

216

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

**CM No.13806-CWP-2020 IN/AND
CWP No.7975 of 2016
Date of decision: February 24, 2021**

Dr. Adarshpal Kaur

.....Applicant-Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Ms. Alka Chatrath, Advocate for the applicant-petitioner.

Ms. Maloo Chahal, DAG Punjab.

MAHABIR SINGH SINDHU, J

CM-13806-CWP of 2020

Application for pre-ponement of date of hearing in the
main case.

Learned counsel for the applicant-petitioner submits that
since the main case is listed for hearing today itself, therefore, the
present application has become infructuous.

Disposed off as having been rendered infructuous.

Main case

Present petition has been filed under Articles 226/227 of
the Constitution of India for issuance of a writ in the nature of
Certiorari for quashing the action of the respondents in not considering
the claim of the petitioner for promotion to the post of Assistant

Professor (Surgery).

The coordinate Bench, on 06.01.2020, passed the following order: -

“On 12.01.2017, when the case was taken up for hearing, following order was passed:-

“It is apparent that vide Circular dated 11.05.2015 (Annexure P-5), inter alia, one post of Assistant Professor in Surgery was sought to be filled up by way of promotion. The eligibility conditions were required to be fulfilled by the last date of submission of the application forms i.e. 16.06.2015. The teaching experience in a Medical College after claiming the exemption from rural service was two years. The petitioner admittedly completed the requirement of two years' teaching experience after rural service on 15.07.2015 i.e. after the cut off date. Hence, she was ineligible for competing against the aforesaid solitary post of Assistant Professor (Surgery).

The grievance now set out is that after the conduct of the D.P.C. on 11.04.2016, the respondents have proceeded to fill up the second vacancy/post of Assistant Professor (Surgery) in the promotion quota, which became available on 07.09.2015, without considering the claim of the petitioner, at least qua the second post, as she has concededly become eligible for consideration by 07.09.2015. Learned State Counsel is unable to answer the aforesaid discrepancy. Thus, prays for a week's time to revert back.

Adjourned to 27.01.2017 for further consideration.

In the meanwhile, the second post of Assistant Professor (Surgery) in the promotion quota, if not filled up till today, shall be kept in abeyance till further orders.

To be shown in the urgent list.”

In pursuance thereto, a subsequent order dated 09.05.2019 was passed, whereby the Court had called upon the State to explain as to how the conditions of advertisement dated 11.05.2015 are applicable to the vacancies which have accrued subsequently i.e. 07.09.2015. This was with reference to the instructions

which have been admitted to have been issued by the department in the affidavit dated 08.02.2017 filed by the Director, Research and Medical Education, Punjab, according to which as per the instructions dated 10.04.1989, a vacancy has to be filled in accordance with the recruitment rules in force on the date of vacancy unless rules made subsequently have been expressly given retrospective effect as also the instructions dated 27.04.1982, which specifically stated that in future the date of occurrence of the vacancy shall be taken as the relevant date of determining eligibility of promotion to the higher post and if the candidate becomes eligible to be considered for the post, it is imperative for the department to fix the last date of receiving the applications and to fix the date to be considered for being eligible.

Despite two opportunities having been granted subsequent thereto, the counsel for the State has not been able to get instructions from the competent authority i.e. the Secretary, Department of Medical Education and Research, Punjab-respondent No.1.

One more opportunity is granted to the respondents No.1 and 2 to consider the claim of the petitioner for promotion to the post of Assistant Professor (Surgery) as per the admitted stand of the respondents and pass a speaking order in this regard within a period of three weeks from today and place the same on record on the next date of hearing.

In case the order passed by this Court is not complied with, respondents No.1 and 2 would be called in person to explain non-compliance of the order passed by this Court.

List on 17.03.2020.”

In compliance of the above order, reply by way of an additional affidavit of Dr. Avnish Kumar, Director, Research and Medical Education and Research, Punjab on behalf of respondents No.1 & 2 along with speaking order dated 05.02.2020 passed by the Principal Secretary, Government of Punjab, Department of Medical Education and Research (R-1) was filed on 02.03.2020.

After arguing at considerable length, learned counsel for the petitioner wishes to withdraw the present petition with liberty to

challenge order dated 05.02.2020 (R-1).

Dismissed as withdrawn with liberty aforesaid.

(MAHABIR SINGH SINDHU)
JUDGE

February 24, 2021
mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No