

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision: 1.11.2018
CWP No. 17099 of 2018

Dr. Narendra Kumar

...Petitioner

Versus

Post Graduate Institute of Medical Education & Research and another

... Respondents

CWP No. 17108 of 2018

Dr. Narendra Kumar

... Petitioner

Versus

Post Graduate Institute of Medical Education & Research and others

... Respondents

CORAM: HON'BLE MR. JUSTICE KRISHNA MURARI,
CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present: Mr. Vikas Singh, Advocate, for the petitioner(s).

ARUN PALLI, J.

Vide this order and judgment we shall decide two writ petitions, *inter se* the parties, though preferred against two separate orders dated 16.05.2018 and 12.07.2017, vide which the original applications (OAs) preferred by the petitioner have since been dismissed by the Central Administrative Tribunal, Chandigarh (hereinafter referred to as 'Tribunal'). For, the issue involved for consideration in both the matters is common, these are being decided by a common judgment. However, the facts are being derived from CWP No.17099 of 2018.

Respondent i.e. Post Graduate Institute of Medical Education &

Research, Chandigarh (hereinafter referred to as 'the institute'), vide advertisement dated 19.07.2017 invited applications from Indian Nationals for direct recruitments in different categories against the faculty post in various disciplines prescribed in the advertisement. The petitioner who happens to be the Additional Professor in the Department Radiotherapy in the institute, assailed the said advertisement and the criteria as regards qualification and experience prescribed for faculty post in the Department of Radiotherapy. Although, the petitioner had questioned the validity of the criteria on multiple grounds, as set out in detail in the impugned order itself, but primarily his grievance was that qualification/experience prescribed by the institute for the post of Professor (Radiotherapy) was wholly illegal, arbitrary and in conflict with the norms set out by the Medical Council of India (for short 'MCI').

As opposed to this, the institute not only questioned the maintainability of the OA and that it was devoid of any cause of action but also that petitioner himself was selected and appointed as Assistant Professor in the institute in terms with the same criteria and the recruitment rules. And now when the post in question was reserved for OBC category, and he himself being ineligible had assailed the same criteria/rules. Further, the institute was an autonomous body, for it was set up by the Act of Parliament i.e. PGIMER Act, 1966, and it had its own rules and regulations for its administrative functions. There exists an institute body constituted in terms of Section 5 of the PGIMER Act as also a governing body. The institute body was the highest body, and in terms of Rules 7(5) of PGIMER Rules, 1968 read with Section 32 of Regulations, 1967, it was fully

categories of posts. Thus, for the institute had its own set of rules and regulations, the norms/rules set out by the MCI could not be applied thereto.

On a consideration of the matter as also the material on record the Tribunal reached a conclusion that grievance of the petitioner that since the qualification/experience prescribed by the institute was against the criteria laid down by the MCI and Regulation 32 of the PGIMER Regulations, 1967, and therefore, the impugned advertisement was arbitrary and illegal was not tenable. It was observed that the institute was an autonomous body created by the Act of Parliament and had its own set of rules and regulations to make recruitments of faculty and staff. Further, the institute body, constituted in terms of Section 5 of the PGIMER Act read with Section 32 of the Regulations, was fully empowered to prescribe the qualification/experience and the criteria for various categories of posts including the faculty posts. And, the impugned qualification/criteria was framed by the competent authority in sync with the PGIMER Rules 1968 and 1967 Regulations. Albeit the petitioner had questioned the constitutional validity of the impugned criteria, but as recorded by the Tribunal, the petitioner failed to demonstrate as to how and in what manner, it could be said to be invalid or unconstitutional. Likewise, nothing was brought on record, least any cogent or conclusive material, to assail the constitutional validity of PGIMER rules and regulations. Significantly, it was not in dispute either that the faculty posts were being filled since long by the institute in sync with the same criteria/qualification/experience which had stood the test of time. In fact, the specific case set out by the institute was that in terms of the letter dated 12.01.2010, issued by the Government

