

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

**1. Date of decision-05.04.2019
CWP-23214-2013(O&M)**

Manveen Kaur and another

...Petitioners

Vs.

State of Punjab and others

...Respondents

2. CWP-26022-2013(O&M)

Dr. Rajinder Kumar

...Petitioner

Vs.

State of Punjab and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

**Present: Ms. Maninder, Advocate
for the petitioner(s) in CWP-23214-2013.**

**Mr. Sanjeev Sharma, Advocate
for the petitioner(s) in CWP-26022-2013.**

**Mr. Vikas Mohan Gupta, Addl.A.G., Punjab assisted by
Mr. Gulzar Khan, Senior Assistant, DRME.**

JITENDRA CHAUHAN, J.

This judgment shall dispose of above mentioned two writ petitions filed under Articles 226/227 of the Constitution of India for the issuance of an appropriate writ restraining the respondents from filling-up the posts of Assistant Professor (Ophthalmology) in violation of the statutory rules known as “Punjab Medical Education Service (Class-I) Rules, 1979 (in short 'Rules of 1979')” and also to appoint the petitioners as Assistant Professor in view of their merit and further for quashing the

action/decision of the respondents taken in the meeting in the DPC held on 21.10.2013.

The facts are being taken from CWP No.23214 of 2013 titled as ***'Manveen Kaur and another Vs. State of Punjab and others'***.

The petitioners were appointed as Medical Officers in PCMS Cadre on regular basis in the year 1998 and continued as such for more than 14 years. Petitioners have also served on the post of Senior Resident which is a tenure post for 3 years. Learned counsel further submits that the respondents, vide notification dated 12.03.2012 (Annexure P-3), invited names of eligible candidates for appointment to various posts including two posts of Assistant Professor in the Department of Ophthalmology. The basic requirement for appointment as Assistant Professor is that a candidate should be a Post Graduate holder in the field of Medicine, should have three years of experience as Senior Resident or two years of experience of senior resident plus one year of rural service and minimum benchmark of 12 marks of the last five years' ACR. Petitioners being fully eligible applied for such post and on 15.10.2013, list of eligible candidates was issued (Annexure P-5), which shows that list of eligible candidates was prepared as per the date of joining of the candidates in the Department. The grievance of the petitioners is that the list of eligible candidates was purely on the basis of seniority, whereas Rule 9 of Rules of 1979, provides that all appointments to the post shall be made by selection on merit and no person shall be entitled to claim promotion as right to such post on the basis of seniority. Learned counsel for the petitioners also refer to order dated 03.12.2013 (Annexure P-9) wherein other candidates were recommended by Department Promotion Committee to be promoted as Assistant Professor and Associate

Professor and three doctors, namely, Dr. Harvinder Nagpal, Dr. Ishwar Singh and Dr. Saroj Bala were appointed as Assistant Professors in the Department of Ophthalmology.

Learned counsel for the petitioner(s) further refers to the notification dated 12.08.2004 (Annexure P-3) issued by Department of Medical Education and Research which provides for criteria for selection of Senior Residents for posting in various specialities in Punjab State Medical Colleges. However, such notification governs the selection of Senior Residents and not the post of Assistant Professors and Associate Professors. Therefore, such notification would be of no help to the petitioner(s).

On the other hand, learned State counsel states that as the promotion of Assistant Professor was on the basis of selection by way of seniority, no candidate can claim such promotional post. To buttress his claim, learned State counsel refers to Rule 9 of Rules of 1979 and the guidelines issued by Department of Personnel vide letter No.4/6/2000-3PPI/13720 dated 06.09.2001 according to which the numbering system of evaluation of ACRs as contained in instructions dated 29.12.2000 has been retained, according to which, four marks are given for outstanding ACR, three marks for very good ACR, two marks for good ACR and one mark for average ACR. On a pointed query raised by this Court, learned State counsel on instructions submits that all the candidates who were considered and promoted in the Department of Ophthalmology were not only senior on the date of joining the department if compared with the petitioners, but all such candidates have also secured more marks on the basis of their ACRs recorded. As per record, Dr. Harvinder Nagpal had secured 14 marks on the basis of his ACRs, Dr. Ishwar Singh secured 16 marks and Dr. Saroj Bala

secured 12 marks whereas petitioner No.1 secured 12 marks and petitioner No.2 secured 14 marks, on the basis of their ACRs. He further submits that as per Annexure P-9 once the candidates have joined on the promotional post, they ought to have been impleaded as necessary party, but the petitioners chose not to do so.

