

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

**CWP No.24743 of 2014 (O&M)
DATE OF DECISION : 14.01.2016**

Dr. A.K. Gupta

...Petitioner

Versus

CAT, Chandigarh Bench and others

...Respondents

CORAM: HON'BLE MR. JUSTICE M.JEYAPPAUL.

HON'BLE MR. JUSTICE RAJ MOHAN SINGH.

Present: Mr. M.L. Sarin, Sr. Advocate with
Mr. Nitin Sarin, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed order dated 07.03.2014 (Annexure P-25), order dated 08.01.2003 (Annexure P-9/A), order dated 24.01.2003 (Annexure P-10) and order dated 07.03.2006 (Annexure P-15) passed by Central Administrative Tribunal, Chandigarh Bench Chandigarh.

[2]. Petitioner claimed that he is a highly acclaimed Doctor having passed his qualifying degree of MBBS and Master's Degree from a premier institute i.e. AIIMS, New Delhi. The petitioner was appointed as Assistant Professor, Department of Hospital Administration, All India Institute of Medical Sciences, New Delhi on 21.05.1988. Thereafter, he was selected in the said institute as Associate Professor in the selection process. Post Graduate Institute of Medical Education and Research, Chandigarh advertised various posts

of Professor including four posts of Professor (Medical). Out of four posts, one post was that of Professor of Hospital Administration and Medical Superintendent. Petitioner applied for the said post in view of his qualification and experience. As per eligibility criteria, the educational qualification and experience required for the post of Professor-cum-Medical Superintendent in Hospital Administration is extracted as below:-

“Master Degree in Hospital Administration along with 14 years teaching experience.

And or

Research experience in Hospital Administration after obtaining the qualifying Masters Degree in Hospital Administration of which at least 7 years in the Administration of a major Hospital in a senior position.”

The advertisement also recited relaxation in age, qualification and experience on the recommendations of Standing Selection Committee in exceptional cases.

[3]. Petitioner was not having requisite experience of 14 years. However, on the basis of recommendations made by the Committee his claim was considered and recommended for appointment as Medical Superintendent in the rank of Additional Professor. Petitioner was appointed as Medical Superintendent of PGIMER on temporary basis likely to continue on 01.12.1995. Petitioner was appointed as Medical Superintendent in the pay scale of Professor (i.e. 5900-200-7300) but the academic rank assigned to the petitioner was that of Additional Professor. The petitioner took over the charge of Medical

Superintendent-cum-Additional Professor w.e.f 09.01.1996 and worked on the post for four years. On 25.09.1999, petitioner made a representation to the Director, PGIMER wherein he sought relaxation of one year experience and sought designation as of full Professor. During intervening period from 1999 to 2002 numerous communications were made by the petitioner in the context of relaxation of one year and for upgradation for the post of Professor w.e.f 01.01.2001. Petitioner submitted that his name was finally cleared as Professor by the Union Health Minister w.e.f 08.01.2003 and not from 01.01.2001 and as such he was promoted/appointed as Professor w.e.f 08.01.2003.

[4]. Appointment of the petitioner was challenged by one Dr. Arvind Rajwanshi in CWP No.15127 of 2003. The writ petition was dismissed being belated. Thereafter, petitioner represented to the Health Ministry seeking promotion w.e.f 01.01.2001 vide representation dated 22.11.2005. The claim of the petitioner was rejected by the Health Ministry on 07.03.2006 on the ground that it would disturb inter se seniority of the candidates.

[5]. By legal notice dated 17.08.2006 to the Institute, petitioner challenged his appointment w.e.f 08.01.2003 instead of 01.01.2001. After invoking process of Right to Information Act, he remained dissatisfied with the information supplied by the CPIO and thereafter, preferred an appeal before Central Information Commission on 20.06.2007. On acceptance of appeal, petitioner obtained information in respect of his case. Thereafter, he filed CWP No.1188 dated 15.01.2008 before this Court challenging the orders dated 08.01.2003, 24.01.2003 and 07.03.2006. The writ petition was transferred to the

Central Administrative Tribunal. The Tribunal accepted the petition vide judgment dated 24.02.2010 and impugned orders therein were quashed and the prayer of the petitioner to be treated as full Professor w.e.f 08/09.01.1996 (date of initial appointment as Additional Professor) was accepted and PGIMER was directed to provide all consequential benefits in terms of status and seniority as per law. Petitioner alleged that opinion of the Union Health Minister was sought by PGIMER and the Ministry decided not to challenge the order of CAT dated 24.02.2010.

