

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

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RA No.512 of 2017 (O&M)) in
CWP No.12508 of 2013
Date of decision:24.4.2018

Dr.Virender Singh

... Petitioner

versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Mr.Bhuwan Vats, Advocate,
for applicants-respondents no.2 and 4
Mr.R.K.Malik, Sr.Advocate, with
Mr.Sunil Hooda, Advocate,
for the petitioner
Mr.Ravi Pratap, AAG, Haryana
...

AMOL RATTAN SINGH, J. (Oral)

By this application, review of the judgment of this Court dated 4.7.2017 is sought by respondents no.2 and 4, i.e. the Pt.Bhagwat Dayal Sharma University of Health Sciences, Rohtak, and the Director-Principal, Post Graduate Institute of Dental Surgery, Rohtak, respectively.

As already noticed in the order dated 8.12.2017, by which notice was issued in the review application, the ground for review is that this Court has erred in not taking notice of Rule 9 of the Haryana Medical Education Service Rules, 1988 (as amended vide the gazette notification dated 25.1.2007, a copy of which has been annexed as Annexure R-2/5 with the review application), which reads as follows:-

“ 9. (1) Method of recruitment. Recruitment to any post in the
Service shall be made as under:-

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(e) in the case of Senior Professors (Medical/Non-Medical)
and Senior Professors (Dental):-

(i) 75% by promotion from amongst the teachers and

(ii) 25% by direct recruitment, or by transfer or
deputation of any officer/official already in the service of
any State Govt. or the Govt. of India.

Provided that the first three vacant posts of Senior
Professors in each department shall be filled in by
promotion and the fourth post by direct recruitment
meaning thereby that in case of the last post filled in any
particular department was by direct recruitment the next
three posts will be filled in by promotion and if it was by
promotion then rest two posts shall be filled by
promotion then fourth post will be filled by direct
recruitment.

Provided further that in case of the direct
recruitment a pre-merit criteria shall be used as provided
in Appendix E.

(f) in the case of Teachers (Medical/Non-Medical) and
Teachers (Dental):-

(i) appointment shall be made on the post of an
Assistant Professor by direct recruitment, following a
pre-merit criteria as provided in Appendix-F and if no
suitable person is available for appointment as an

Assistant Professor then by transfer or deputation from any State Government or Government of India or any institution provided he fulfills the requisite qualifications and experience;

(ii) an Assistant Professor shall be re-designated as an Associate Professor if he fulfills the qualifications and experience for the post of Associate Professor as laid down in column 5 of Appendix B;

(iii) an Associate Professor shall be re-designated as Professor if he fulfills the qualifications and experience for the post of a Professor as laid down in column 5 of Appendix B:

Provided that the persons holding the posts of Lecturer, Reader, Associate Professor on the commencement of these rules shall be re-named as Assistant Professor, Associate Professor and Professor respectively; and the Professor as Senior Professor.”

Mr.Malik, learned Senior Counsel appearing for the non-applicant-petitioner, very fairly submits that the petitioner has no objection to modification of the aforesaid order of this Court dated 4.7.2017, inasmuch as it has been erroneously held therein that after first re-designating the petitioner as a Professor with effect from the date that he became eligible for such designation (from the post of an Associate Professor) thereafter he be re-designated as a Senior Professor w.e.f.

1.7.2009; whereas actually as per the aforesaid rule, the post of Senior

Professor is one which is to be filled in either by promotion to the extent of 75% of the posts, or by direct recruitment to the extent of 25% of the posts.

It is not in dispute by either side that the nomenclature of “Professor” is only by way of re-designation and it is not a promotional post, as per Rule 9(f)(iii) of the aforesaid rule.

However undoubtedly, as is obvious from a perusal of Rule 9 (1) (e), for appointment as a Senior Professor it is to be by promotion or by direct recruitment alone. It is also not disputed that the person seeking such promotion/direct recruitment has to possess the qualifications as are also given in Appendix B to the aforesaid rules, as stipulated at sr.no.10 of the chart given in the said Appendix.

A perusal of the same shows that for promotion as a Senior Professor (Dental), a candidate requires a basic University qualification (Bachelor of Dental Surgery), as also a Masters Degree in Dental Surgery (MDS) and 5 years experience in the specialty, as an Associate Professor or on an equivalent post in the Post Graduate Institute of Medical Sciences, Rohtak.

Upon specific query to learned counsel for the review applicants-respondents, it is not denied that the petitioner, who was promoted as a Reader on 29.6.2004, would be deemed to be an Associate Professor from that very date as per the amended rule which came into force w.e.f. 2007. Thus, he would be firstly eligible for re-designation as a Professor (Dental) w.e.f. 29.6.2009, the number of years of experience required for such re-designation, as per sr.no.20, columns no.11 and 12 of Appendix B, being 5 years.

He would also with effect from the same date itself, i.e. 29.6.2009, be eligible for consideration for promotion as a Senior Professor (Dental) as per what is contained at sr.no.10 in the chart contained in Appendix B of the aforesaid rules, the number of years of experience for such promotion, also being 5 years as an Associate Professor.

Consequently, the present application is allowed to the extent that the last part of the order dated 4.7.2017 shall now read as follows:-

“.....Having considered the aforesaid contentions, it is considered appropriate that the petitioner be first re-designated as a Professor from the date that he became eligible for such re-designation, i.e. 29.6.2009, and thereafter he be considered for promotion to the post of a Senior Professor also from the same date, i.e. 29.6.2009, he being eligible for such promotion on that date as per the aforesaid rule, there being no charge sheet pending against him, the charge sheet having been issued on 9.7.2010.

However, all arrears as would accrue to the petitioner from such re-designation as a Professor and promotion, shall be restricted to the 3 years prior to the date of his first representation for re-designation as a Professor, and to 3 years and 2 months prior to the filing of the present writ petition, if he is ordered to be promoted as a Senior Professor, upon consideration of his case for such promotion.

The aforesaid directions be carried out within a period of three months.

The petition is allowed to the aforesaid extent.”

24.4.2018
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(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No