

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

**CWP No.12672 of 2017 (O&M)
Date of decision:31.05.2017**

Dr. Sangeeta Aggarwal and others

... Petitioners

Vs.

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Ms.Alka Chatrath, Advocate
for the petitioners.

AMIT RAWAL J.

The petitioners four in number have approached this Court for quashing of the order dated 28.02.2013 (Annexure P-25) passed by respondent No.1 rejecting the report of the Expert Committee regarding the case of the petitioners being absorbed working as Dental Officers in Dental Colleges; with a further prayer of mandamus by directing the respondents to adjust them on the posts of Senior Lecturers/Assistant Professors owing to report of Expert Committee as per the order of this Court dated 29.08.2011 (Annexure P-16) with consequential relief; and with a further prayer of restraining the respondents from relieving and transferring the petitioners from their respective posts to non-teaching post by repatriating them to Health and Family Welfare Department as per the letters dated 30.05.2017 (Annexures P-26 and P-27).

Ms. Alka Chatrath, learned counsel appearing on behalf of the petitioners submits that the petitioners, who have passed the Bachelor of Dental Surgery (BDS) Examination and MDS Examination from recognized

universities, were appointed as Medical Officers(Dental) and had served in the Rural Dispensaries in the State of Punjab which fact is evident from the chart enumerated in paragraph 4 of the writ petition. Thereafter, they were transferred/posted by respondent No.1 in Government Dental College and Hospital Amritsar/Patiala against the post of Demonstrator/Senior Lecturer for teaching to the BDS students and since then, they have been discharging the duties to the satisfaction of the seniors and have an impeccable record. The petitioners were appointed in Government Dental College and Hospital for teaching after getting 'No Objection Certificate' from the Department of Health and Family Welfare, Punjab. Reference has been made to their transfer/posting as Demonstrator/Assistant Professor vide orders, Annexures P-2 to P-6.

As per the rules for appointment to the post of Demonstrator, a person should have passed BDS degree from a recognized university or an equivalent qualification, with at least 6 months experience as House Surgeon in a recognized College & Hospital, with not more than two additional attempts in passing all the University Professional examinations during the BDS course and at least 60% marks in the final BDS examination. Owing to letter dated 12.08.2008 (Annexure P-7), the petitioners working as Medical Officers (Dental) and posted in the Medical Colleges/Dental Colleges and Ayurvedic Colleges were re-designated as Tutor/Lecturer-cum-Medical Officer. The aforementioned placement was done due to acute shortage of teaching staff as per D.C. norms. Vide order dated 23.07.2008 (Annexure P-9), the Govt. promoted/selected six Medical Officers (Dental) as Assistant Professors, Department of Dentistry. The

petitioners also applied for their appointment as Assistant Professor and were quite hopeful for the same but were not selected though they were eligible.

She further submits that for the purpose of filling up the post of Senior Lecturers in the Department of Dentistry and keeping in view the report published in the daily newspapers regarding the meeting of Departmental Promotion Committee consisting of three persons, i.e., Joint Director, Principal, Government Dental College, Patiala and Principal, Government Dental College, Amritsar.

In the year 2011, the respondents with an object to deprive the petitioners from their adjustments as Assistant Professor, initiated a move to transfer them from teaching post to a non-teaching post by transferring them back on the post of Medical Officer, Dental in the PCMS cadre despite having been discharged their duties to the entire satisfaction of respondents. Moreover, there was acute shortage of teaching staff in Government Medical/Dental Colleges and Hospitals. The petitioners were left with no alternative, approached this Court vide CWP No.8480 of 2011 titled as Dr. Sangeeta Aggarwal and others vs. State of Punjab and others and vide interim order dated 27.04.2011, there was interim stay of not relieving the petitioners from the college. However, the aforementioned writ petition was disposed of vide order dated 29.08.2011 (Annexure P-16) with the following directions:-

“i) The State Government shall address the grievances of the petitioners and other similarly placed medical officers who have spent sufficient number of years as members of the

Teaching Faculty in Medical Dental College(s) and see as to how many of them can be adjusted in public interest as a part of teaching faculty. The adjustment can be made keeping in view that no stagnation is caused to the directly recruit members of the teaching faculty.

ii) The adjustment in the Medical/Dental Colleges would necessarily follow the consequential service benefits including promotion as was decided earlier and thereafter only the orders like dated 23.7.2008 (Annexure P-9) can be given effect.

iii) The State Government shall constitute a Committee of five experts including (i) the Director, Health and Family Welfare and (ii) the Director, Medical Education and Research as its members and the appropriate decision on directions (i) and (ii) above shall be taken only after considering the view point of the Expert Committee.

iv) The Committee shall submit its report to the State Government within three months from the date of receipt of a certified copy of this order.

v) Till then, the petitioner or other similarly placed medical officers shall not be repatriated, however, their promotion shall also be kept in abeyance.

Dasti.”

In pursuance to the aforementioned directions, the petitioners submitted detailed representations. However, no action was taken. In pursuance to the implementation notice and reminder dated 16.01.2012, the

Director Medical Education and Research, Chandigarh, Principal-cum-Convener vide letter dated 16.02.2012 (Annexure P-17), informed that the government is contemplating to take steps in compliance of the order passed by this Court but no orders were communicated to the petitioners, much less decision of the Committee. The respondents fixed the meeting of Departmental Promotion Committee on 10.07.2013, wherein, the names of 10 persons were recommended for promotion as Assistant Professors against 13 posts without deciding the fate of the petitioners. They were flabbergasted to ascertain from the website that the Secretary, Medical Education and Research has passed the order dated 08.07.2013 (Annexure P-22) rejecting the promotion orders made vide order dated 23.07.2008, in essence, the earlier order dated 25.07.2008 was not required to be kept in abeyance and such an action was/is illegal.

