

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

Civil Writ Petition No.10203 of 2018

Reserved on : November 29, 2018

Date of decision: January 23, 2019

Post Graduate Institute of Medical Education
and Research, Chandigarh and another

...Petitioners

Versus

Prof. Arunanshu Behera and others

...Respondents

AND

Civil Writ Petition No.11433 of 2018

Dr.Gurpreet Singh

...Petitioner

Versus

Prof. Arunanshu Behera and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA,
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr.Rajesh Garg, Senior Advocate with
Ms.Nimrata Shergil, Advocate for the petitioners
in CWP No.10203 of 2018.

Mr.Rajiv Atma Ram, Senior Advocate with
Mr.Amit Jhanji, Advocate for the petitioner
in CWP No.11433 of 2018.

Mr.Akshay Bhan, Senior Advocate with
Mr.Amandeep Singh Talwar, Advocate for
the caveator – respondent No.1.

HARINDER SINGH SIDHU, J.

By this order two writ petitions, namely CWP Nos.10203 and
11433 of 2018 are being disposed of as they arise from the common

judgement of the Central Administrative Tribunal, Chandigarh Bench.

For the purpose of judgment, the facts are taken from CWP No.10203 of 2018.

This writ petition has been filed by the Post Graduate Institute of Medical Education and Research, Chandigarh (PGI) impugning the order dated 28.3.2018 of the Central Administrative Tribunal Bench in OA No.060/00336/2017, whereby, the Original Application filed by respondent No.1 has been allowed and he has been declared to be senior on the substantive post of Professor over and above respondents No.3 and 4.

Respondent No.1 was appointed to the post of Assistant Professor (General Surgery) by direct recruitment against a leave vacancy on 24.9.1992. Thereafter, he was appointed by way of selection on the post of Assistant Professor (General Surgery) on 11.2.1995. He was subsequently promoted as Associate Professor and Additional Professor (General Surgery) under the Assessment Promotion Scheme (for short 'APS'). His service record, as given in the Original Application, is reproduced below:-

<i>S. No.</i>	<i>Designation</i>	<i>Selection Mode</i>	<i>Year</i>	<i>Interview Date</i>	<i>Remarks</i>
1.	Assistant Professor, General Surgery (Leave Vacancy)	Direct Selection (Recruitment through Government body for lien post)	24.09.1992	31.08.1992	Appointment Date: 24.09.1992
2.	Assistant Professor, General Surgery	Direct Selection	11.02.1995	22.01.1995	Appointment Date: 11.02.1995
3.	Associate Professor, General Surgery	APS (Only APS post available at this level)	01.07.1999 (Retrospective)	28.09.2000 29.09.2000	
4.	Additional Professor, General Surgery	APS (Only APS post available at this level)	01.07.1999 (Retrospective)	22.11.2005 12.12.2005	

5.	Professor, General Surgery	Direct Selection	21.12.2005	22.11.2005 12.12.2005	Appointment Date: 21.12.2005
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Three sanctioned posts of Professor (General Surgery) were advertised by the petitioner vide Adv. No.10/2004 dated 15.10.2004. Respondent No.1 and private respondents No.3 and 4 applied for these posts. Meeting of the Selection Committee was held on 20.12.2005 which selected Respondents No.1 and 3 for the post. It is clear from the proceedings of the Standing Selection Committee dated 11.12.2005 (Annexure P-9) that respondent No.3 was placed at Sr. No.1 in the order of merit and respondent No.1 at Sr. No.2. Respondent No.4 was placed in the Waiting List.

As Respondent No.3 was also eligible for promotion to the post of Professor under APS Scheme w.e.f. 1.7.2002 he opted to be promoted under this Scheme w.e.f. 1.7.2002. Respondent No.4 was also promoted to the post of Professor under the APS w.e.f. 1.7.2002. Office orders (Annexure R-10 and R-11 before the Tribunal) dated 21.12.2005 were issued as per which respondent No.3 and respondent No.4 were promoted as Professors along with other Additional Professors in different Departments/Specialities w.e.f. the dates indicated in the orders. The dates of promotion of respondents No.1 and 4 were 1.7.2002. The order in respect of respondent No.3 is reproduced below:-

*“POSTGRADUATE INSTITUTE OF MEDICAL EDUCATION
AND RESEARCH,
CHANDIGARH*

OFFICE ORDER

On the recommendations of the Selection Committee meeting held from 22.11.2005 to 26.11.2005 and from 8.12.2005 to 12.12.2005, under the Assessment Promotion Scheme and further approved by the Governing Body of the Institute in its meeting held on 20.12.2005 in terms of the instructions contained in the letter No. VI6020/35/89-ME (PG) dated 24th December, 1991 of the Ministry of Health and Family Welfare, the following Additional Professors are hereby promoted as Professor in the pay scale of Rs.18400-500-22400 plus NPA (for medical personnel) from the date mentioned against each:-