In CWP-26022 of 2013 titled as '*Dr. Rajinder Kumar versus State of Punjab*', petitioner was a candidate for Department of Surgery. There were total 14 vacancies, out of which 08 seats were under general category. Petitioner was a candidate under General Category. Learned State counsel on instructions submits that petitioner secured 16 marks on the basis of his ACR, but other selected candidates who were much senior from the petitioner have also secured the bench mark of 12 marks. Even, petitioner has not impleaded the selected candidates who were necessary parties. The selected candidates in Department of Surgery were

1. Dr. Darshanjit Singh Walia, joined on 02.01.1991
2. Dr. Rattan Lal Singla, joined on 21.01.1991
3. Dr. Manjit Singh Khalsa, joined on 01.07.1991
4. Dr. Sanjiv Gupta, joined on 19.12.1991
5. Dr. Bhupinder Singh, joined on 19.12.1991
6. Dr. Ashok Kumar, joined on 03.12.1992
7. Dr. Amar Vir Singh, who joined on 04.12.1993
8. Dr. Rimal Singh, who joined on 04.12.1993

Whereas, the petitioner had joined on 14.11.1995.

Learned State counsel submits that in view of the above, petitioner-Rajinder Kumar was admittedly junior to the selected candidates, who have also achieved the benchmark of 12 marks.

Heard.

Petitioner-Rajinder Kumar completed his three years course in M.S. Surgery in the year 1993 and was appointed to the cadre of PCMS as Medical Officer on 14.11.1995. Post of Assistant Professor has been claimed on the basis of merit, as associated by the DPC on the basis of ACRs and other relevant consideration. On consideration of the service record of the petitioner, the petitioner was given 16 marks whereas certain selected candidates had less marks than scored by the petitioner, but the DPC determined the benchmark at 12 marks.

The relevant portion of notification dated 06.09.2001 reads as under:-

“Subject:- Setting up of Departmental Promotion Committees for considering cases of promotion to Class-I and Class-II (now Group 'A' and Group 'B') posts.

x x x x x

© it has been decided to retain the numbering system of evaluation of ACR's as contained in the instructions dated 29.12.2000 which is as under:-

<i>Outstanding</i>	<i>:</i>	<i>4 marks</i>
<i>Very Good</i>	<i>:</i>	<i>3 marks</i>
<i>Good</i>	<i>:</i>	<i>2 marks</i>
<i>Average</i>	<i>:</i>	<i>1 mark</i>

x x x x x

(2) For promotion to posts falling in Group 'A' other than Head of Departments, the minimum bench mark will be Very Good with atleast 12 marks. Among those meetings this criteria, there would be no supersession.

x x x x x”

It is to be noticed that selection in the present case is on the basis of seniority-cum-merit. In the Rule it has been specifically mentioned that for promotion to the post falling in Group A other than Head of

Departments, the minimum benchmark will be 'Very Good' with at least 12 marks. There would be no supersessions to those who meet this criteria. As per record, the petitioner scored higher marks but that is not the sole criteria. The seniority of the selected candidates, those who have achieved the benchmark, cannot be ignored in the light of notification dated 06.09.2001. Admittedly, the selected candidates are senior to the petitioners and have achieved the benchmark. Induction of the petitioners would result into ouster of the selected candidates, who have not been impleaded as respondents. On the basis of the higher marks alone appointment letters for the post of Assistant Professor and Associate Professor cannot be issued to the petitioners.

In view of the above, the Court finds no merit in the above said petitions, therefore the same are hereby dismissed.

Photocopy of this judgment be placed on the other connected file.

05.04.2019*ps-I***(JITENDRA CHAUHAN)
JUDGE**

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