Since no order was conveyed, the application dated 14.08.2013 under Right to Information Act was submitted seeking information but the Public Information Officer only supplied a copy of the order dated 09.07.2013 but remaining information was not supplied. The appeal preferred against the aforementioned order but of no avail. However, on perusal of the Expert Committee Report (Annexure P-24), it is revealed, that it has unanimously been decided to adjust the Medical Officer in Dental Colleges keeping in view the fact that they have been working for number of years, for, as under the promotion quota 75% posts of Senior Lecturer from amongst the Demonstrators and further there is provision of recruitment by transfer.

Vide order dated 28.02.2013 (Annexure P-25), the Secretary to Government of Punjab, Department of Medical Education and Research did not accept the report of the Committee and found that Expert Committee had not included remarks of the representatives of the personnel department. The petitioners have come to know about the communications vide Annexures P-26 to P-28 written to all the Medical Colleges for repatriation of such persons/officers/employees who are on deputation from other departments by cancelling the deputation. The aforementioned order is not sustainable in the eyes of law.

She further submits that the impugned order dated 28.02.2013 (Annexure P-25) had been challenged vide CWP No.15605 of 2013 titled as Jagan Jyot and others vs. State of Punjab and others by one of the petitioners long time back and this Court, vide order dated 23.07.2013 while issuing notice of motion stayed the repatriation of the petitioners therein. The action of the respondents in not recognizing the teaching experience gained by petitioners while working on the post of Demonstrator/Assistant Professor and discharging the duties as Medical Officer-cum-Lecturer is wholly illegal, arbitrary and discriminatory and deserves to be quashed by issuing a writ of mandamus owing to the shortage of teaching staff in Dental Colleges, the rejection of the Committee's report is also irrational and does not have any sound logic. The post of Demonstrator and Senior Lecturers is governed by rules called Punjab Dental Service Class-II Rules, 1977 which shows that for appointment to the post of Demonstrator, a person should have passed a BDS degree from a recognized university or equivalent qualification, with at least 6 months experience as House Surgeon in a

recognized College and Hospital. The petitioners have requisite qualification for being adjusted in Government Colleges for discharging their duties by imparting education to the students seeking medical degrees.

I have heard learned counsel for the petitioners, appraised the paper book and of the view that there is no force and merit in the submissions of Ms. Alka Chatrath for the following reasons:-

- i) The order dated 28.02.2013 was never challenged and had been challenged for the first time in this writ petition. No explanation has come forth in not challenging the aforementioned order, much less outcome of the information sought under RTI Act. It cannot be believed that the petitioners were not aware as the effected party had already filed writ petition and obtained the interim stay and such stay is not applicable to the petitioners.
- ii) The impugned order dated 28.02.2013, Annexure P-25 is based upon the opinion of the AG, as the selection process and qualification for the post of Demonstrator is totally different. The selection process for the post of Senior Lecturer is also different. The Medical Officer (Dental) comes under the Health Department as per the Punjab Dental Service Rules and the cadre is also different, much less seniority. For all intends and purpose, the petitioners basically have been adjusted on deputation basis till the posts are filled up.

I would be committing a fallacy in not extracting one of the orders, whereby, the petitioners were ordered to be adjusted which reads as

under (Annexure P-4):-

*“Dr. Monaliza Kahlon, Medical Officer (Dental), C.H.C. Lopoke, Amritsar is adjusted at Government Medical College, Amritsar as Medical Officer against the post of Assistant Professor till this post is not filled.
This order will come into force with immediate effect.”*

The petitioners cannot thus have lien on such posts by raking up the issue of order dated 28.02.2013 in the year 2017. Even the directions contained in the order relied upon by the petitioners is indicative that it will be domain of the executive as to whether the officers or persons who have substantial part of the service carrier in Medical/Dental Colleges as Member of the Teaching Faculty should be repatriated or not cannot be subject of dispute in the Courts as it is the prerogative of the State resolving the issue as per the need and in public interest. The directions of this Court contained in the order dated 29.08.2011, *ibid*, have been duly complied with.

No person can be ignorant of law, much less no explanation has come forth in challenging the order dated 28.02.2013 as late in 2017. The necessary collary, outcome and consequential action of the order dated 28.02.2013 which have been impugned vide letter dated 30.05.2017, Annexure P-26 written by the Directorate Research & Medical Education, Punjab to various Principals of Government Medical Colleges, Amritsar/Patiala regarding cancellation of deputation. The petitioners were aware of such consequences but having not taken the appropriate steps at an appropriate stage cannot be allowed to challenge at the drop of the hat or sweet Will.

For the reasons aforementioned, I am of the view that the arguments raised by Ms. Alka Chatrath, are wholly ill-founded, much less un-tenable and also misplaced.

No ground for interference is made out in the impugned order.

Accordingly, the writ petition stands dismissed.

(AMIT RAWAL)
JUDGE

May 31, 2017

savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No