

CWP Nos.1402 & 16761 of 2018 (O&M)

212

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

Date of decision : 15.10.2019

1. CWP-1402-2018 (O&M)

Anand Rai Bansal and others

... Petitioners

Versus

State of Haryana and another

... Respondents

2. CWP-16761-2018 (O&M)

Vazir Singh Rathee

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Manoj Kumar, Advocate
for the petitioners in CWP-1402-2018.

Mr. Rajesh K. Kataria, Advocate
for the petitioner in CWP-16761-2018.

Mr. Kiran Pal Singh, AAG, Haryana.

Mr. D.S. Patwalia, Senior Advocate with
Mr. Gaurav Rana, Advocate
for respondent No.3 in CWP-1402-2018.

Mr. Ramesh Goyat, Advocate
for respondent No.2 in CWP-1402-2018 and
for respondent Nos.2 to 5 in CWP-16761-2018.

AMIT RAWAL, J. (ORAL)

This order of mine shall dispose of two writ petitions bearing

CWP No.1402 of 2018 titled as **“Anand Rai Bansal and others V/s State of**

CWP Nos.1402 & 16761 of 2018 (O&M)

Haryana and another” and **CWP No.16761 of 2018** titled as **“Vazir Singh V/s State of Haryana and others”** as the questions of law and facts are identical and, therefore, are being decided together. The facts are being taken from CWP No.1402 of 2018.

Petitioners, being aspirant for being promoted to the post of Senior Professor in the Department of Surgery, have challenged decision dated 29.12.2017 (Annexure P-15) of Additional Chief Secretary, Department of Medical Education and Research/respondent No.1, communicating to the Registrar, Pt. B.D. Sharma University of Health Sciences, Rohtak, on the subject of filling up the vacant post of Senior Professor, by fixing the roster point as 8th, instead of 6th meant for Scheduled Caste Category.

Learned counsel appearing on behalf of the petitioners submitted that on retirement of one Dr. Sham Singla in 2015, post of Senior Professor in the Department of Surgery, had fallen vacant. Sham Singla was occupying the post under General Category and being 6th in number, was to be filled by the University, by taking into consideration the General Category i.e. petitioners. Respondent No.3/Hansraj Ranga, Associate Professor, in 2016, approached National Commission for Scheduled Castes and vide order dated 29.01.2016 (Annexure P-10), certain directions were issued, which were challenged in this Court vide CWP No.7823 of 2016 (Annexure P-11). This Court, vide order dated 21.10.2016, set aside the order dated 29.01.2016 (Annexure P-10) and directed the University to take an independent decision for settling the dispute between the petitioner and the private respondent etc., in accordance with Rules. In the year 2016, the respondent/University came out with roster point of Scheduled Caste and

CWP Nos.1402 & 16761 of 2018 (O&M)

Backward Class, by fixing the roster point, meant for General Category and 6th post, according to it, was to be filled from the candidate, belonging to the General Category. Respondent No.1, vide letter dated 30.10.2017 (Annexure P-13), communicated to the Vice Chancellor, Pt. B.D. Sharma University of Health Sciences, Rohtak, to take necessary action in fixing the roster point, under intimation to the State Government, by giving reference to the reservation policy of the State. The respondent/University responded, vide letter dated 06.12.2017 (Annexure P-14), giving the detailed reasons for fixing the roster point i.e. details of Doctors, who had manned the position from 1982 onwards and by disclosing the roster point, in such circumstance, reached at point No.6 and not at 8th meant for General Category.

Respondent No.3, had been running from pillar to post to get the posts filled by changing of roster point, resulting into, passing of the impugned communication dated 29.12.2017 (Annexure P-15). Since the University being autonomous body is bound to accept the reservation policy, a cause of action accrued to challenge the impugned action. The Government has no role to play and the entire domain was of the University.

On the other hand, Mr. Kiran Pal Singh, AAG, Haryana and Mr. D.S. Patwalia, learned Senior Counsel assisted by Mr. Gaurav Rana, learned counsel appearing on behalf of respondent No.3, have drawn the attention of this Court to the specific averments in the written statement to justify the impugned action on the premise that while framing the roster point and also filling up the posts governed by the Haryana Medical Education Service Rules, 1976, the University failed to take into consideration the appointments of two other doctors i.e. Dr. Waryam Singh

CWP Nos.1402 & 16761 of 2018 (O&M)

and Dr. G.S. Sekhon, in the year 1964 and 1973, respectively, therefore, post vacated by Dr. Sham Singla, was 8th in roster point and not 6th.

It was also submitted that as per Sub-Rule 2 of Rule 9, first post of the vacancies of Professors, in each Department, shall be filled up by direct recruitment and second by promotion and so on, however, dispute in present petitions, is qua fixing of roster point amongst the direct recruitees.

Mr. Ramesh Goyat, learned counsel appearing on behalf of the respondent(s)/University supported the roster point.

At this stage, Mr. Patwalia, handed over the information dated 19.09.2016, received from the University, under the Right to Information Act, whereby his client was informed regarding joining and relieving of two aforementioned doctors, but the record of the same, according to the information, though is not available.

The aforementioned information could not be rebutted by Mr. Goyat, in the absence of any instruction from the University. Be that as it may, I am of the view that since the dispute has arisen for fixing of the roster point either to be 6th or 8th, particularly when this Court cannot assume the role of an expert as it is within the domain of the concerned Department of the University to implement the reservation policy promulgated from time to time or in vogue, in the letter and spirit. Keeping view of the aforementioned facts, without commenting upon the merit and demerit of the matter, I deem it appropriate to dispose of the writ petitions with a direction to the Vice Chancellor, Pt. B.D. Sharma University of Health Sciences, Rohtak, to constitute a Committee consisting of three members i.e. i) Vice Chancellor, Pt. B.D. Sharma University of Health Sciences, Rohtak; ii) Additional Chief Secretary, Department of Medical

CWP Nos.1402 & 16761 of 2018 (O&M)

Education and Research or his nominee; and iii) any nominee nominated by the Vice Chancellor, Bhagat Phool Singh Mahila Vishwavidyalaya, Khanpur Kalan, Sonipat. The said Committee will fix particular time and place for adjudication of the issue, by affording an opportunity of hearing to the petitioners or respondent No.3, or any other affected party i.e. petitioner in CWP-16761-2018, who is also aggrieved for non-filling up the post of Assistant Professor under Physically Handicapped Quota, uninfluenced with the reply or any other stand taken in the pending or the previous writ petition. The parties shall be at liberty to refer to any document and address the arguments, in support of their respective cases.

Let this exercise be done within a period of two months from the date of receipt of certified copy of this order.

In case, decision is taken in favour of either of the parties, necessary action, as it exists today, as a corollary, be taken.

It is made clear that interim order dated 03.04.2018 in CWP No.1402 of 2018 is ordered to be maintained till such decision is taken by the Committee.

15.10.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

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