

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

LPA No.666 of 2013

Date of Decision:- 27.10.2016

Dr. Neeraj Sharma

...Appellant

VERSUS

State of Punjab & Ors.

....Respondents

**CORAM : HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE SUDIP AHLUWALIA**

Present:- Mr. Saurav Khurana, Advocate for the appellant.

Mr. Rajesh Bhardwaj, DAG Punjab.

Mr. Ashwani Kumar Chopra, Senior Advocate with
Mr. Akshit Chaudhary, Advocate for respondent No.4.

Ms. Shivangi Sharma, Advocate for respondent No.5.

SUDIP AHLUWALIA, J.

This appeal is directed against the judgment passed by the Ld.

Single Judge in CWP No.1278 of 2006 on 12.12.2012.

2)

The appellant had filed the Writ Petition challenging selection

of respondent No.4 to the sole post of Assistant Professor (later Designated as Associate Professor, **Blood Bank**) in the State Medical Colleges of Punjab. Her contention was that the respondent did not satisfy the eligibility criteria inasmuch as she did not possess the requisite teaching experience in the '**Specialty**' concerned i.e. '**Blood Bank**'. The petition was contested on behalf of respondent Nos.1 to 4, whose assertion was that the private respondent was rightly selected for appointment inasmuch as according to the Rules in existence at the relevant time, teaching experience in '**Pathology**' was to be treated at par with '**Blood Bank**', which was the purported '**Specialty**'. For this purpose, the Respondent/State had placed on record a copy of the Letter of clarification issued on behalf of the Government of Punjab way back on 8.1.2002, i.e. long before commencement of the Selection Process and issuance of the Advertisement. The relevant prescribed qualifications for the post concerned in the Advertisement, as well as in the Letter of clarification dated 8.1.2002, which were noted by the Ld. Single Judge, are set out below -

A/ (Extracts from Advertisement 'Annexure P3' regarding qualifications) -

<i>Sr No.</i>	<i>Name of the post</i>	<i>General</i>	<i>SC PB</i>	<i>BC PB</i>	<i>Total</i>
18	Blood Bank	1	-	-	1

Essential qualification for (i), (ii) & (iii) as specified below

(i) Sr. No.17 to 22, MD MS Ph.D, F.R.C.S. P.M.R.C.P., In the specialty concerned.

Sr.No.17 to 22: Should have teaching experience as Senior Lecturer or lecturer for a minimum period of three years in the 'specialty concerned' whether prior to Post Graduation or subsequent thereto.

B/ (Letter of Clarification) -

*“No.1/7/99-3HS3/178
Govt. of Punjab
Department of Medical Education & Research
(Health-I Branch)*

*To
The Secretary,
Punjab Public Service Commission,
Patiala.*

Dated Chandigarh 8.1.2002

*Subject:- Direct Recruitment to one post of Assistant Professor
Blood Bank in the Punjab State Medical Colleges.*

Sir,

*I am directed to refer to your letter No.RG186/99/A-13/3734 dated 19.6.2001 on the above subject and to say that according to the Punjab State Medical Education Services (Class-I) Rules, 1978 under item (Amendment 1985) Appendix A, No.5 **Rules 11 is a wing of department of Pathology**. As per amended rules 1985 under rule 4 there is no change in Appendix A item No.5. Only item No.24 has been changed and item shown at serial No.27 to 30 (new deptt.) has been introduced. As per law the Blood Bank cannot be treated as separate department and it is department of Pathology as one of the part/wing. Therefore, the persons who are teaching in the Blood Bank can be replaced in the deptt.of Pathology meaning thereby that both the deptts. are interchangeable. The experience as Lecturer Pathology can be treated for the post of Assistant Professor Blood Bank or working as Lecturer Blood Bank can be treated as experience for the post of Assistant Professor Pathology.*

2. It has been made clear under the Punjab State Medical Education Services (Class-I) Rules, 1978 (Amendment Rules, 1985) Rule 11 Appendix that Blood Bank is not a separate deptt. and is a part of the deptt. of Pathology. Though the specialty wing of Blood Bank is separate but its cadre is not separate. The specialty wise posts are indicated in Appendix B.

3. With reference to your letter dated 19.6.20\01 the Punjab Medical Education Services (Class-I) Rules 1978 (Amendment 1985) under Appendix-C(3) B-1 the action regarding provisions in the specialty of Blood Bank is taking separately.