<i>Sr. No.</i>	<i>Name</i>	<i>Department/Speciality</i>	<i>Date of promotion</i>
<i>1.</i>	<i>Dr. C.M. Pathak</i>	<i>Biophysics</i>	<i>1.7.2002</i>
<i>2.</i>	<i>Dr. Gurpreet Singh</i>	<i>General Surgery</i>	<i>1.7.2002</i>
<i>3.</i>	<i>Dr. Satyawati Rana</i>	<i>Gastroenterology</i>	<i>1.7.2002</i>
<i>4.</i>	<i>Dr. K. L. Gupta</i>	<i>Nephrology</i>	<i>1.7.2003</i>
<i>5.</i>	<i>Dr. B.R. Thapa</i>	<i>Gastroenterology</i>	<i>1.7.2003</i>
<i>6 to 20</i>	<i>xxx</i>	<i>xxx</i>	<i>xxx</i>
<i>21.</i>	<i>Dr. Rakesh Sehgal</i>	<i>Parasitology</i>	<i>1.7.2005</i>

With the promotion of the above Additional Professors no consequential vacancy will come into existence and their inter-se-seniority would be as per their seniority in the grade of Additional Professor.

They are requested to give their acceptance of the said promotion to this office within 15 days so that their pay can be fixed in the grade of Professor.

Other terms and conditions of their appointment will, however, remain unchanged.

*Sd/-
K.K. Talwar
Director”*

The petitioner issued a provisional seniority list of Professors vide letter dated 17.8.2006. In the said list, respondent No.3 was placed at Sr.No.51 and respondent No.4 at Sr.No.56. Respondent No.1 was placed at Sr.No.83. Respondent No.1 vide his letter dated 16.7.2007 (Annexure A-16) raised objections against the seniority assigned to three candidates at Sr. Nos.60, 66 and 67 who were all direct recruits to the post on the ground that they had joined at date later than him and hence could not be assigned seniority over him. He did not raise any objection to the seniority assigned to respondents No.3 and 4. It was only on 19.8.2016 that he

submitted a representation for the first time questioning the grant of seniority with retrospective effect to respondents No.3 and 4. His contention was that as the interviews for direct recruitment and for promotions under APS were held on the same date, members of the Selection Committee were same, the Governing Body of the Institute approved the appointments on the same date i.e. 20.12.2005 and appointment letters were issued on the same date i.e., 21.12.2005, respondent No.1 being a direct recruit was entitled to seniority over respondents No. 3 and 4 who were promoted under the APS Scheme. It was also his case there was no provision under any Rule for grant of retrospective seniority to APS promotees. The representation was declined by the petitioner on 4.1.2017 by stating that :

“I am directed to invite a reference to your letter No.GS/16-2685 dated 19.08.2016 on the subject noted above and to inform you that Dr.Gurpreet Singh and Dr.G.R.Verma were promoted to the post Professors w.e.f. 01.07.2002 under Assessment Promotion Scheme (APS) whereas you were appointed to the post Professor w.e.f. 21.12.2005. As per rules, the inter-se-seniority in the cadre is determined with reference to the date as per their joining date. Hence, your inter-se-seniority has been determined correctly.

This issues with the approval of Director, PGIMER.”

Thereafter, he filed the Original Application with a prayer for quashing the order dated 4.1.2017. He also prayed for directions that the seniority of respondents No.3 and 4 be fixed without granting them the benefit retrospectively from 2002. Interim orders were also prayed for.

Apart from justifying their action of granting retrospective seniority to respondents No. 3 and 4 on merits, the petitioner and respondents No. 3 and 4 sought the dismissal of the Original Application on the ground that it was barred by limitation and delay and laches. It was

also pleaded that respondent No. 1 was estopped from claiming the relief sought.

The learned Tribunal rejected the objection to the maintainability of the OA on the ground of delay and laches by holding that the PGI had only circulated the provisional seniority list vide letter dated 17.8.2006 inviting objections from the aggrieved persons. The final seniority list had not been prepared. It was further held that the representation of respondent No.1 raising important legal issues with regard to the seniority of respondent Nos.3 and 4 had been rejected by the petitioner Institute by a non-speaking order dated 4.1.2017 which was illegal. The Original Application was held to be within limitation. On merits the learned Tribunal then relied on Regulation 34 of the PGIMER Regulations, 1967, which are as under:

“34. Seniority:- Seniority of employees of the Institute in each category shall be determined by the order of merit in which they were selected for appointment to the grade in question, those selected on earlier occasion being ranked senior to those selected later:

Provided that the seniority interse of employees, other than the teaching staff of Institute shall be determined by the length of continuous service on a post in a particular service:

Provided further that in the case of members, recruited by direct appointment, the order of merit determined by the Commission or the Selection Body shall not be disturbed in fixing the seniority.

