

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No.164 of 2015 (O&M)

Date of Decision: 07.11.2016

Dr. Sukhraj Singh Gill

... Appellant

VS.

State of Punjab & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT

HON'BLE MR.JUSTICE SUDIP AHLUWALIA

1. Whether Speaking?

Yes

2. Whether Reportable?

Yes

3. Whether Reporters of local papers may be allowed to see the judgment?

Yes

4. To be referred to the Reporters or not?

Yes / No

5. Whether the judgment should be reported in the Digest?

Yes / No

Present: Mr. Harkaran Singh, Advocate for
Mr. BS Bhalla, Advocate for the appellant

Mr. Rajesh Bhardwaj, Addl.AG Punjab

Mr. Girish Agnihotri, Senior Advocate with
Mr. Ishaan Bhardwaj, Advocate for respondent No.4

SURYA KANT, J.

(1) This Letters Patent Appeal assails the order dated 03.09.2014 whereby Misc.Application moved by the appellant to recall the order dated 04.07.2012 vide which learned Single Judge had disposed of his writ petition as infructuous, has been dismissed.

(2) The facts of the case are like this.

(3) The appellant did his MBBS from Govt. Medical College, Patiala in the year 1980 and joined the Punjab Civil Medical Services as a Medical Officer in August, 1982. He was thereafter appointed as Registrar in the Department of Anesthesia at Govt. Medical College, Patiala on 31.12.1985. The appellant while serving as Registrar, completed his MD in the year 1990.

(4) Respondent No.4 did his MBBS in April, 1979 and joined as a PCMS Medical Officer on 13.08.1981. He also did his MD in Anesthesia in October, 1990.

(5) Both, the appellant as well as respondent No.4, were appointed as Senior Residents in the Department of Anesthesia at Govt. Medical College, Patiala on 24.12.1992 (P4).

(6) Government of Punjab vide order dated 15.09.1998 promoted some Senior Residents/Registrars including respondent No.4, as Senior Lecturer on *ad hoc* basis in the Department of Anesthesia. As the petitioner was not granted such promotion, he firstly represented and thereafter filed the instant writ petition challenging the promotion order of respondent No.4. A further direction for the appellant's own promotion as Senior Lecturer was also sought.

(7) It may be mentioned at this stage that while questioning the promotion of respondent No.4, the appellant's foremost objection was that the said respondent was not eligible for appointment, even as a Senior Resident, for he was disqualified in view of Clause (4) "MINIMUM ESSENTIAL QUALIFICATIONS/ ELIGIBILITY" prescribed by Punjab Government on 18.01.1993 for the "Selection of Senior Residents". As per this clause the candidate "should not have taken more than two additional attempts in passing his/her Post Graduate Examination". The appellant alleged that respondent No.4 had made more than two additional attempts to complete his MD therefore he was disqualified for the subject appointment.

(8) It appears that during the pendency of the writ petition the post of Senior Lecturer was advertised for appointment by direct recruitment on regular basis. Respondent No.4 applied for such post in the reserved

category of Scheduled Caste. The appellant did raise the question of eligibility of respondent No.4 but as per the affidavit dated 02.02.2006 filed by Secretary of the Punjab Public Service Commission, respondent No.4 was found to have fulfilled the eligibility criteria for the post of Assistant Professor Anesthesia (now designated as Associate Professor).

(9) The appellant thereafter admittedly sought voluntary retirement from service. His request was accepted. He thus left the service of Government Medical College, Patiala and is now settled in Canada.

(10) It was taking notice of the voluntary retirement obtained by the appellant that the learned Single Judge vide order dated 04.07.2012 declined to go into the merits of the case and disposed of the writ petition as infructuous.

(11) The appellant, as noticed above, is settled in Canada. He moved an application in the year 2014, along with a separate application for condonation of delay of 665 days, for the recall of order dated 04.07.2012 but his application has been dismissed by learned Single Judge vide order dated 03.09.2014.

(12) The aggrieved appellant has filed the instant appeal only against the order dated 03.09.2014, without assailing the original judgment dated 04.07.2012 of the learned Single Judge.

(13) It is worthy to note that during the pendency of these proceedings, respondent No.4 has also retired from service on attaining the age of superannuation on 31.07.2016. We thus made an effort to persuade the appellant not to press this appeal on merits in view of the changed circumstances but he appears to be an emotionally hurt person as he insisted to consider his claim on merits.

(14) Learned counsel for the parties were thus heard on merits and the record perused.

(15) It may be observed at the outset that the instant appeal is hopelessly time barred, for the delay in its filing has to be counted keeping in view the fact that the writ petition was disposed of on 04.07.2012 and the application to recall such order was filed after a delay of 665 days. The instant appeal has been filed after a delay of 80 days, if the limitation is counted from the date of dismissal of Misc.Application on 03.09.2014. The only plea taken by the appellant is that he is settled in Canada and his counsel in the writ petition never informed him about disposal of the writ petition. This would not be a sufficient explanation for the condoning of delay which runs into almost two years.

(16) Regardless of that, we have gone through the merits of the appellant's claim. His contention that respondent No.4 was disqualified for appointment as a Senior Resident, even if correct, lost its significance for two reasons. Firstly, the appointment of respondent No.4 as a Senior Resident was never challenged. Secondly, the only qualification prescribed for the post of Senior Lecturer is that the candidate must possess (a) Post Graduate (MD/MS in particular subject) and (b) at least three years' teaching experience as Lecturer or Research Assistant in Medical College. Respondent No.4 indisputably possessed both these qualifications when he was appointed as Senior Lecturer on *ad hoc* basis in the year 1998.

(17) As regard to the regular selection of respondent No.4 as a Senior Lecturer through Commission, it is undeniable that he was selected against the reserved post as per Roster Point. The appellant, on the other hand, belongs to General category. He has no claim against the reserved

post. There could thus be no comparison of their *inter-se*-merit. No candidate from the Scheduled Caste reserved category has come forward to assert his superior claim over and above respondent No.4.

(18) For the reasons afore-stated, we do not find any merit in this appeal on merits also and the same is accordingly dismissed on the ground of delay as well as on merits.

(Surya Kant)
Judge

07.11.2016
vishal shonkar

(Sudip Ahluwalia)
Judge