

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-14808-2017

Date of decision: 22.01.2020

Dr. Kiran Sharma

...Petitioner(s)

V/s.

State of Haryana and others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

Present: Mr. Vivek Suri, Advocate
for the petitioner.

Mr. Harish Nain, AAG, Haryana.

RITU BAHRI, J.

The petitioner is seeking quashing of order dated 10.08.2016 (Annexure P-5) whereby her claim for redesignating from the post of Assistant Professor as Associate Professor has been wrongly declined, by not giving teaching experience certificate. However, she fulfills all the educational qualifications as well as experience as laid down in the Haryana Government Medical Education Service (Amendment) Rules 2007.

The petitioner passed her MBBS examination from Lady Harding Medical College, New Delhi in the year 1998. Thereafter passed her MD degree in Anesthesia in the year 2003 from University College of Medical Sciences Delhi. She passed her DNB examination in Anesthesia in the year 2004. The petitioner worked as Senior Resident w.e.f. 02.07.2003 to 09.11.2006 and then appointed as Specialist in Safdarjang Hospital & V.M.M.C., New Delhi on 09.11.2006 and worked till 08.11.2008. She was

selected as Assistant Professor in the Department of Anesthesia in Muzaffar Nagar Medical College and Hospital, Muzaffar Nagar on 23.01.2009 and resigned on 06.12.2012 as she was selected as Assistant Professor in Kalpana Chawla Government College, Karnal as per the selection letter dated 29.11.2012 (Annexure P-1). She joined her services there on 21.12.2012 and her joining report is Annexure P-2. Annexure P-3 is the experience certificate issued by Medical Superintendent Safdarjang Hospital and V.M.M.C. and Annexure P-4 is the experience certificate issued by Principal of Muzaffarnagar Medical College & Hospital.

The petitioner is seeking direction to the respondent-college to re-designate her as Associate Professor since as per Rule 9(f)(ii) of Haryana Medical Education Service (Amendment) Rules, 2007, the Assistant Professor shall be re-designated as an Associate Professor if he fulfills the qualifications and experience for the post of Associate Professor as laid down in column 5 of Appendix B which reads as under:-

Sr. No.	Designation of Posts	Academic Qualifications and experience, if any, for direct recruitment and appointment by transfer/deputation	Academic qualifications and experience, if any, for appointment by promotion	Academic qualifications and experience, if any, for re-designation as Associate Professor/Professors
1.	2.	3.	4.	5.
1 to 14	X	X	X	X

15.	Associate Professor (Medical)	-	-	1. A basic university qualification included in the schedule to Indian Medical Council Act, 1956 (102 of 1956). 2. MD/M.S or equivalent qualification recognized by the Medical Council of India in the subject concerned. 3. Experience:- Four years service in the speciality concerned as an Assistant Professor or an equivalent post in Postgraduate Institute of Medical Sciences, Rohtak.
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The petitioner joined respondent No.3 on 21.12.2012 (Annexure P-2) and her claim has been wrongly rejected by passing impugned order dated 10.08.2016 (Annexure P-5) that she has no teaching experience in the Kalpana Chawla Government Medical College, Karnal. She made representation on 11.03.2017 (Annexure P-6) and 01.06.2017 (Annexure P-7) and thereafter the present writ petition has been filed.

Learned counsel for the petitioner has argued that a similiary situated Professor in Bio-Chemistry namely Sangeeta Bhattacharya who was working as Associate Professor Bio-Chemistry in Shaheed Hassan Khan Mewati Medical College, Nalhar approached this Court for redesignating her as Professor Bio-Chemistry in **CWP No. 23049 of 2013** and the same was allowed on 04.05.2016 and she was redesignated as Professor Bio-Chemistry w.e.f. 23.11.2013 with all consequential benefits. The case of the petitioner squarely covers by the said judgment.

On notice of this petition, written statement has been filed on behalf of respondents No. 1 to 3. The stand taken by the respondents in the written statement is that the Kalpana Chawla Govt. Medical College, Karnal got approval from the Medical Council of India and Ministry of Health & Family Welfare, Govt. of India in 2017 under Section 10-A of the IMC Act 1956 vide letter dated 29.05.2017. Therefore before the date i.e. 29.05.2017 Kalpana Chawla Government Medical College, Karnal was neither recognized nor approved/permitted Medical College and hence experience of the petitioner has to be counted only after 29.05.2017 for the purpose of re-designation as Associate Professor. It is admitted that after joining on 21.12.2012, petitioner has completed 4 years of service as on 20.12.2016. Even though Kalpana Chawla Govt. Medical College, Karnal was established pursuant to the decision taken by Govt. of Haryana on 13.07.2011 and the State Government transferred the administrative/functional control of General Hospital to the Director, Kalpana Chawla Govt. Medical College in 2012 and Finance Department sanctioned various posts of Professors, Associate Professors, Assistant Professors and other faculty members for Kalpana Chawla Govt. Medical College, Karnal. However, for the purpose of re-designation as Associate Professor, the teaching experience will be counted from the date when Kalpana Chawla Govt. Medical College was approved i.e. 29.05.2017. The respondents have also placed on record amended Rule of Medical Council of India regarding eligibility for appointment of teachers in Medical Colleges (Annexure R-3) whereby 4 years of teaching experience as Assistant Professor is required for re-designation as Associate Professor. It is further stated therein that the present writ petition is not maintainable