Provided further that in case of two members appointed on the same date, their seniority shall be determined as follows-

(a) member recruited by direct appointment shall be senior to a member recruited otherwise:-

(b) a member appointed by promotion shall be senior to a member appointed by transfer:

(c) in the case of members appointed by promotion or other transfer seniority shall be determined according to the seniority of such members in the appointments from which they were promoted or transferred; and

(d) in case of members appointed by transfer from different cadres, their seniority shall be determined according to pay, preference being given to a member who was drawing a higher rate of pay in his previous appointment and if the rates of pay drawn are also the same, then by their length of service in those appointments and if the length of such service is also the same an older member shall be senior to a

younger member.

Note: 1 This rule shall not apply to members appointed on purely provisional basis pending their passing the qualifying test.

Note:2 In the case of members whose period of probation is extended the date of appointment for the purpose of these rules shall be deemed to have been deferred to the extent the period of probation is extended.”

It was held that in terms of the proviso to this regulation a member recruited by direct appointment shall be senior to a member recruited otherwise. As respondent No.1 was directly appointed and respondents No.3 and 4 were promoted under the APS Scheme he would rank senior to them. It was also held that there is no provision in the APS Scheme for grant of retrospective promotion. Accordingly, the Original Application was allowed.

We have heard learned counsel for the parties and perused the record.

We are of the view that in the facts and circumstances of the case, the Tribunal was not justified in entertaining the petition and the same was liable to be dismissed on the ground of limitation and delay and laches. Further respondent No.1 was estopped from challenging the grant of retrospective seniority to respondents No.3 and 4 with effect from the date of their eligibility under the APS Scheme being himself a beneficiary of retrospective promotion under that Scheme at an earlier stage in his service career.

After the approval of the recommendations of the Selection Committee under the APS Scheme by the Governing Body of the Institute in its meeting held on 20.12.2005 respondents No.3 and 4 were promoted as Professors w.e.f. 1.7.2002 vide office orders dated 21.12.2005. Thereafter,

a provisional seniority list dated.17.8.2006 was circulated which reflected their date of appointment as 1.7.2002. Respondent No.1 in his representation dated 16.7.2007 raised a grievance regarding the seniority assigned to Professors figuring at Sr.Nos.60, 66 and 67, whose appointment was by direct recruitment on the ground that they had joined at a later date. No grievance was raised regarding the seniority of respondents No.3 and 4. It was on 19.8.2016 that for the first time he raised a grievance regarding the grant of retrospective promotion to respondents No.3 and 4 and assigning them seniority on that basis. This was about eleven years after their promotion on 21.12.2005 w.e.f., 1.7.2002. It was clearly barred by limitation.

It is well settled that disputes relating to seniority cannot be permitted to be raised at a belated stage.

In ***P.S. Sadasivaswamy v. State of T.N., (1975) 1 SCC 152***

Hon'ble Supreme Court observed:

“2..... A person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters. The petitioner's petition should, therefore, have been dismissed in limine. Entertaining such petitions is a waste of time of the Court. It clogs the work of the Court and impedes the work of the Court in considering legitimate grievances as also its normal work. We consider that the High Court was right in dismissing the appellant's petition as well as the appeal.”

Similarly, in ***B.S. Bajwa v. State of Punjab, (1998) 2 SCC 523*** it was held

as under:

“7. Having heard both sides we are satisfied that the writ petition was wrongly entertained and allowed by the Single Judge and, therefore, the judgments of the Single Judge and the Division Bench have both to be set aside. The undisputed facts appearing from the record are alone sufficient to dismiss the writ petition on the ground of laches because the grievance was made by B.S. Bajwa and B.D. Gupta only in 1984 which was long after they had entered the department in 1971-72. During this entire period of more than a decade they were all along treated as junior to the other aforesaid persons and the rights inter se had crystallised which ought not to have been reopened after the lapse of such a long period. At every stage others were promoted before B.S. Bajwa and B.D. Gupta and this position was known to B.S. Bajwa and B.D. Gupta right from the beginning as found by the Division Bench itself. It is well settled that in service matters the question of seniority should not be reopened in such situations after the lapse of a reasonable period because that results in disturbing the settled position which is not justifiable. There was inordinate delay in the present case for making such a grievance. This alone was sufficient to decline interference under Article 226 and to reject the writ petition.”

The ratio of the above decisions is clearly applicable in this case.

It has come on record that respondent No.1 was promoted under the APS Scheme as Associate Professor on 29.9.2000 with retrospective effect from 1.7.1999 and then again on the post of Additional Professor (General Surgery) with retrospective effect from 1.7.2003. Being a beneficiary of retrospective promotion under this Scheme he is estopped from challenging the grant of similar benefit to others.

Thus, we are of the view that the Ld. Tribunal has wrongly entertained the OA which was liable to have been dismissed on the grounds of limitation, delay and laches as also estoppel. Consequently, there was no occasion for the Tribunal to adjudicate on the case on merits.

Accordingly, these writ petitions are allowed. The order of the Tribunal is set aside.

As these petitions have been allowed on preliminary grounds,

we make it clear that we have not expressed any opinion on the merits of the other contentious issues decided by the Tribunal.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

January 23, 2019

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No