[6]. Thereafter, on 25.03.2010, Dr. Nancy Malla and 29 other doctors filed CWP No.6103 of 2010 challenging the order of the Tribunal dated 24.02.2010. The Division Bench of this Court took cognizance of the writ petition and allowed the same on 13.03.2012 on the ground that the Tribunal did not consider the question of delay, latches and limitation. This Court observed that an opportunity be granted to the petitioners in the said writ petition to project their side of arguments. Parties were directed to appear before the Tribunal. Petitioner assailed the order of the High Court in SLP No.19147 of 2012. However, the Hon'ble Supreme Court vide order dated 18.03.2013 disposed of the matter directing the Tribunal to decide the matter on merits without being influenced by any observation made by the High Court in the order dated 13.03.2012.

[7]. Thereafter, private respondents impleaded themselves before the Tribunal in terms of permission granted by the High Court vide order dated 13.03.2012 and thereafter, the Tribunal proceeded to decide the case. The Tribunal dismissed the case on the ground of

limitation as well as on merits vide order dated 07.03.2014. That is how the present petition came to be filed.

[8]. We have heard learned counsel for the petitioner and have also perused the material on record.

[9]. Admittedly, petitioner was appointed as Assistant Professor in Department of Hospital Administration, AIIMS, New Delhi on 21.05.1988 and thereafter, he was selected as Associate Professor on 02.07.1992. PGIMER advertised various posts including the post of Professor-cum-Medical Superintendent of Hospital Administration. Candidates including the petitioner applied responding to the above advertisement. They were subjected to interview before the Selection Committee. On the recommendations of the Selection Committee, candidature of the petitioner was approved by the Governing Body vide order dated 15.11.1995. Consequently, the petitioner was issued letter of appointment dated 01.12.1995 for the post of Additional Professor of Hospital Administration in the pay scale of Rs.5900-200-7300/- which was accepted by the petitioner without any protest. Petitioner joined the Medical Superintendent-cum-Additional Professor of Hospital Administration.

[10]. After joining the post, the petitioner made a representation for the first time on 25.09.1999 to the Director PGIMER, Chandigarh for his re-designation as Professor instead of Additional professor. Thereafter, there were numerous correspondence at the instance of the petitioner. Petitioner represented to the Director, PGIMER that since he has completed 14 years experience, therefore, he be designated as Professor in Hospital Administration w.e.f 01.01.2001. His request was

turned down, however, the petitioner kept on making representations and reminders.

[11]. The issue of re-designation of petitioner as Medical Superintendent-cum-Professor of Hospital Administration was ultimately decided and vide order dated 08.01.2003, Director PGIMER was directed by the Ministry of Health and Family Welfare to re-designate the petitioner as Medical Superintendent-cum-Professor of Hospital Administration. Petitioner was re-designated as Medical Superintendent-cum-Professor of Hospital Administration w.e.f 08.01.2003. Retrospective designation w.e.f 01.01.2001 was held not possible. Thereafter, process of filing writ petition and ultimate challenge upto the Hon'ble Apex Court were resorted to.

[12]. We have considered the issue involved in the present writ petition. The private respondents were promoted as Professor after they fulfilled the eligibility criteria of 14 years. Petitioner was appointed as an Additional Professor, though in the grade of Professor on 01.12.1995.

[13]. Admittedly, private respondents were promoted as Professors after 01.12.1995 and at the time of promotion of the private respondents after 01.12.1995, petitioner was not eligible for the post of Professor for want of experience. Petitioner claimed deemed promotion from the date of his initial appointment on 01.12.1995 and the relief claimed by the petitioner would alter the date of appointment of the petitioner from 08.01.2003 to 01.12.1995. Such a course would definitely affect the seniority of private respondents adversely. The re-designation of the petitioner in the year 2003 cannot take away the

rights of seniority of the private respondents on the basis of notion propounded by the petitioner as his initial appointment was on the post of Medical Superintendent-cum-Additional Professor though in the pay scale of a Professor.

