

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

CM No. 6694-CWP-2019 &
CM-14294-CWP-2017 in
RA-CW-452-2017 in
CWP 26429-2013
Date of decision: 3.5.2019

Dr. Iqbal Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Ms. Rajni Gupta, Sr. DAG, Punjab,
for the applicant/respondent.

Mr. Ashok Sharma Nabhewala, Advocate,
for the non-applicant/petitioner.

JAISHREE THAKUR, J.

CM -14294-CWP-2017

This is an application that has been filed under Section 151 of the Code of Civil Procedure seeking condonation of delay of 155 days in filing the review petition.

For the reasons stated in the application, which is supported by an affidavit, the delay in filing the review is condoned.

CM stands disposed of.

CM 6694-CWP-2019

This is an application that has been filed to place on record promotion order dated 31.12.2014 as Annexure A-4.

For the reasons mentioned in the application, the same is allowed. Promotion order dated 31.12.2014 Annexure A-4 is taken on record, subject to all just exceptions.

CM stands disposed of.

RA-CW-452-2017 in CWP 26429 -2013

1. The State of Punjab/applicant has filed this review petition seeking recalling of the order dated 25.4.2017 passed by this Court in CWP 26429 of 2013. The non-applicant/petitioner had filed a writ petition seeking to challenge the advertisement dated 14.7.2013 (Annexure P/9) issued by the respondent—Department for filling up one post of 'Associate Professor' in the Department of Physiology by way of direct recruitment. It had been argued that the advertisement issued was not in conformity with the Punjab Medical Education Service (Class-I) Rules 1978 (**'the 1978 Rules'** for short). It was contended that as the 1978 rules, which were applicable to the case of the petitioner, the mode of appointment to the post of Associate Professor was 100% by way of promotion from amongst Assistant Professors. This Court had set aside the advertisement being *dehors* the 1978 Rules and allowed the writ petition accordingly.

2. Learned counsel appearing on behalf of the applicant—State submits that at the time of addressing the final arguments, this Court could not be apprised of the notification dated 22.5.2003, whereby the Governor of Punjab had been pleased to re-designate various posts in the respondent—Department. It was specifically provided in the notification that the designation of '*Assistant Professor*' shall be read as '*Associate Professor*' and the designation of '*Associate Professor*' shall be read as '*Additional Professor*' in the Punjab Medical Education Service (Class-1) Rules 1978, and the Department had issued the advertisement dated 14.7.2013 and Public Notice dated 17.7.2013 in accordance with the Punjab Medical Education Service (Class-1) Rules, 1978 read with Notification dated 22.5.2003. It is argued that the petitioner herein could not claim any benefit for being promoted as he did not have necessary qualifications. It is also argued that Rule 9 of the Punjab

Medical Education Service (Class I) Rules, 1978 provides for mode of appointment and in case of Assistant Professors, 75% posts by promotion from amongst the Lecturers and Senior Lecturers or by transfer of officials already in service of Government and 25% by direct appointment, whereas in the case of Associate Professors, all the posts will be filled up by promotion from amongst the Assistant Professors. It is also argued that with the amendment in the nomenclature of the various posts, the method of appointment in the case of '*Assistant Professors*', who has new nomenclature as '*Associate Professors*', the appointment would be as specified in Rule 9 (a) (i) and (ii) i.e. 75% by promotion from amongst the Lecturers and Senior Lecturers or transfer of officials already in service of Government and 25% by direct appointment and in the case of '*Associate Professors*' with the new designation as '*Additional Professors*' that post would be filled up by promotion from amongst the Associate Professors.

3. Per contra, learned counsel appearing on behalf of the non-applicant/petitioner, submits that there is no infirmity in the order passed by this Court, while contending that the petitioner has been denied promotion on one ground or the other and in fact now his post is being re-designated as Assistant Professor by order dated 31.12.2014.

4. I have heard learned counsel for the parties and have also perused the order that was passed by this Court in CWP 26429 of 2013 by which the Court set aside the advertisement issued by the respondents—Department holding the same to be dehors the Punjab Medical Education Service (Class-I) Rules, 1978, while relying upon Rule 9 of the said Rules.

5. A perusal of the advertisement available on the record as Annexure P/9 shows that one post had been advertised in the main stream of Physiology, showing that the post of Associate Professor was to be filled by

75% by promotion and 25% by direct recruitment, whereas Rule 9 of the 1978 Rules provides for mode of appointment to the post of Associate Professor 100% by way of promotion from amongst the Assistant Professors. The arguments raised that the advertisement would be by the new designation would have some merit if there had also been a mention in the advertisement that the posts were being advertised with the new designations, since there was no amendment in the rules.

6. The question regarding entitlement of the petitioner herein is not questioned before this Court nor argued. Therefore, he has to be considered on the basis of his merit.

7. In view of the above, there is no ground to review the order dated 25.4.2017 passed by this Court. Finding no merit in this review application, the same is dismissed.

3.5.2019
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No