

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

CWP Nos. 16012 of 2019 (O & M)
CWP No. 22491 of 2019
CWP No. 7404 of 2020
CWP No. 11739 of 2021 (O & M)
Reserved on: 01.06.2022
Date of decision: 06.07.2022

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Sukhminderjit Singh Bajwa and othersPetitioner(s)

Versus

State of Punjab and othersRespondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MR. JUSTICE VIKAS SURI**

Present: Mr. Rajesh Garg, Senior Advocate
with Ms. Neha Matharoo, Advocate
for the petitioner(s) (in CWP-16012-2019).

None for the petitioners
(in CWP-7404-2020 & CWP-22491-2019).

Mr. V.M.Gupta, Addl. A.G., Punjab.

Ms. Monica Chhibbar Sharma, Advocate, for respondent No.5.
Dr. B.R. Ambedkar Institute (in CWP-16012-2019).

Mr. Gursimranjit Singh, Advocate
for respondent No.6 (in CWP-16012-2019)
and for the petitioner (in CWP-11739-2021).

G.S.SANDHAWALIA, J.

The present judgment shall dispose of 4 civil writ petitions i.e.
CWP Nos. 16012 and 22491 of 2019 and CWP No. 7404 of 2020 and CWP
Nos. 11739 of 2021.

Challenge in CWP No. 16012 of 2019, Sukhminderjit Singh

Bajwa and others vs. State of Punjab and others is to the Rule 6(2) as well as Entry 7 of Schedule B of Punjab Medical Education (Group A) Service Rules, 2016 (in short '2016 Rules') being ultra vires, illegal and having no rational nexus to the object that is sought to be achieved. Similarly, the same relief is also sought in CWP No. 22491 of 2019, Dr. Amarpreet Kaur and another vs. State of Punjab and others. In CWP No. 7404 of 2020, apart from the challenge to the Rule, challenge has also been raised to the list of eligible and non-eligible candidates as per the list dated 25.02.2019 (Annexure P-3) issued by the Director Principal, Dr. B.R. Ambedkar State Institute of Medical Sciences, SAS Nagar, Mohali, Punjab qua the advertisement dated 26.02.2000 as the petitioners were stated to be eligible candidates for recruitment to the post of Professors/Associate Professors in the Department of Micro Biology, Pathology, Bio Chemistry and Anatomy. In CWP No. 11739, Dr. Shivani vs. State of Punjab and others, the petitioner seeks quashing of the subsequent advertisement dated 03.06.2021 (Annexure P-9) qua the Assistant Professor of Pharmacology and to declare the result of the petitioner for the said post and to decide her representations.

In view of various orders passed and developments which have taken place and the necessary steps the State Government has taken since the Rules have thereafter been amended on 08.01.2021, we are of the considered opinion that the writ petitions have been rendered infructuous whereby challenge to the Rule has been raised. However, on account of interim orders passed, two candidates still are contesting for the benefit of appointment to the post of Assistant Professor, Pharmacology namely Dr.

under Order 1 Rule 8(1) CPC i.e. C.M. No. 9096-CWP of 2019 in CWP No. 16012 of 2019 on 01.06.2022 and Dr. Shivani, who has filed CWP No. 11739 of 2021. In order to adjudicate on their respective rights, the background will have to be referred to.

Initially, when the first writ petition by Sukhminder Singh Bajwa was filed, the same was on the basis of the advertisement dated 25.02.2019 having been issued (Annexure P-3) wherein, applications for direct quota of posts of Professors/Associate Professors and Assistant Professors in various departments were invited as per the 2016 Rules. The petitioners and the added petitioner No.7 were aggrieved against a common condition in the Rules which are under challenge which prescribed the requirement of teaching experience for a minimum period of 7 years after completion of Post Graduation which included 4 years' experience as Assistant Professors in the concerned specialty from a recognized post graduate medical college. Thus, the grouse as such was that the requirement of the eligible candidates to have teaching experience only in a post graduate medical college was not justified. It had been brought out that earlier the service was governed by the Punjab Medical Education Service (Class I) Rules, 1978 and the experience of teaching was in a medical college after requisite post graduate qualifications.

While issuing notice of motion on 31.05.2019, the petitioners were permitted to appear in the interview provisionally and their result was to be kept in a sealed cover. The provisional participation in the interview would neither create any equity nor any right in favour of the petitioners. C.M. No. 4248-CWP of 2020 was then filed wherein, it was mentioned that

faculty post for Dr. B.R. Ambedkar State Institute of Medical Sciences at Mohali and provisional participation was also sought which was allowed on 17.03.2020 on the same terms and conditions that the interim order would not confer any right on the petitioners and they were allowed to submit their applications for the posts which had been advertised. C.M. No. 9096-CWP of 2019 in CWP No. 16012 of 2019 was then filed to permit various other petitioners to pursue the writ petition in a representative capacity including applicant Dr. Gurleen Kaur. The said application has now been allowed on 01.06.2022.