framed for appointment and application of revised Assessment Promotion Scheme for faculty post, i.e. Assistant Professor, Associate Professors, Additional Professors and Professors. Different qualification, criteria and experience was envisaged for different set of categories of faculty members which were duly approved by the Ministry. Not just that, as indicated above, the petitioner himself was selected and appointed as Assistant Professor in terms of the same criteria/recruitment rules by the institute and was even promoted as Associate Professor and then Additional Professor following those. And now just because the post in question was reserved for OBC category and finding himself ineligible to compete in terms of the prescribed criteria, the petitioner chose to assail the same set of rules/criteria. Just because the petitioner was ineligible, the provisions in question could not be termed as unconstitutional. And in reference to the decision of the Supreme Court in **State of Andhra Pradesh v. V. Saddanandam AIR 1989 SC 2060, J. Rangaswamy vs. Government of Andhra Pradesh, 1990(1) SCC 288, Union of India v. S.L. Dutta AIR 1991 SC 363 and V.K. Sood Vs. Secretary Civil Aviation and Ors, 1993 Supp. (3) SCC 9**. It was concluded that the position of law was well settled: that the methodology and the manner in which the posts are to be filled is solely the prerogative of the employer and once a policy decision is taken predicated upon an expert advise, after all the conceivable aspects are thrashed out, it cannot be termed as arbitrary, and such functions are best left to the Executive and the Courts should not interfere there with. The matter did not rest there as even earlier the petitioner had filed another OA No.060/00016/2017, wherein he had questioned the order dated 30.11.2016,

post of Professor in the Department of Radiotherapy, on identical grounds. However, the Tribunal, vide its order dated 12.07.2017, dismissed the same vide a detailed order and judgment. Although, the operative part of the said decision is duly extracted in the order that has been assailed in this petition, but for facility of reference and, particularly in context of the issue that arises for consideration, we find it expedient to set it out here, as well:

“12. At the very outset it will not be out of place to mention here that the applicant was not eligible to be appointed as Professor (Radiotherapy) by way of direct recruitment at the relevant point of time for want of requisite experience. Neither he applied for the said post in pursuance of advertisement (Annexure A-18 colly) issued as per Rules (Annexure R-1/4) nor initially challenged the advertisement and recruitment process. Moreover, he himself declared the respondent No.2 as eligible to be appointed as Professor (Radiotherapy) by way of direct recruitment, as he himself was a member of the Scrutiny Committee.

13. Moreover, it is also not a matter of dispute that the respondent No.2 has already joined the indicated post. Not only that, the process of subsequent selection has since already been completed. As soon as the applicant was confronted with the situation, then he moved an application for amendment of the OA challenging the recruitment rules, providing teaching experience of 14 years, to make a person eligible for the post of Professor in Radiotherapy, by way of direct recruitment, being arbitrary, against the minimum teaching experience prescribed by the Central Government and violative of

14 XXXXXX

15 XXXXXX

16 Ex facie the arguments of the learned Senior counsel for the applicant, that no doubt the applicant did not possess the requisite teaching/research experience of 14 years at the relevant time, he has not applied for the post of professor (Radiotherapy) in pursuance of the impugned Advertisement, Annexure A-18, and even held respondent No.2 to be eligible for the post of Professor (Radiotherapy), being a member of the Scrutiny Committee, but since the applicant was senior to respondent No.2 and Rules providing for 14 years teaching/research experience, is contrary to the experience prescribed by Medical Council of India (Annexure A-24), so the impugned order & recruitment rules are arbitrary and illegal, are not only devoid of merit but misplaced as well.

17. At the initial stage, the applicant has tried to project that his seniority was ignored, as if it was a selection by way of promotion. However, since the instant matter is a case of direct recruitment, so question of seniority, pales into insignificance, which may be relevant for recruitment by way of promotion only and not otherwise.

18. What cannot possibly be disputed here is that the PGI, Chandigarh is governed by its own Act, Rules and Regulations. It has framed recruitment criteria in pursuance of its rules/regulations. Since the PGI is a reputed research institute, so it has vast legal power to formulate its own rules and regulations, prescribing higher qualifications and experience of specified post as it may deem

appropriate. PGI is not legally bound to adopt the experience

prescribed by any other Institution as such.

