

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

LPA No.1786 of 2014 (O&M) in
CWP No.7911 of 2013
Date of decision: 26.05.2016

Rajesh Kumar

----Appellant

Versus

Pt. B.D. Sharma, University of Health
Sciences, Rohtak and another

----Respondents

**Coram: Hon'ble Mr. Justice Rajesh Bindal
 Hon'ble Mr. Justice Harinder Singh Sidhu**

Present: Mr. R.K. Malik, Sr. Advocate with
 Mr. Bhupinder Malik, Advocate
 for the appellant

Mr.Ramesh Hooda, Advocate
for the respondents.

HARINDER SINGH SIDHU, J.

This intra-Court appeal under Clause X of the Letters Patent has been filed against the judgment dated 29.04.2014 of the learned Single Judge, whereby the writ petition filed by the appellant for quashing the decision dated 19.10.2012 (Annexure P-1) of the Executive Council, whereby, his claim for promotion to the post of Dental Mechanic had been rejected, has been dismissed.

Along with the appeal, application seeking condonation of 59 days delay in re-filing the appeal has also been filed.

For the reasons stated in the application, the delay of 59 days in re-filing the appeal is condoned.

The appellant was appointed as Chair Side Assistant by way of direct recruitment and joined as such on 08.01.2010. The next promotion from the post of Chair Side Assistant is to the post of Dental Mechanic.

The service conditions for the post of Dental Mechanic are governed by '**Haryana Medical Education Department Technical Staff (Group-C) Service Rules, 1999**'. 50% posts of Dental Mechanic are to be filled by direct recruitment and 50% by promotion from amongst the Chair Side Assistants or Assistant Dental Mechanics having two years experience as Chair Side Assistant or three years experience as Assistant Dental Mechanic. The relevant rule is reproduced below:

“Method of recruitment

9(1) Recruitment to the service shall be made:-

a) Dental Services

b) In case of Dental Mechanic:-

i) 50% by promotion from amongst the Chair Side Assistant or Assistant Dental Mechanic; and

ii) 50% by direct recruitment; or

iii) by transfer or deputation of an official already in the service of any State Govt. or the Govt. of India.”

2) All promotions, unless otherwise provided shall be made on seniority cum merit basis and seniority alone shall not confer any right to such promotions.”

It is the case of the appellant that pay scale of the post of Chair Side Assistant is ₹4000-6000/- which was subsequently revised to ₹5200-20200/- plus GP ₹2400/- whereas, pay scale of Assistant Dental Mechanic was ₹3050-4590/- which was revised to ₹5200-20200 plus GP ₹1900/- with effect from 1.1.2006. Thus, the pay scale of Chair Side Assistant is higher in comparison to Assistant Dental Mechanic. It was argued on behalf of the

be made from different categories/posts with the same pay scale, promotions can be made from both the categories on the basis of combined seniority list to be framed on the basis of length of service. But where the pay scale of one of the categories is higher, then, in the first instance promotion is to be made from that category and only if no eligible person in that category is available, then a person in the lower pay scale can be considered for promotion.

Per contra, it was contended on behalf of the respondents that CWP No.6255 of 2012 titled 'Karamjeet and another Vs. State of Haryana and ors' had been filed by Assistant Dental Mechanics praying for directions to grant higher pay scale to the post of Assistant Dental Mechanic in comparison to the post of Chair Side Assistant and to grant them preferential right of promotion to the post of Dental Mechanic in comparison to the persons holding the post of Chair Side Assistant. Vide order dated 3.4.2012, this petition was disposed of with a direction to consider the representation filed by the petitioners therein.

Pursuant thereto a committee consisting of Dr. Mrs. Sarla Hooda, Registrar, Pt. B.D. Sharma University of Health Sciences, Rohtak (Chairperson), Dr. Sanjay Tewari, Principal, PGIDS, Rohtak, Dr. (Mrs.) Manu Rathee, Sr. Prof. & Head, Prosthodontics Deptt. PGIDS, Rohtak and Sh. Yogender Rathee, Law Officer UHS Rohtak was constituted, which in its report observed that the pay scales and work of both of the categories being different, the inter se seniority of both the categories cannot be made. The committee proposed that promotion to the post of Dental Mechanic from amongst Chair Side Assistants and Assistant Dental Mechanic may be

the University, however, did not wholly agree with this recommendation. In its meeting held on 19.10.2012 vide Agenda item No.12 (Annexure P-1) it resolved that the five vacant posts of Dental Mechanic be filled up by way of promotion from amongst the Assistant Dental Mechanics and Chair Side Assistants having requisite experience in equal proportion i.e. 50:50 meaning thereby two Assistant Dental Mechanics and three Chair Side Assistants be promoted to the five vacant posts of Dental Mechanic as a one time measure.

It was stated that there were a total of 11 sanctioned posts of Dental Mechanics out of which 06 posts had been filled by way of direct recruitment and remaining 5 posts had to be filled up by way of promotion, on the basis of the criteria approved by the Executive Council and reservation policy of the State Government.

It was explained that the decision of the Executive Council, which is the supreme body to frame/change rules and regulations of all categories of service, became applicable w.e.f. 19.10.2012 and hence the posts of Dental Mechanic were rightly filled by promotion giving representation to both the categories. For filling up the 5 vacant posts of Dental Mechanic by promotion 50% quota (three posts) was given to Chair Side Assistants out of which one was meant for Scheduled Castes. 50% quota (two posts) both in the general Category fell to the share of Assistant Dental Mechanics. Accordingly, two senior most Chair Side Assistants of General Category have been promoted. The appellant was third in the seniority in the General Category and hence could not be promoted.

Before the Ld. Single Judge, it was argued on behalf of the

application and could not apply to the case of appellant as he had become eligible for promotion prior thereto.

Ld. Single Judge thus considered the question i.e., whether the statutory Rules applicable at the time of availability of the post would govern or the Rules applicable at the time of consideration for promotion would apply.

Ld. Single Judge noted that there was no provision in the statutory rules enjoining upon the respondents to prepare year wise panel of eligible candidates for promotion or requiring that the vacancies be earmarked and the cases of promotions be considered year wise on accrual of the vacancies.

In these circumstances, relying on various decisions of Hon'ble the Supreme Court including in the case of **Deepak Aggarwal and another Vs. State of U.P and ors (2011) 6 SCC 725**, Ld. Single Judge held that decision of the Executive Council does not result in any vested right of the appellant being taken away. His right to be considered for promotion was to be as per the Rule applicable at the time of consideration for promotion. Accordingly the writ petition was dismissed.

Before us, Ld. Counsel for the appellant has reiterated the same arguments as addressed before the Ld. Single Judge.

Admittedly, the promotions have been made as per the decision of the Executive Council dated 19.10.2012, which decision was taken to resolve the pending issue of promotions. Like before the Ld. Single Judge, the Ld. Counsel for the appellants was unable to refer to any statutory provision which mandated the preparation of a year wise panel of

eligible candidates for promotion or required that the vacancies be

earmarked year wise and the cases of promotion be considered year wise on accrual of the vacancies. In the absence of any such statutory requirement, we see no illegality in the action of the respondents in making the promotions, as per the subsequent decision of the Executive Council, in respect of vacancies which had arisen earlier. The judgments relied on by the Ld. Single Judge are squarely applicable in the facts of this case.

Thus, we find no infirmity in the order of the Ld. Single Judge.

Accordingly, the appeal is dismissed.

(RAJESH BINDAL)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

May 26, 2016
Atul