On 10.06.2020, it was brought to the notice of the co-ordinate Bench that 95% of the applicants for direct recruitment of faculty have been found ineligible in view of the condition of the experience of teaching in the Post Graduate Medical Colleges as imposed by the 2016 Rules. The Court had also been informed that the authorities were probably inclined to revisit the issue of the said requirement, which would be substituted by any medical college. Resultantly, the concerned Secretary was asked to file the affidavit detailing the rationale/basis for incorporating the clause of the said experience from a post graduate medical college and also why the Punjab Public Service Commission had been excluded as a recruiting agency in view of the mandate of Article 320 of the Constitution of India. Dr. Ambedkar Institute was impleaded as respondent No.5 vide order dated 30.10.2020 keeping in view the fact that it was not a party in the writ petition and there was a grouse that the petitioners had not been permitted to join the process of selection and further process of selection was kept in abeyance vide order dated 30.10.2020. On an application being filed for

was vacated so that the respondents could interview the petitioners with interim orders in their favour and further complete the selection process. The result as such was to be kept in a sealed cover, subject to the final decision of the writ petition. No appointment letters were to be issued without seeking prior permission of the Court and the result was to be declared on provisional basis.

Vide order dated 27.08.2021, a co-ordinate Bench by a detailed order discussed the background and noticed that the Rules of 2016 had been amended vide notification dated 08.01.2021 and the position had been put back as was prior to the Rules of 2016 and therefore, the petitioners had become eligible as per Rules as amended in 2021. Resultantly, directions were issued that the result be declared by opening the sealed cover and the names of the successful candidates be declared as per merit. Accordingly, C.M. No. 18714-CWP of 2021 in CWP No. 16012 of 2019 was filed by Dr. Gurleen Kaur staking her claim to the post of the Assistant Professor, Pharmacology being shown at Sr. No.1 of the merit list but ineligible apparently on account of not having the teaching experience from a recognized post graduate medical college. Similarly C.M. No. 1593-CWP of 2022 in CWP No. 16012 of 2019 was filed by respondent No.6 namely Dr. Shivani also seeking appointment to the same post being shown at Sr. No.2 of the merit list and shown as eligible.

CWP No. 11739 of 2021 came to be filed by Dr. Shivani on the ground that fresh advertisement had been issued on 03.06.2021 wherein, the post of Assistant Professor had been advertised. It was her case that she was an eligible candidate and had been called for interview but her result

2019. Therefore, subsequent advertisement as such was leading to serious prejudice to her rights and she was a qualified candidate who had been called for interview on 07.06.2019. The said writ petition was ordered to be heard alongwith CWP No. 16012 of 2019 on 05.07.2021. She accordingly prayed for decision on her representations for appointment to the said posts.

The short stand of the State as such was that the case was subjudice and the earlier advertisement was under challenge. The petitioner was in the selection zone but she was second in position and the first candidate had been shown to be ineligible and, therefore the appointment order could not be issued. Dr. Gurleen Kaur, who was arrayed as respondent No.6, took the stand that in view of the interim order dated 27.08.2021 passed by the co-ordinate Bench, the participation in the interview provisionally would render her to be eligible and declaration of the result was prayed for. Resultantly, it is held out by her counsel that the re-advertisement dated 03.06.2021 was not justified and the position was restored qua the eligibility of the said respondent, who had also been interviewed and selected and she was the only meritorious candidate for the sole post of Assistant Professor, Pharmacology which had been advertised.

Senior counsel, Mr. Rajesh Garg, while pressing C.M. No. 18714-CWP of 2021 submitted that by virtue of the interim orders dated 31.05.2019, she be given appointment as she stood first in the merit list and she had also served a legal notice dated 24.11.2021. The same was contested by Dr. Shivani that she was the sole eligible candidate as per the advertisement dated 25.02.2019 and the amendment of 2021 could not relate back to the posts advertised in the year 2019.

State, in its response, took the plea that the appointment orders

could only be given if the writ petitions are decided in favour of either of the petitioners.

Mr. Gursimranjit Singh, Advocate appearing for Dr. Shivani, on the other hand, prays for orders in C.M. No. 1593-CWP of 2022 that directions be issued to appoint his client and implement the result as declared on 21.09.2021. Accordingly, it is submitted that the second advertisement should not have been issued.

In our considered opinion, admittedly, the State has amended the Rules on 08.01.2021, which was notified on 12.01.2021. The requirement of the teaching experience is now only from a recognized medical college. The grouse as such of the petitioners no longer subsists as a fresh advertisement has also been issued.