19. In the instant case, the PGI has duly advertised the post as per eligibility criteria, for various posts in its departments. Having completed all the codal formalities and recruitment process, not only that the respondent No.2 was appointed as Professor (Radiotherapy) by way of direct recruitment, but at the same time, dozens of other Doctors were appointed by way of direct recruitment in their respective departments, in furtherance of impugned order, Annexure A-1. Thus, no fault can possibly be found in the recruitment process for the post in question carried out by the PGI authorities.

20. There is yet another aspect of the matter which can be viewed entirely from a different angle. As indicated hereinabove, Dr. Bhavana Rai (Respondent No.2) fulfilled all the essential educational qualifications and requisite experience of teaching/research, as per the relevant rules and regulations, so she applied, successfully cleared the recruitment process and was appointed as Professor (Radiotherapy) by way of direct recruitment. On the contrary, since the applicant did not fulfill the requisite experience of 14 years of teaching/research, so even he did not apply for the indicated post, rather he himself was the Member of the scrutiny committee and held that respondent No.2 was eligible to be appointed on the post of Professor (Radiotherapy) by way of direct recruitment. Neither, he applied for the pointed post nor he challenged the initial advertisement Annexure A-18 or relevant rules at initial relevant time. Meaning thereby he is not aggrieved, in any manner, in this relevant connection and is a stranger (third party) to the

estopped from and has no locus standi to challenge the appointment of respondent No.2, at this belated stage.

21. A person can invoke jurisdiction of this Tribunal under Section 19 of the AT Act, only if he is actually aggrieved by any order pertaining to any matter within the jurisdiction of the Tribunal. It thus, goes without saying that a total stranger to the service concerned cannot make an application before the Tribunal. Thus, applicant has no locus standi to file the present OA to challenge the eligibility and appointment of respondent No.2, particularly when he did not apply for the said post in question and he is not in any way aggrieved by the appointment of respondent No.2. In this manner, he appears to have filed the instant OA as a public interest litigation, challenging the eligibility and appointment of respondent No.2, which is not legally permissible as this Tribunal has no jurisdiction to entertain any matter by way of Public Interest Litigation. This matter is no longer res-integra and is now well settled.

22. An identical question came to be decided by Hon'ble Apex Court in the case of Dr. Duryodhan Sahu Vs. Jitendra Kumar Mishra (1998) 7 SCC, 273. Having considered the various aspects of the matter it was ruled that the Administrative Tribunals constituted under the AT Act, cannot entertain a public interest litigation, at the instance of a non aggrieved person. The same view was reiterated by Hon'ble Supreme Court in the case of Gurpal Singh Vs. State of Punjab and others (2005) 5 SCC 136.

23. Again it was held by Hon'ble Apex Court in the case of R.K.

action can be questioned only by the non-appointee and non-appointee can only be considered to be the person aggrieved, and it has been held in paragraph 74 as under:-

“74..... In service jurisprudence it is settled law that it is for the aggrieved person i.e. Non-appointee to assail the legality of the offending action. Third party has no locus standi to canvass the legality or correctness of the action. Only public law declaration would be made at the behest of the petitioner, a public spirited person.”

24. Sequelly, relying upon its earlier decision in the case of *Jasbhai Motibhai Desai v. Roshan Kumar*, (1976) 1 SCC 671, Hon'ble Apex Court has held in the case of *Utkal University, etc. Vs. Dr. Nrusingha Charan Sarangi and others* AIR 1999 SC 943, that in order to invoke the writ jurisdiction, the writ petitioner must be a person who has suffered illegal injury and a meddlesome interloper cannot maintain the writ petition, and observed in paragraph 8 as under:-

“8. It is in this context that the submission of the University regarding the locus standi of the first respondent to file the writ petition must also be considered. The University has rightly pointed out that the original writ petition does not disclose any legal injury to the original petitioner/present first respondent, because there is no reason to come to a conclusion that he would have been selected even if all his contentions in the writ petition were accepted. The University has relied upon the decision of this Court in *Jashbhai Motibhai Desai V. Roshan Kumar, Haji Bashir Ahmed*, reported in (1976) 3 SCR 58 at page 71 : (AIR 1976

SC 578 at page 586) for the purpose of pointing out that the first respondent stands more in the position of a meddlesome interloper than a person aggrieved. There is much force in this contention also.”

