

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

CWP No.24206 of 2018(O&M)

Date of Decision:-22.10.2018

Dr. Kanwarjit Singh Sandhu.

.....Petitioner.

Versus

State of Punjab & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. Vikas Singh, Advocate for the Petitioner.

Mrs. Anu Chatrath Kapoor, Additional Advocate General,
Punjab for respondent nos.1 & 2.

Ms. Nupur Chaudhary, Advocate for respondent no.3-
Dr. Jaspal Singh.

JASWANT SINGH, J.(ORAL)

CM No.15886 of 2018

Instant CM has been filed under Section 151 CPC for placing
on record written statement on behalf of private respondent no.3-Dr. Jaspal
Singh.

Copy supplied to the opposite side.

CM is allowed and written statement on behalf of respondent
no.3 is taken on record.

Registry to place the same at appropriate place and paginate the
paper book accordingly.

CWP No.24206 of 2018

Petitioner(Dr. Kanwarjit Singh Sandhu) and Dr. Jaspal Singh-private respondent no.3 are serving as Associate Professors in the Department of Orthopedics, Medical College Patiala and Amritsar respectively. The post held by them are governed by the Punjab Medical Education (Group-A) Service Rules 2016 (P-1) (as notified on 14.03.2016) (hereinafter referred to as 2016 Rules). The next promotional post is that of Professor sanctioned for the same stream and governed by the aforesaid 2016 Rules. The criteria for promotion, *inter alia* is based on principle of seniority-cum-merit. Admittedly, Dr. Jaspal Singh-respondent no.3 is placed higher in the seniority than the petitioner, as respondent no.3 was promoted as Associate Professor on 01.05.2014, whereas the petitioner was promoted on 17.08.2015.

The DPC for considering the case of eligible candidates for promotion to the post of Professor in Orthopedics was stated to be held on 14.09.2018.

The petitioner belongs to the general category whereas Dr. Jaspal Singh belongs to the reserved category of Scheduled Caste. Both of them are stated to have been recruited as Medical Officers in the years 1983 and 1999 respectively and became members of the Punjab Civil Medical Services governed by Punjab Medical Education Service Class-II Rules 1979.

The grievance of the petitioner raised is that he has not been assigned seniority above Dr. Jaspal Singh-respondent no.3 in the rank of Assistant Professors and Associate Professors based on the “*Catch up*

Upon notice private respondent no.3 has filed his reply by way of **CM No.15886 of 2018** whereas the State has filed its reply by way of affidavit dated 22.10.2018 of Dr. Avneesh Kumar, Director in the Court. Same is taken on record. Replication on behalf of the petitioner to the written statement filed by respondent no.3 is also filed in Court. Same is also taken on record.

Para nos.3 to 8 of the preliminary submissions of the reply filed by the State reads as under:-

“3. That the petitioner was selected as Assistant Professor on adhoc basis against direct quota post on 23.07.2008 and his services were regularized w.e.f. 21.10.2011 vide order dated 16.07.2013 as Assistant Professor against one of the post under 75% quota earmarked for PCMS doctors. Copy of the order dated 16.07.2013 is annexed as Annexure R-2. He was further promoted to the post of Associate Professor vide order dated 04.09.2015. The table showing comparison of date of appointment/selection and promotion is given below:-

1	2	3	4	5	6
Name	Selection as Assistant Professor	DQ/PQ as Assistant Professor	Appointed/regularized on reserve post or not	Date of Promotion as Associate Professor on merit	On Reserve post or not
Dr. Kanwarjeet Singh Sandhu i.e. Petitioner	22.09.2008 Adhoc 21.10.11 Regular	Promotional Quota	No	17-Aug-15	No
Dr. Jaspal Singh i.e. respondent	12-Apr-07	Direct Quota	Yes	1-May-2014	No

4. That the petitioner was regularized on the promotion quota post as Assistant Professor w.e.f. 21.10.2011. The above table clearly shows that petitioner is junior to the respondent no.3.

5. That it is further submitted that Punjab Civil Medical Services (PCMS) cadre and Punjab Medical Education Services

(PMES) are two different cadres. Entry into PMES cadre on 75% posts is by selection from eligible PCMS candidates and 25% by direct recruitment against the post of Assistant Professor. It is further submitted that appointment on the post of Assistant Professor is by selection as per eligibility criteria and not by promotion.

6. *That challenged seniority is the seniority of PMES Cadre and this seniority is maintained from the date of entry into this cadre and not from entry in the PCMS cadre.*

7. *That final seniority list has been released vide order dated 27.09.2018 and the respondent no.3 is senior to the petitioner. A copy of the final seniority list dated 27.09.2018 is annexed as Annexure R-3.*

8. *That Departmental Promotional Committee (DPC) was convened on 14.09.2018 and DPC recommended the name of respondent no.3 for promotion as Professor. ”*

On scrutinizing the arguments of the parties as also the aforesaid pleadings, it is apparent that the present petition is devoid of any merit. No doubt the petitioner was appointed as Medical Officer much before Dr. Jaspal Singh in the cadre known as PCMS governed by Punjab Civil Medical Service Class-II Rules 1979, however, Dr. Jaspal Singh was recruited by way of direct recruitment through Punjab Public Service Commission as an Assistant Professor on 12.04.2007 governed by Punjab Medical Education Service Class-II Rules 1979. It cannot be disputed that PCMS and the Punjab Medical Education Service constitute two separate service governed by two separate set of statutory Rules, therefore, the seniority as Medical Officer of the petitioner had absolutely no relevance to the recruitment of Dr. Jaspal Singh as Assistant Professor. The half hearted argument was sought to be made that Dr. Jaspal Singh was directly recruited against a post reserved for Scheduled Caste category also does not advance the case of the petitioner as petitioner would have had due opportunity for

they were advertised as per the quota meant for direct recruits under the PCMS Rules 1979 and as per the reservation policy.

It is also evident that petitioner was assigned 21.10.2011 as the date of regular recruitment/appointment to the post of Assistant Professor by way of promotion on the availability of the post in his promotional quota and, therefore, would rightly rank junior to Dr. Jaspal Singh in the cadre of Assistant Professors who stood appointed on 12.04.2007 as a direct recruit. It is also conceded that Dr. Jaspal Singh-respondent no.3 was promoted as Associate Professor w.e.f. 01.05.2014 based on the joint seniority and not against any reserved post, which even otherwise would have been irrelevant being senior. Thus, respondent no.3 was correctly assigned the seniority above the petitioner in the rank of Assistant Professor as well as Associate Professor, as concededly the petitioner was promoted as Associate Professor on 17.08.2015 after more than a year of promotion of respondent no.3. It is also conceded that for promotion to the next higher post of Professor the criterion, *inter alia*, is seniority-cum-merit as per the Statutory Rules.

In view of the aforesaid conceded facts, the challenge to the seniority *inter se* between the petitioner and respondent no.3 either in the rank of Assistant Professor or Associate Professor cannot thus be sustained.

Dismissed.

(JASWANT SINGH)
JUDGE

October 22, 2018
Vinay

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No