

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

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**CWP No. 4323 of 2022
Date of decision : 9.3.2022**

Dr. Ramanpreet Kaur

.....Petitioner

Vs.

National Medical Commission, New Delhi and others **.....Respondents**

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Navkesh Singh Goraya, Advocate, for the petitioner

Rajbir Sehrawat, J. (Oral)

This is a petition filed under Articles 226/227 of the Constitution of India seeking issuance of a writ of mandamus, directing respondent No.2 to consider the petitioner for interview and for further proceedings of selection to the post of Assistant Professor in the Department of Pathology (under SC Category); being fully eligible in view of the advertisement No. AIMS/E-1/20221/6079 dated 21.12.2021 (Annexure P-1).

It is submitted by counsel for the petitioner that the petitioner has been working with the respondent college since 7.10.2020 on the post of Senior Resident (Pathology). As such, he has completed more than one year of service and experience in the respondent college. Now the respondent college has issued an advertisement dated 21.12.2021, inviting online applications for recruitment to the one post of Assistant Professor; reserved for Schedule Caste Category. The petitioner is having MD Degree in Pathology. Beside this, as mentioned above, the petitioner has got one year working experience on the post of Senior Resident. Therefore, the petitioner is fully eligible for the said post. However, the respondents have not considered the petitioner eligible for

the said post. Counsel has further submitted that although the respondent college has not communicated anything in writing to the petitioner, however, the petitioner has been verbally intimated that he is not eligible because his work experience is not of working in a 'recognized/permitted college' and that any experience before the date the respondent college acquired the status of 'permitted college', cannot be recognized by them as a valid experience. The counsel has submitted that the work experience is an independent fact irrespective of the fact whether the college was permitted/recognized or not. Therefore, the experience of the petitioner cannot be discarded; as such. The petitioner has relied upon the judgments rendered by this Court in **CWP No. 16049 of 2018**, titled as **Dr. Gaurav Bambha v. State of Haryana and others**, decided on 01.11.2021, and **CWP No. 14808 of 2017**, titled as **Dr. Kiran Sharma v. State of Haryana and others**, decided on 22.1.2020, to contend that the persons in similar situations were considered eligible and were held entitled to be re-designated as Assistant Professor on the basis of their experience acquired by them prior to the college in those cases got the status of 'recognized/permitted college'.

Notice of motion.

Mr. Shailesh Aggarwal, Advocate has put in appearance on behalf of contesting respondent No. 2 and submits that the National Medical Commission (in short 'NMC') has prescribed the rules/qualifications for appointment on the posts in medical colleges, including the post of Assistant Professor in the respondent Institution. As per the said rules/qualifications, which already stand approved by Government of India, the experience of a candidate has to be in 'recognized/permitted' medical college and it has to be in the concerned subject. Since the petitioner does not have the experience in a

'recognized/permitted college', therefore, his experience cannot be counted. If the experience is so counted as is being claimed by the petitioner; then the same shall be in violation of the statutory rules. Counsel has further submitted that although the petitioner had been working with the respondent medical institute before the same was conferred the status of a 'permitted medical institute', however, in view of the statutorily prescribed qualifications, this fact is no more relevant. Hence, the petitioner has rightly not been considered as eligible for the post in question.

Having heard counsel for the parties and having perused the case file, this Court does not find any substance in the argument of counsel for the petitioner. It is even not in dispute that the petitioner is having MD Degree in the concerned subject. It is also not in dispute that the petitioner had worked with the respondent Medical Institute as a Senior Resident for a period of one year before applying for the post in question. However, the qualifications, which have been prescribed in the advertisement; creates a stumbling block in the way of the petitioner. The qualifications which have been prescribed for this institute and which have been duly approved by the Government of India, as mentioned above, are reproduced herein below :-

ANNEXURE- 1 : Academic Qualification & Teaching & Research Experience for the Medical Faculty in AIMS, Mohali (as suggested in the meeting of Board of Management of Dr. B.R. Ambedkar State Institute of Medical Sciences dated 5.3.2021 and approved by the Government vide Memo No. 18/5/2021-6SS3/2081 dated 12.3.2021).