25. Likewise, Hon'ble Supreme Court in the case of Dr. N.C. Singhal Vs. Union of India and others AIR 1980 SC 1255, has held in paragraph 21 as under:-

“21. Having examined the challenge to the promotion of respondents 4 to 24 on merits, it must be made clear that the appellant is least qualified to question their promotions. Each one of them was promoted to a post in supertime grade II in a speciality other than Ophthalmology and appellant admittedly was not qualified for any of these posts. Even if their promotions are struck down appellant will not get any post vacated by them....”

26. Similar is the proposition of law laid down by the Supreme Court in the case of State Bank of India v. Yogendra Kumar Srivastava and others AIR 1987 SC 1399 wherein it was rule, as under:-

“27. Moreover, there is some force in the contention made on behalf of the Bank that as the Probationary/Trainee Officers are not in the Junior Management Grade which is a different cadre, they have no locus standi to challenge any benefit conferred on the Officers of the Junior Management Grade comprising erstwhile Officers Grade-I and Officers Grade-II, as were in the employment of the Bank prior to October 1, 1979.”

aforesaid judgments, *mutatis mutandis*, is applicable to the present controversy and is the complete answer to the problem in hand. Therefore, it is held that the applicant, who is a stranger (third party) to the recruitment process in real sense, is neither a person aggrieved nor has a *locus standi* to file the instant OA and is estopped from filing and maintaining this OA challenging the eligibility criteria and appointment of respondent No.2, particularly, when he has not even applied for the indicated post being ineligible. Moreover, it is not a matter of dispute that the respondent No.2 has already joined on the post of Professor (Radiotherapy). Not only that, even process of subsequent similar selection has already been completed. In this manner, the applicant is estopped from and has got no *locus standi* to challenge the impugned order and action of PGI, at this belated stage.”

And as the order dated 12.07.2017, extracted above, was accepted by the petitioner and was not questioned any further the Tribunal concluded that since the subject matter of the present OA was directly and substantially in issue in the earlier OA, preferred by the petitioner, which has since been dismissed, the subsequent OA filed by him was barred on the analogy of the principle of *res judicata*. No doubt, the question of constitutional validity of the impugned rules, regulations and criteria was kept open in those proceedings, but as indicated above, the finding recorded by the Tribunal is that neither anything was brought on record nor it could be demonstrated as to how the rules/criteria in question could be termed as unconstitutional. That is how, we are seized with the two writ petitions,

National importance and having been created by the Act of Parliament i.e. PGIMER 1966, is an autonomous body. The institute body constituted in terms of Section 5 of the Act was/is fully empowered to prescribe the qualification/criteria for appointment to various categories of posts of faculty members. Thus, the alleged norms/guidelines of MCI could not be said to be binding upon the institute. Upon a due and comprehensive analysis of the matter in issue, the Tribunal reached a conclusion that there was hardly any conflict between the provisions of PGIMER Act, rules and regulations or any other constitutional provisions. Rather we are reminded to clarify at this juncture that though the petitioner never choose to assail the order dated 12.07.2017, rendered by the Tribunal, but having found that the same, as also the finding recorded therein, operates as res judicata against him, nearly after a year he choose to assail even the said order vide writ petition No.17108 of 2018, which was nothing but an after thought. Learned counsel for the petitioner, upon being pointedly asked, could not refer to anything on record to show if the conclusion recorded by the Tribunal was either contrary to the record or suffered from any material illegality.

In conspectus of the above, we are dissuaded to interfere with the impugned orders and judgments dated 16.05.2018 and 12.07.2017. The petitions being devoid of merit and are accordingly dismissed.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

1.11.2018

Manoj Bhutani

Whether speaking / reasoned:
Whether Reportable:

YES
NO