since Medical Council of India has not been impleaded as necessary party. However, the representation of the petitioner was sent by respondent No. 3 to respondent No. 2 and respondent No. 2 further referred the matter to the Secretary to the Medical Council of India to suggest whether the period from 2012 to 2017 of the Assistant Professors including the petitioner Dr. Kiran Sharma in the absence of permission from MCI can be considered for promotion or not. Copy of the letter is Annexure R-5. As per the clarification given in the Frequently Asked Questions (FAQ) by the MCI, the experience gained before the date of issuance of letter of permission to the medical college cannot be counted for teaching experience. The letter of permission was granted to Kalpana Chawla Medical College on 29.05.2017. The experience gained by the petitioner from her joining on 21.12.2012 till 29.05.2017 cannot be counted towards teaching experience for determining her eligibility for the post of Associate Professor. It is further stated in para No. 7 that experience of 3 years 10 months and 14 days in a private medical college namely Muzaffarnagar Medical College and Hospital cannot be counted for promotion/redesignation on the post of Associate Professor in Kalpana Chawla Govt. Medical College, Karnal as the petitioner had to attain 4 years teaching experience in the same institution i.e. Kalpana Chawla Govt. Medical College Karnal in terms of PGIMS, Rohtak Rules of promotion.

Heard learned counsel for the parties.

The short question for consideration in the present writ petition is whether experience of the petitioner before the Medical Council of India approval can be considered to be regular experience?

This Court in the case of *Sangeeta Bhattacharya (supra)* had considered the case of the petitioner who had applied for the post of Professor Bio-Chemistry. The petitioner after getting no objection from institute where she was earlier working, applied for the above said post and after being interviewed, she was not found eligible as she did not have requisite 4 years experience as Associate Professor from MCI recorgnized/approved medical college. A direction was given by the Court to file specific affidavit stating therein whether all the colleges in which the petitioner had rendered services as Associate Professor were/are recognized by the MCI or not. As per the affidavit dated 11.12.2015 filed by Dr. Sansar Chand Sharma, Direector SKHM GMC, Nalhar, Mewat, a decision had been taken for promotion to the petitioner as Professor in Bio-Chemistry by taking her previous years of service from 01.02.2012 and her case was recommended on 21.04.2015. However, in the minutes of the meeting dated 24.10.2013 experience of the petitioner had been taken w.e.f. 01.10.2010 to 31.01.2012 at SGT Medical College Budhera, Haryana (one year and four months) as Associate Professor and from 01.07.2010 to 10.09.2012 at SKHM GMC Nalhar, Mewat. The experience of one year and four months had been taken in SGT Medical College as per the MCI regulations. But the experience from 01.02.2012 to 02.07.2013 had not been taken into consideration as there was no affiliation by the MCI. As per the affidavit dated 11.12.2015, the petitioner's case had been recommended by taking her experience w.e.f. 01.02.2012 by the office of respondent No. 3, vide letter dated 21.04.2015. The period from Feburary 2012 till the approval was granted by MCI had now been taken as regular experience, to be given to the petitioner for the purpose of eligibility for promotion to the

post of Professor. The experience of the petitioner as Associate Professor was finally taken from 06.10.2008 till the date of interview i.e. 24.10.2013. As per letter dated 16.02.2016 issued by the Director General, Medical Education & Research, Haryana the case of the petitioner had been recommended for re-designation as Professor w.e.f. 23.11.2013. The writ petition was allowed and she was directed to be re-designated as Professor Bio-Chemistry w.e.f. 23.11.2013.

The case of *Sangeeta (supra)* makes it abundantly clear that from February 2012 till approval by Medical Council of India was taken into consideration as regular experience and this period was accepted by the Director General, Medical Education & Research, Haryana and the case of the petitioner had been recommended for redesignation as Professor w.e.f. 23.11.2013.

In the present case, the respondents cannot now take turn around that experience before approval of MCI cannot be counted teaching experience for redesignation as Associate Professor. The case of the petitioner is squarely covered by the aforesaid judgment. The petitioner has been duly selected by Kalpana Chawla Medical College and joined there on 21.12.2012. Her experience before 29.05.2017 has to be taken into consideration for all intents and purposes as regular experience in Kalpana Chawla Medical College and she is fully eligible as per column No. 5 of Appendix B of the Rules.

Writ petition is allowed. Order dated 10.08.2016 (Annexure P-5) is set aside. Respondent No. 3-Director, Kalpana Chawla Government Medical College is directed to pass appropriate order for redesignating the petitioner as Associate Professor after considering experience of the

petitioner from 21.12.2012 till 29.05.2017 when approval was granted, as regular experience within a period of two months from the date of receipt of certified copy of this order.

(RITU BAHRI)
JUDGE

22.01.2020
Divyanshi

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No