

CWP-24038-2017 (O&M)

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

**CWP-24038-2017 (O&M)
Date of decision : 22.10.2019**

Dhara Ballabh Dhaulakhandi

... Petitioner

Versus

Pt. B.D. Sharma University of Health Sciences and
another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.K. Malik, Senior Advocate with
Mr. Sandeep Dhull, Advocate
for the petitioner.

Mr. S.K. Aggarwal, Advocate
for the respondents.

AMIT RAWAL, J. (ORAL)

The case of petitioner is plain and simple. Uncontroverted facts on record are that w.e.f. 29.01.2013, petitioner was redesignated as Associate Professor and as per appointment letter (Annexure P-10), service conditions were directed to be governed by Haryana Medical Education Service Rules, 1988/Haryana Medical Education Service (Amendment) Rules, 2007 (hereinafter called 'the Rules') as amended from time to time, but till date, the Competent Authority has not adopted the new Rules and Regulations.

Mr. R.K. Malik, learned Senior Counsel assisted by Mr. Sandeep Dhull, learned counsel appearing on behalf of the petitioner submitted that as per Rule 9(1)(e) of the Rules, method of recruitment to the

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next promotional post i.e. Senior Professors (Medical/Non-Medical) and Senior Professors (Dental), is 75% by promotion amongst the teachers; 25% by direct recruitment or by transfer or deputation of any officer/official already in service of any State Government or the Government of India. Person, having the following qualification, can be considered for promotion:-

"1. Post-graduate qualification in the subject concerned.

2. Ph.D./D.Sc. in the subject concerned.

Explanation:-

Four years service in the speciality concerned as Associate Professor or equivalent post in Post Graduate Institute of Medical Sciences, Rohtak."

Petitioner acquired four years of service in speciality as Associate Professor in 2017, was eligible for promotion. A representation, in this regard, was submitted, but no action was taken, compelled to approach this Court vide CWP No.10369 of 2017 and in view of directions of this Court, representation was decided while rejecting the case of petitioner, vide impugned order dated 09.10.2017 (Annexure P-8), on the premise that Government has not approved the qualification and experience, required for re-designation/promotion/appointment to the post of Professor and Senior Professor, in the Department of Biotechnology and Molecular Medicine, Post Graduate Institute of Medical Sciences, Rohtak. Until and unless, Rules are not framed, terms and conditions of the appointment letter would be governing, therefore, explanation given is wholly erroneous and fallacious.

Mr. Sanjiv Aggarwal, learned counsel appearing on behalf of the respondent/University supported the impugned order by drawing the

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attention of this Court to decision dated 04.06.2008 (Annexure R-1) of Health and Education Department, Haryana, whereby educational eligibility and experience submitted by the University to be incorporated in Services Rules, was accorded, thus, in the absence of promulgation of new Rules or its introduction in the aforementioned Rules, the case of petitioner for promotion has rightly been rejected.

Attention of this Court is also drawn to the expression "Clinical Departments of Medical College, which would mean various Departments, but do not include the Department of Bio-technology, thus, urges this Court for dismissal of present writ petition.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr. Malik.

To examine controversy and decision thereon, I would extract the Rule 9(i)(e) of the Rules, Clause 7 of the appointment letter as well as contents of decision dated 04.06.2008 (Annexure R-1), which reads thus:-

"Rule 9(1)(e) of the Rules-Method of Recruitment:

Recruitment to any post in the Service shall be made as under:-

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

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

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

Clause 7 of the appointment letter

7. You will be governed by Haryana Medical Education Service Rules, 1988/Haryana Medical Education Service (Amendment) Rules, 2007; as amended from time to time. In

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respect of pay, leave, pension and other matters not expressly provided for in these rules, you shall be governed by such regulations and rules as have been framed or may hereafter to be adopted by the Competent Authority under the Constitution of India.

Contents of decision dated 04.06.2008 (Annexure R-1)

"The Government has approved the proposed qualification and experience given by you for different post in Biotechnology and Molecular Medicines Departments. Approved educational eligibility and experience are to be incorporate in Service Rules. Therefore, after accordingly, proposal regarding amendment in the Service Rules be notified in English and Hindi and copies be sent to the Government at the earliest."

On juxtaposition of the conditions and the Rules coupled with the stand taken by the respondents, particularly decision (Annexure R-1), I am of the view that once University had already sought the approval of the Government in fixing the educational qualification and experience, in the year 2008, no explanation has come forth in not introducing the Rules or promulgation of new Rules, thus, in such circumstances, the aforementioned Rules would be applicable. Petitioner concededly was redesignated as Associate Professor w.e.f 29.01.2013, after gaining four years of experience in the speciality concerned. The stand of the respondents that aforementioned Department i.e. Biotechnology was not included in the definition 2(b) , therefore, non-applicability of the Rules, is not able to cut an ice, for the reason that terms and conditions of the appointment letter would be sacrosanct between the parties.

Keeping in view the aforementioned facts and reasoning, the impugned order is not sustainable in the eyes of law being illegal and *void*

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ab initio, accordingly, is set aside. The respondents are directed to consider the case of petitioner as per Rules, aforementioned.

Let this exercise be done within a period of two months from the date of receipt of certified copy of this order, failing which, there shall be costs of ₹50,000/- to be recovered from the concerned Officer, who is responsible at the helm of affairs.

With the aforesaid observation, the present writ petition is allowed.

22.10.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

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