

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

CWP No.2105 of 2018 (O&M)

Date of Decision.18.10.2019

Dr. B.M. Vashisht

...Petitioner

Vs

Pt. B.D. Sharma University of Health Sciences, Rohtak and others

...Respondents

Present: Mr. Abhay Gupta, Advocate
for the petitioner.

Mr. Ramesh Goyat, Advocate
for respondents No.1 and 2.

Mr. Salil Sabhlok, Advocate
for respondent No.3.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

C.M. No.15665 of 2019

Application is allowed.

Replication is taken on record.

CWP No.2105 of 2018 (O&M)

Written statement filed by respondent No.3 in court today is
taken on record.

The challenge in the instant writ petition is to the minutes of
selection dated 10.01.2017 (Annexure P-12) whereby respondents
considered the matter with regard to awarding of marks obtained by the
selected candidates for the post of Floating Senior Professor-Social and
Preventive Medicine and promotion order of respondent No.4 dated
08.02.2017 (Annexure P-13).

Petitioner, according to averments in the writ petition, being

the senior most for promotion to the post of Floating Senior Professor-Social and Preventive Medicine from the post of Professor, duly fulfilled the requisite criteria and qualifications, was thus, required to be promoted in place of respondent No.4, who admittedly was in any case, lower than the petitioner in the Department of Community Medicines as per Annexure P-14 i.e. the official communication regarding seniority. Petitioner had been working as Professor in the Department of Community Medicine at Pt. B.D. Sharma Postgraduate Institute of Medical Sciences, Rohtak. In order to fill two posts of Floating Senior Professor caused an advertisement (Annexure P-1) and laid down a misplaced criteria, as criteria for promotion to the said post as per rule was seniority-cum-merit.

Mr. Abhay Gupta, learned counsel appearing on behalf of the petitioner submitted that seniority-cum-merit means a minimum benchmark of marks. Petitioner was awarded 37 marks out of 55 whereas respondent No.4, 39. Respondent No.4 in its application for said post claimed that he had passed MD (Social and Preventive Medicine now known as Community Medicine) in first attempt whereas the document reveals that it was third attempt. He had not even authored any book relevant to the subject of Community Medicine, which he had been teaching. The Screening Committee erroneously awarded 10 marks to respondent No.4 under the head of passing postgraduate degree in first attempt and 5 marks under the head of Chapter in Foreign Books whereas the petitioner was awarded lesser marks. In this regard, series of reminders were sent vide Annexure P-4 but no action was taken.

Respondent No.4 was given relaxation of work experience of 15 days even at the time of giving his appointment as Lecturer contrary to

the Rules and Regulations. As many as 10 (ten) candidates from General Category had appeared for four (4) posts of Lecturer in 1992, thus, there was no shortage of candidates with proper experience. Respondent No.4 was short of required experience. First attempt has to be interpreted as 'passed MD/MS in the minimum specified period' as given in Appendix F of Haryana Government Medical Education and Health Department notification dated 25.01.2007 (Annexure P-20) but selection committee did not notice this fact and therefore, entire selection process is vitiated and liable to be undone.

In response to aforementioned arguments, reliance was placed on objections taken in the written statement filed by respondents No.1 to 3 through Mr. Ramesh Goyat, Advocate and Mr. Salil Sabhlok, Advocate that pre-merit criteria for determination of promotion was approved by Government of Haryana in Appendix G and impleadment of State of Haryana being a necessary party. It is not proper to cast aspersions on the selection committee on validity of respondent No.4's Master's Degree which once it had validly been awarded by the University. Rule 5(2) and 6 of the HMES Rules, 2007 determined criteria for promotion as seniority-cum-merit and not merely seniority. Only for equally marked candidates seniority would prevail. Dr. Jain was correctly awarded 10 marks as per pre-merit criteria as he secured his Master's degree in first attempt.

He also authored a chapter in Medical Sciences being a foreign publication whereas pre-merit criteria did not prescribe any requirement that book should pertain to the specific medical specialization of the candidate. It can be of any book as the advertisement do not envisage publication only in a particular field, as long as it relates to field of medicine. The petitioner

was not equally placed with respondent No.4, as was found to be lower in pre-merit criteria. Court cannot sit in appeal and assume role of an expert unless and until there is irrationality, biasness and discrimination. The reason for dentistry being a separate profession to medicine and having a separate professional body does not have to do anything with the technical merits of the practice area, thus, urges this Court for dismissal of the writ petition.

Contention of petitioner that Dr. R.B. Jain failed to submit his thesis within time and was therefore, not allowed to sit in examination in 1990 was considered by the selection committee. Because of same, he could only sit in the examination in 1991. Pre-merit criteria reveals that Master's degree was to be attained in the first attempt. First attempt of respondent No.4 was in 1991. Disqualification from an examination on any ground cannot be counted as attempt. At the best, it could be stated that examinee did not obtain the degree in shortest possible time. There are various pre-requisites for being allowed to sit in final examination like attendance, clearance of dues, pending disciplinary action etc. While concluding submission it was requested to dismiss the writ petition.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr.Abhay Gupta.

