Biochemistry had been appointed on deputation for one year and on his request sanction for extension has been granted on 08.01.2004. Two candidates have applied for the post of professor. One was the petitioner and second was Dr. Shashank Tyagi. Interview of the petitioner was taken on 24.10.2013 in compliance of the High Court and the result was kept in sealed cover. Second candidate could not be contacted and did not participate in the interview.

Keeping in view the fact that the petitioner was the sole candidate, who was participated in the interview, this Court, vide order dated 03.12.2015, directed the respondent No.2 to remain in present in

Court to explain as to why the petitioner was not appointed on the post of Professor in Biochemistry, being eligible and working in the College since its inception.

An affidavit of Dr. Sansar Chand Sharma, Director SKHM GMC, Nalhar, Mewat was filed in Court on 11.12.2015. In para 6 of the said affidavit it has been stated that the College itself had taken a decision for promotion/re-designation of the petitioner as a Professor in Biochemistry by taking into consideration her previous experience from the date of joining i.e. 01.02.2012 and her case has been recommended on 21.04.2015. The matter was adjourned to enable the Government to take a decision on the recommendation made in favour of the petitioner by taking her experience from the date of joining of the institution on 01.02.2012. However, the directions of this Court dated 11.12.2015 were not complied with. In the affidavit dated 11.12.2015 it was further stated that fresh advertisement would require to be issued to enable Dr. Shashank Tayagi an opportunity to appear in the interview as the advertisement has been withdrawn. On 02.02.2016, a detailed order was passed by this Court after perusing of the meeting of the selection committee dated 24.12.2013 and it was observed that Dr. Sushant Tyagi, who had applied for the post “**could not be called for the interview**”. Despite attempts having made by the college, this candidate could not be contacted. The Selection Committee in the minutes of meeting held on 24.10.2013 had taken her experience from 01.10.2010 to 31.01.2012 (one year and four months) as Associate Professor and from 02.07.2013 to 10.09.2013 (two months) at SHKM, Nalhar, Mewat, and thereafter treated her ineligible. However, at the same

time, in the affidavit dated 11.12.2015 in paragraph 6 it has been stated that the case of the petitioner had been recommended by counting her service from the date of joining the institution as 01.02.2012 by the office of respondent No.3, vide letter dated 21.04.2016. In the background of this affidavit, the matter was again adjourned to 16.03.2016, by giving directions to the respondent Nos.1 and 2, to take a decision with regard to eligibility for the selection for the post of Professor Biochemistry. It was made clear that no further attempts will be made to get in touch with the candidate Dr. Sushant Tyagi, as he could not be contacted at the time of interview on 24.10.2013 and has not challenged the withdrawal of corrigendum.

On 28.04.2016, learned State counsel has informed the Court that the petitioner has been re-designated as Associate Professor with immediate effect, vide order dated 22.04.2016. When the case was taken up for hearing today and file whereby the case of the petitioner had been recommended was produced. Vide letter dated 21.04.2016, the Medical College, Mewat had recommended the case of the petitioner for re-designation as Professor from Associate Professor w.e.f. 01.02.2015 and as per MCI regulations, she completed three years of experience as Associate Professor in the institute. The recommendation made by the Mewat College taking her initial appointment as February 01, 2012.

Now the question for consideration would be whether the services of the petitioner rendered w.e.f. 06.10.2008 to 30.09.2010 as Associate Professor in the Tearthanker Mahaveer Medical College, Mooradabad and thereafter w.e.f. 01.10.2010 to 31.01.2012 in SGT

Medical College, Budhera, have been duly recommended by the MCI. The petitioner has worked in the above said two institutes as Associate Professor.

A perusal of the minutes of the meeting dated 24.10.2013 shows that the experience of the petitioner has been taken w.e.f. 01.10.2010 to 31.01.2012 at SGT Medical College Budhera, Haryana (one year and four months) as Associate Professor and from 01.07.2010 to 10.09.2012 at SHKM GMC Nalhar, Mewat. The experience of one year and four months had been taken in SGT Medical College as per the MCI regulations. At the same time, her experience from 01.02.2012 to 02.07.2013 has not been taken into consideration as there was no affiliation by the MCI. As per affidavit dated 11.12.2015, the petitioner's case has now been recommended by taking her experience w.e.f. 01.02.2012, by the office of respondent No.3, vide letter dated 21.04.2015. The period from February 2012 till the approval was granted by MCI has now been taken as regular experience, to be given to the petitioner for the purpose of eligibility for promotion to the post of Professor. The period from 01.10.2010 to 31.01.2012 is also required to be taken into consideration as this period was considered by the Selection Committee as per interview held on 24.10.2013.

Since the petitioner fulfills all the essential qualifications prescribed as per the Minimum Qualification for Teachers in Medical Institutions Regulations, 1998 as stated above, so, the petitioner after serving as Associate Professor from 06.10.2008 till the date of interview i.e. 24.10.2013 was fully eligible for appointment to the post of Professor.

She had an experience w.e.f. 06.10.2008. Hence, the experience from 06.10.2008 has to be taken into consideration for assessing the eligibility of the petitioner for the post of Professor. Moreover, in the present case, the record was produced and there is a letter dated 16.02.2016 issued by the Director General, Medical Education & Research, Haryana to The Additional Chief Secretary, Health & Medical Education Department whereby the case of the petitioner has been recommended for re-designation as Professor w.e.f. 23.11.2013. The recommendation sent by the Director General, Medical College has not been implemented while issuing the promotion order to the petitioner. She has been wrongly re-designated as Associate Professor with immediate effect, vide order dated 22.04.2016.

In view of the above, the present writ petition is allowed and directions to the respondents to re-designate the petitioner to the post of Professor Biochemistry w.e.f. 23.11.2013 at SHKM (GMC, Nalhar, Mewat) and shall release all the consequential benefits. Since, the petitioner had worked in all the three institutes, which have been duly recognized medical colleges, a costs of ₹50,000/- is imposed upon the respondents for not considering her eligible in the minutes of meeting held on 23.11.2013.

May 04, 2016
naresh.k

(**RITU BAHRI**)
JUDGE