[14]. The initial post offered and accepted by the petitioner was distinct from the cadre of the Professor. Therefore, re-designation of the petitioner if done w.e.f 01.12.1995 would place him in the cadre of Professor along with others, thereby affecting the seniority position of the private respondents. If any alteration is made in the date of appointment of the petitioner as Professor by virtue of his re-designation, then the settled seniority position would receive a jolt and the legitimate seniority of private respondents would be in jeopardy. Therefore the claim of the writ petitioner is totally unacceptable.

[15]. Question of delay, laches and limitation would definitely play a pivotal role in determination of claim of the petitioner viz-a-viz others. Since there was no protest raised by the petitioner at the time of initial appointment with regard to his terms and conditions of the appointment, therefore, the claim has to be decided on the principle of estoppel and secondly on the ground of delay and laches. In the event of no objection having been raised by the petitioner at the time of his initial appointment, he is estopped from his own act and conduct from challenging the terms and conditions of the appointment at such a belated stage. He made the representation after four and half years from the date of his appointment on 25.09.1999 and thereafter, kept on making representations till the year 2008, when the writ petition was filed. The claim has to be espoused within one year from the date of

accrual of cause of action and after six months from the date of filing representation. No application for condonation of delay was filed and explained before the Tribunal in not approaching in time. The re-designation of the petitioner as Professor w.e.f 08.01.2003 was on acquiring seven years experience as Additional Professor under the Assessment Promotion Scheme issued by the Government of India on 10.03.2000, which was given to the petitioner and he was not subjected to any interview by the Standing Selection Committee as per rules, whereas other similarly situated persons were subjected to the interview by the Standing Selection Committee and they were not given any relaxation at par with the petitioner.

[16]. We have considered the submissions made at the bar. Pursuant to order dated 14.12.2015, petitioner has filed an affidavit highlighting that there are no rules governing the PGIMER whereby there could have been any scope for the selection committee to re-designate the petitioner as Additional Professor, when post advertised was that of Professor. As per advertisement, the post of Professors was advertised stipulating that those candidates who were having 14 years experience in regular field were eligible. Petitioner was one of the candidates who did not pass the test of eligibility criteria but Scrutiny Committee forwarded his candidature before the Selection Committee, who recommended his name to the Governing Body for appointment. Governing Body approved the name of the petitioner and ultimately, Director, PGIMER offered him the appointment on 01.12.1995 to the post of Medical Superintendent-cum-Additional Professor of Hospital

Administration instead of Medical Superintendent-cum-Professor of Hospital Administration.

[17]. The minutes of the Meeting of the Selection Committee shows that the petitioner was never appointed as Professor. Since none of the candidates was found eligible for the post of Medical Superintendent-cum-Professor of Hospital Administration, therefore, a decision was taken by the Selection Committee to make appointment on a lower post. Since the petitioner accepted the assignment without demur and did not choose the protest, his candidature was considered for re-designation as Professor w.e.f 08.01.2003 on completion of 7 years of experience. Accordingly, re-designation was done as Medical Superintendent-cum-Professor of Hospital Administration w.e.f 08.01.2003.

[18]. The re-designation as done was not on account of the fact that he was appointed as Professor but such re-designation was for a specific purpose. Petitioner having joined service as Additional Professor accepting the terms and conditions of appointment, cannot turn round and challenge the same at such a belated stage. The petitioner was lacking in terms of qualification and experience at the relevant time and therefore, he was offered a lower post of Additional Professor. Since the petitioner was offered a lower post of Additional Professor against the advertised post of Professor and he also heartily accepted the same, his claim for fixation of seniority in the grade pay of Rs.5900-7300/- is unsustainable.

[19]. The grade which was granted to the petitioner cannot be used as a tool to prejudice the rights of the private respondents for

granting him the seniority from the date of his initial appointment. Of course, the private respondents challenged the initial appointment of petitioner as Additional Professor. But in view of decision in earlier writ petition, the appointment of the petitioner on the post of Additional Professor cannot be questioned by the private respondents at this stage.

[20]. Relief of re-designation on the post of Medical Superintendent-cum-Professor has already been granted to the petitioner w.e.f 08.01.2003, therefore, in the considered opinion of this Court, no indulgence can be granted to the petitioner by changing the nomenclature of the post he held at the time of initial appointment. We found the writ petition to be totally bereft of merits and the same is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

(M. JEYAPPAUL)
JUDGE

January 14, 2016
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