In order to appreciate the controversy, it would be in the fitness of things to reproduce criteria (Annexure P-1), which is as under:-

<i>"1. MBBS Career</i>	<i>10 marks</i>
<i>a) The attempts</i>	<i>6 marks</i>
<i>-No extra attempt</i>	<i>6 marks</i>
<i>-One extra attempt</i>	<i>4 marks</i>
<i>-More than one extra attempt</i>	<i>2 marks</i>
<i>b) Percentage of aggregate marks</i>	<i>4 marks</i>

-Above 75%	4 marks	
-70% to 75%	3 marks	
-60% to 70%	2 marks	
 2. Postgraduate degree		10 marks
-1 st attempt	10 marks	
-2 nd attempt	8 marks	
- More than 2 attempts	6 marks	
 3. Academic Performance Research		20 marks
Conference and Chapters in Foreign Books		
a) Research Papers (20 marks)		
-Paper in a foreign journey which is indexed	2 marks	
-Paper in a National Journal which is indexed	1 mark	
-Paper in a National Journal which is not indexed	0.5 marks	
-Paper cited in foreign books	2 marks	
b) Chapters in Foreign Books (5 marks)		
One chapter in a foreign book	2 marks	
 c) National/International		(5 marks)
 Conferences		
For attending and reading a paper (now credit for regional & local conferences)	2 marks	
 4. Interview		5 marks”

and relevant portion of proceedings whereby the matter was considered by the experts qua awarding of marks to respondent No.4 for promoting him to the post of Floating Senior Professor-Social and Preventive Medicine which reads thus:-

“1. That Dr. R.B. Jain has been wrongly claiming five marks under the Head of Chapter in Foreign Book.

The Committee is of the considered opinion that as per rules the applicant is entitled “02 marks for every chapter in a Foreign Book” subject to maximum of 05 marks. The rules do not state anywhere that the chapter or the book should pertain to the specialty of the concerned.

2. That Dr. R.B. Jain has wrongly been claiming 10 marks under the head of passing Postgraduate degree in first attempt while Dr. R.B. Jain had passed his Postgraduate

degree in third attempt and is only entitled for six marks.

The Committee examined the examination documents of Dr. R.B. Jain, Professor, Community Medicine, PGIMS, Rohtak in detail. It was observed that through Dr. R.B. Jain completed his court in July, 1990, he was issued Roll No. also for appearing in examination which was subsequently cancelled on account of non submission of thesis. As per record Dr. R.B. Jain sat for his MD examination for the first time in the month of July, 1991 and cleared the same in the same attempt. Therefore, the examination was cleared by Dr. R.B. Jain in the first attempt.”

According to the submissions, respondent No.4 has been awarded 10 marks as having obtained the Postgraduate degree in first attempt, which according to the petitioner was a third attempt as he failed to avail the chance in 1990. In this context, it is observed that respondent No.4 though was awarded roll number in 1990 but did not sit in the examination, owing to non-submission of thesis but appeared in 1991 examination. Even if respondents have considered the same to be first attempt, assuming to be second attempt for the sake of argument, even then respondent No.4 is entitled for eight (8) marks. In such an eventuality, petitioner shall not be able to make in the merit as he had obtained total 33 marks.

Rules prescribe that persons worked for 10 years will be considered for post of Senior Professor. Promotion would mean an upgradation of the post, which a promotee was holding and for claiming it, person had to appear before the selection committee constituted for deciding the suitability prescribed in Appendix G, which prescribes awarding of marks including attempts. There is decision of the committee, which reveals that Rules do not prescribe that book should be in a particular

field. The reasoning assigned on having sat in the examination in July, 1991 would be the first attempt and not second attempt, for respondent No.4 had not submitted the thesis. It was not that he did not fulfill other criteria, which made him ineligible to sit and loose first chance.

In fact, promotion of respondent No.4 for not availing the first chance after having been issued roll number is totally falsified from the reasons assigned and record available with the Committee, as despite having been issued roll number for appearing in examination, he was not allowed to sit in examination on account of non-submission of thesis. So it could not be said that respondent No.4 availed second chance after having failed in first chance, thus, rightly awarded 10 marks.

In view of such circumstances, I do not find any fallacy or irrationality in such process or decision. In my view, a fainted attempt has been made by petitioner, who somehow or other remained disgruntled on having not been promoted being more meritorious than eligible but equally so, I cannot exceed scope of judicial review by assuming role of an expert by sitting in appeal on decision of Committee consisting of three persons referred to above.

Dismissed.

(AMIT RAWAL)
JUDGE

October 18, 2019

Pankaj*

Whether speaking/reasoned Yes

Whether reportable No