Yours faithfully,

Sd/-

(Harjit Singh)

Special Secy. to Govt. Punjab

Medical Education & Research Deptt.” (Emphasis added)

3) In the light of the aforesaid clarification on behalf of respondent No.1 and in view of the fact that the Recruitment Rules, 1978, which were in existence at the relevant time, did not have any provision for any exclusive **Specialty** Department of **Blood Bank**, the Ld. Single Judge was of the opinion that there was no illegality in the Selection and Appointment of respondent No. 4 for the concerned post and, therefore, dismissed the writ petition. The appellant is understandably aggrieved and has asserted that even the rules and clarification quoted on behalf of respondents are *de hors* the guidelines issued by the Medical Council of India (Respondent No. 5) in the year 1998, regarding the necessary qualification for such appointment (s), and such guidelines having been held to be mandatory in nature by various Judicial pronouncements. The appointment of respondent No. 4 is, therefore, liable to be quashed.

4) The appellant's side has drawn attention of this Court to the Eligibility Criteria for the Post of Assistant Professor, according to the MCI guidelines. The same have been reproduced in Para 7 of the Writ Petition, which is on Pages 47 to 48 of the Paper Book. The MCI as respondent No. 5 has also reproduced those qualifications in Para 9 in its counter affidavit, which is on Pages 99 to 100 of the Paper Book. Again, the same set of

qualifications has been reproduced in the MCI's letter dated 26.4.2008, which is Annexure R-5/1 in Para 2 on Pages 208 to 209. The same set of qualifications is now being reproduced below for further consideration -

IMMUNO-HAEMATOLOGY AND BLOOD TRANSFUSION		
Name of Post	Academic Qualification	Teaching Experience required
Professor	D.M. Immunology or MD (Immuno Haematology & Blood Transfusion/MD (Pathology or Bacteriology or Haematology with 2 years teaching experience or special training in the deptt of Immuno-Haematology & Blood Transfusion	(1) As Reader/Associate Professor in Immuno-Haematology & Blood Transfusion or Immunology or Pathology /Bacteriology Haematology for your (Sic....) years in a recognized medical college Desirable (2) Minimum of four Research Publication indexed in index Medicus/national journal and one research publication in international journal
Reader/Associate Professor	D.M. Immunology or MD (Immuno-Haematology & Blood Transfusion/MD (Pathology or Bacteriology or Haematology with 2 years teaching experience or special training in the deptt of Immuno-Haematology & Blood Transfusion	(1) As Assistant Professor/Lecturer in Immuno-Haematology & Blood Transfusion or Immunology or Pathology /Bacteriology Haematology for your (Sic....) years in a recognized medical college Desirable (2) Minimum of four Research Publication indexed in index Medicus/national journal.

IMMUNO-HAEMATOLOGY AND BLOOD TRANSFUSION		
Assistant/Professor/Lecturer	D.M. Immunology or MD (Immuno-Haematology & Blood Transfusion/MD (Pathology or Bacteriology or Haematology with 2 years teaching experience or special training in the deptt of Immuno-Haematology & Blood Transfusion	1. Requisite recognized post graduate qualification on the subject. 2. <i>Three years teaching experience 'in the subject' in a recognized medical college as Resident/Registrar/Demonstrator.</i>
Tutor/Demonstrator / Resident / Registrar	MBBS	<i>(Emphasis added)</i>

5) The private respondent was ostensibly appointed Assistant Professor (**Blood Bank**) in terms of the Recruitment Rules as in force in the State of Punjab at the relevant time, which do not appear to have been updated or revised in the light of MCI Guidelines of 1998. Incidentally, those Guidelines do not specifically refer to any Post or Department of '**Blood Bank**', and the reference in this regard from the side of the appellant is to the Department of '**Immuno Hematology-Blood Transfusion**'. There is an obvious discrepancy of nomenclature in respect of the concerned department and the question at this stage is whether the term '**Blood Bank**' is to be understood or treated at par with the Department of '**Immuno Hematology-Blood Transfusion**', which otherwise is essentially a matter for minute scrutiny only by the Academic Experts in this field. Obviously, the best authority to give the opinion in this regard would have been the Medical Council of India itself (respondent No. 5). Unfortunately, however, it has not been forthcoming in giving a categoric and clear opinion on this Technical/Expert question. This would be clear from the MCI's own version regarding the eligibility of respondent No. 4 to the Post in question. The

approach of the MCI in its counter affidavit is clearly evasive, as would appear from the following averments made therein -