Assistant Professor	Postgraduate qualification MD/MS/DNB in the concerned subject	Candidate after completion of 3 years of Junior Residency in a recognized/permitted medical college in the concerned subject <u>has done one year as Senior Resident/Registrar or Equivalent in the concerned subject in a recognized/permitted medical college.</u> Preference will however be given to candidates who have completed 3 years following post-graduation.
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Associate Professor	Postgraduate qualification MD/MS/DNB in the concerned subject	Total Teaching experience of 7 years including as : i) Assistant Professor in the subject for 4 years in a permitted/approved/recognized medical college/institution ii) 3 years of Senior Residency or equivalent AND one Research publication (only original papers, meta-analysis, systematic reviews, and case series that are published in journals included in Medline, PubMed Central, Citation index, Sciences Citation index, Expanded Embase, Scopus, Directory of Open access journals (DoAJ) will be considered). The author must be amongst first three or should be the Corresponding author.
Professor	Postgraduate qualification MD/MS/DNB in the concerned subject	Total Teaching experience of 10 years including : i) Associate Professor in the subject for 3 years ii) Assistant Professor 4 years and ii) Senior Residency or equivalent for 3 years in permitted/approved/recognized medical college/ institution AND with three Research publications (at least two as Associate Professor) (only original papers, meta-analysis, systematic reviews, and case series that are published in journals included in Medline, PubMed Central, Citation index, Sciences Citation index, Expanded Embase, Scopus, Directory of Open access journals (DoAJ) will be considered). The authour must be amongst first three or should be the Corresponding author.

A bare perusal of the qualifications prescribed and duly approved by the Government of India, and as has been duly advertised by the Appointing Authority; shows that it is not just any experience; obtained as Senior Resident in any institute; which makes one eligible for the post of Assistant Professor under the rules. A particular kind of experience has been prescribed under the rules. The said experience has to be in a medical college, which is 'recognized' or 'permitted' medical college. As an answer to the query, counsel for the respondent has clarified the concept of 'recognized' and 'permitted medical college'. The medical college acquires the status of 'permitted college' when first letter of permission is granted by the NMC. The college attains the status of a 'recognized college' when it has already conducted medical courses for

minimum of 5 years as 'permitted college'. The petitioner has not disputed this aspect. In the present case, it is not even in dispute that the respondent medical institute was granted first letter of permission by the NMC only on 01.11.2021. Therefore, the experience of the petitioner acquired before this date; even in the respondent institute; cannot be taken to be a valid experience for the purpose of the rules.

Since the advertisement has prescribed a particular rule/qualification which is stated to be statutorily approved by the Government of India as well, therefore, the said qualification has to be either adhered to or has to be challenged and get set-aside. However, the Rule/qualification as such, is not even under challenge before this court.

Although the counsel for the petitioner has relied upon the judgments rendered in **CWP No. 16049 of 2018**, titled as **Dr. Gaurav Bambha v. State of Haryana and others**, decided on 01.11.2021 (supra), and **CWP No. 14808 of 2017**, titled as **Dr. Kiran Sharma v. State of Haryana and others**, decided on 22.1.2020 (supra), however, the said judgments are of no help to the case of the petitioner. The very basic fact which distinguished the present case from the above said cases is that the present qualification was not involved in the above said cases. Rather, the said cases had been decided even before the qualifications prescribed in the present case were approved by the Government of India for this institute. Therefore, the above said cases might have been decided on the facts of their own case, however, those cases have no relevance qua the qualifications prescribed for recruitment in the present case. Any prior judgment of the Constitutional Court can be regarded as a precedent only on what it has actually decided, and not on what can be logically deducted from

such a judgment.

In view of the above, finding no merit in the present petition, the same is dismissed.

(RAJBIR SEHRAWAT)
JUDGE

9.3.2022
Ashwani

Speaking/Reasoned	:	Yes/No
Reportable	:	Yes/No