“17. It is respectfully submitted that for the post of Associate Professor in Immuno-Haematology and blood transfusion Deptt., a candidate after fulfilling the minimum required educational qualification of possession MD in the subject, is required to have at least 5 years teaching experience in the same Deptt. and not in any other Deptt. In other words, by working as a teacher in the Pathology Deptt., a doctor concerned cannot claim to possess the minimum required teaching experience in the Immuno-Haematology Blood Transfusion Deptt. and therefore would not be eligible for appointment to the post of Associate Professor in the specialty of Immuno-Haematology & Blood Transfusion. It is, therefore, respectfully submitted that for the adjudication of the dispute raised, it would deserve to be considered whether the candidate concerned possesses the educational qualification and the teaching experience for the post of Associate Professor for this specialty. It is respectfully submitted that in the absence of complete details in the writ petition, it would be for the authorities who are undertaking the exercise of appointment/promotion to place the entire material on record for evaluation and determination of the eligibility by any of the candidates for this post.

18. It is most respectfully submitted that in the present case, the answering respondent is not involved in the dispute in relation to appointment/promotion and craves leave of this Hon'ble Court to refer to the replies on behalf of the other respondents. However, it is respectfully reiterated that each candidate who seeks to claim employment as a medical teacher, is obliged to show and demonstrate that the candidate possesses the minimum requisite recognized educational qualifications and the minimum prescribed teaching experience laid down by the Council through its mandatory regulations. Any candidate who does not fulfill the minimum requirements in this regard, as laid down by the Council, would not be entitled to seek any relief under Article 226 of the

Constitution of India and which is contrary to the regulations of the Council. The answering respondent prays accordingly.”

6) On the other hand, in its communication dated 26.4.2008, the MCI in answering a letter to the private respondent's counsel clearly went on to opine that the said respondent **“can be considered eligible”** for the Post of Reader-Associate Professor in **Blood Bank**. The relevant extract from the aforesaid communication issued by the MCI, which is on record in the form of Annexure R-5/1 at Pages 207 to 210 of the Paper Book is as follows -

“3. It is submitted that the perusal of the affidavits filed by Dr. Neeraj Sharma and Dr. Kanchan Saini reveal as under:-

(a) Dr. Neeraj Sharma possesses M.D. in Pathology from Govt. Medical College, Amritsar and has worked as Lecturer/Senior Lecturer in Blood Bank from 09.07.1999 till date i.e. for a period of 8 years 10 months.

(b) Dr. Kanchan Saini has possessed the qualifications of M.D. in Pathology and has worked as Lecturer in Pathology from 17.11.98 to 10.11.1999 i.e. for a period of one year and in clinical Pathology from 11.11.1999 till date i.e. for a period of 8 years 5 months.

4. In view of above and in view of statutory Regulations, both the petitioner i.e. Dr. Neeraj Sharma and respondent No.4 i.e. Dr. Kanchan Saini can be considered eligible for the post of Reader/Associate Professor in Blood bank.

Yours faithfully,

Sd/- (Lt.

*Col. Dr. A.R.N. Setalvad (Retd.)
Secretary”*

7) The aforesaid two versions almost bordering on contradiction in the contents of the averments of the MCI in its counter affidavit, and its separate communication dated 26.4.2008 notwithstanding, it can be clearly inferred that the content and scope of '**Blood Bank**' is extremely close to

that of '*Immuno-Hematology Blood Transfusion Deptt.*', if not, altogether identical. In the circumstances, the selection of respondent No.4 to the Post in question would not appear to be altogether illegal considering that she did satisfy the prescribed criteria of eligibility as in force in the State of Punjab at the relevant time, which however does not appear to have been revised in accordance with the MCI Guidelines of 1998, for which, in any event, she herself is certainly not responsible. However, if the prescribed minimum qualifications for the Posts of Professor, Reader and Associate Professor, which undoubtedly, are Posts superior to that of Assistant Processor/Lecturer, as reproduced in Para 4 earlier, are scrutinized carefully in totality, yet another logical conclusion in favour of respondent No. 4 would emerge. We say so for the reason that undoubtedly both the appellant and respondent No. 4 had initially applied for the Post of Assistant Professor (later Designated as Associate Professor). Now according to the above Table of essential minimum qualifications prescribed by the MCI, it is seen that for the purpose of teaching experience required, the stipulation is *three years teaching experience in the subject in a recognized medical college as Resident/Registrar/Demonstrator*. In this regard, the appellant's assertion is that the words '*in the subject*' would mean only '*Blood Bank*' or its equivalent '*Immuno-Hematology Blood Transfusion Deptt.*', and not '*Pathology*', which was the subject the respondent had been teaching. On the other hand, as argued on behalf of respondent No. 4, in the light of the prescribed qualifications under the Punjab State Medical Education Services (Clause-I) Rules 1978 as amended in 1985, and in view of the specific classification by the Medical Education & Research Department reproduced in Para 2 earlier, *Blood Bank* cannot be treated as separate

Department and at least at the relevant time, it was a part/wing of the Department of ***Pathology***, on account of which, the experience as Lecturer, Pathology could be treated for the Post of Assistant Professor, Blood Bank and vice versa. In fine, therefore, the appellant has sought to emphasize that the words '***in the subject***' as prescribed in the teaching experience requirement for the Post of Assistant Professor/Lecturer must be taken to mean as only ***Blood Bank or Immuno-Hematology Blood Transfusion Deptt.***, while according to respondent, there was no restriction in this respect for an applicant having teaching experience in '***Pathology Department***', which was inter-changeable with '***Blood Bank***' according to the prevalent rules. In this backdrop, when the necessary teaching experience for the superior posts of ***Professor and Reader/Associate Professor Immuno-Hematology Blood Transfusion Deptt.*** are to be seen as prescribed by the MCI, it emerges that for being Professor, experience as Reader/Associate Professor in '***Immuno-Hematology Blood Transfusion Deptt.***' or '***Pathology/Bacteriology Hematology***' for the required number of years is permissible. Similarly, for the post of Reader/Associate Professor, again the requisite teaching experience in '***Immuno-Hematology Blood Transfusion Deptt.***' or '***Pathology/Bacteriology Hematology***' is permissible (**Emphasis added**). Admittedly, the post applied for by the contesting parties being '***Assistant Professor***' was itself re-designated as that of '***Associate Professor***'. In such eventuality, the respondent's teaching experience in '***Pathology***' would, therefore, automatically render her eligible according to the teaching experience requirement. By no logic, can it be inferred that when teaching experience in '***Pathology***' is admissible to satisfy the minimum teaching experience for the Superior posts of Professor

and Associate Professor in the *Immuno-Hematology Blood Transfusion Deptt.*', the same experience in the same subject for the lower post of Assistant Professor would not be admissible, since the post of Assistant Professor was itself a Feeder Post for the other two superior posts.

8) It is also well settled that in case of a person lawfully appointed to a Post even if such appointment is irregular, cannot be divested of the same. [See Gujarat State Deputy Executive Engineers' Association v. State of Gujarat, 1994 Supp (2) SCC 591; Buddi Nath Chaudhary v. Akhil Kumar, (2001) 2 SCR 18; M.S.Mudhol (Dr.) v. S.D.Halegkar, (1993) II LLJ 1159 SC and Tridip Kumar Dingal v. State of West Bhengal, (2009) 1 SCC 768.]

9) In the present case, there is no allegation anywhere of any nepotism or any other form of unfair favoritism or bias in the matter of appointment of private respondent in the original Writ Petition, on account of which, she is clearly entitled to continue in her post considering that she has been in such employment for the last ten years. However, in her Written Submissions filed before us on 29.9.2016, after conclusion of the arguments in appeal, the appellant did try to insert a rather vague and belated element of mala fide on the part of erstwhile Acting Director, Medical Education and Research, Punjab by stating -

“.....Whatever manipulated experience certificate of Blood Bank, she had produced, was wrong and was prepared by hand in glove of malpractice of the acting director, Medical Education and Research Punjab. He is liable for penal action for this act since working in speciality of pathology is altogether separate from working in Blood Bank speciality (e.g. working of eye cannot be equated with the working of leg).....”

We are not impressed by this extremely belated and new

insinuation raised by the appellant 10 years after filing of her Writ Petition, by imputing vague motives to Government Authority, on whose behalf, the letter of clarification of Eligibility Rules was issued four years before start of the recruitment process when the Post in question had not even been advertised, and after passage of over 14 years following such clarification.

10) For the aforesaid reasons, we find no merit in the appeal, which is, therefore, dismissed.

(Surya Kant)
Judge

(Sudip Ahluwalia)
Judge

October 27, 2016
AS

Whether speaking/reasoned : ***Yes/No***

Whether Reportable : ***Yes/No***