Counsel for the State has submitted that on account of the amendment, the fresh advertisement was issued on 03.06.2021 and 13 persons have applied under the new advertisement for the said post and, therefore, all of them should be given a chance to apply against the same. It is, thus, submitted that the earlier advertisement no longer stands good in view of the amendment of the Rules and, therefore, challenge to the second advertisement is without any basis. It is submitted that not only the said post has been advertised but due to the litigation, the posts of 22 specialties of Assistant Professors have now been re-advertised in contrast to the 64 posts which had been initially advertised. Only the present two applicants are contesting whereas, others had applied in pursuance of the fresh advertisement. It is submitted that even other counsels have not put in appearance to contest CWP Nos. 22491 of 2019 and 11739 of 2021 as their clients are no longer interested in pursuing the litigation.

Ms. Monica Chhibber Sharma, counsel appearing for Dr. Ambedkar Institute has pointed out from her reply that in pursuance to advertisement dated 26.02.2020, certain persons had joined as Associate Professors and posts which had been unfilled were readvertised on 06.01.2021, 02.04.2021 and 06.05.2021 and the petitioners in the said writ petition had not applied for respective posts in the subsequent advertisement. In pursuance of the re-advertisement also, persons had joined.

C.M. No. 7757-CWP of 2021 in CWP No. 16012 of 2019 has also been filed for declaration of result in which the reply of the State was that the petitioner cannot be given appointment as the posts which had remained unfilled had been readvertised with the permission of the competent authority on 03.06.2021 in view of the amendment of the Rules.

It is pertinent to mention that senior counsel has not argued on the issue of the validity of the Rules in any manner and had only restricted his right on account of the fact that Dr. Gurleen Kaur was at Sr. No.1 in the merit. In pursuance of the interim orders, while placing reliance upon the result dated 21.09.2021, wherein she is stated to have got 69 marks whereas, Dr. Shivani has got 65 marks but Dr. Gurleen Kaur has been held to be not eligible, he has argued that a mandamus be issued in her favour for issuance of an appointment order.

However, we are of the considered opinion that the petitioner has no legal and vested right as such since the interim orders dated 31.05.2019 only granted her provisional protection as such and the said orders will go with the final orders passed in the writ petition. It is settled

very explicit and clear that provisional participation in the interview would neither create any equity nor any right in favour of the petitioners. The orders dated 31.05.2019 and 17.03.2020 read as under:-

“Notice of motion.

Mr. Shireesh Gupta, Sr. DAG, Punjab, present in the Court, accepts notice on behalf of the respondents and prays for and is allowed six weeks time to file response/written statement.

Considering the facts and circumstances, in the meantime, the petitioners shall be permitted to appear in the interview provisionally and their result shall be kept in a sealed cover. However, their provisional participation in the interview shall neither create any equity nor any right in favour of the petitioners.

Adjourned to 26.08.2019.”

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“Issue notice on the application to the non-applicants/respondents.

Service is waived, Ms. Lavanya Paul, learned Assistant Advocate General, Punjab having entered appearance and accepted notice on behalf of the respondents.

List on the date already fixed in the main case i.e. 19.03.2020.

In the meanwhile, in terms of the previous order passed by this Court, the applicants-petitioners may be permitted to submit their applications for the post which has been advertised.

It is made clear that this interim order would not confer any further right on the petitioners.”

The State, in its wisdom, has chosen to amend the Rules and, therefore, opened the criteria to a large number of persons and to restrict the

field of competition only *inter se* the present applicants i.e. Dr. Gurleen Kaur and Dr. Shivani, would not be justified in the facts and circumstances. Merely because they had initiated litigation as such would not given them any vested right to the post. It is settled principle that candidates only have a right of consideration and no absolute right of appointment. Reliance can be placed upon the judgment of the Apex Court in ***Shankarsan Dash vs. Union of India, (1991) 3 SCC 47***. The decision of the Government not to fill up the posts from the two persons contesting cannot be said to be arbitrary in view of the fact that on account of the amendment, fresh advertisement has been issued and, therefore, the claim for appointment as such by cutting out other persons who have become eligible cannot be justified as such in any manner. Reliance can be placed upon the judgment of the Apex Court in ***P. Suseela and others vs. UGC and others, (2015) 8 SCC 129*** wherein, it was held that there would be no vested right for the post till the time of appointment and it is only a right of consideration. Similar view was also taken by the Apex Court in ***Kulwinder Pal Singh and another vs. State of Punjab and others, (2016) 6 SCC 532*** wherein, claim was on account of respect of reserved category seats remaining unfilled. It was accordingly held that merely because appellants had been pursuing the matter for long, but appointment would be deprived to the candidates who were not eligible for appointment, to the post on the date of submission of the applications who had become eligible thereafter.

In ***Karnataka State Seeds Development Corporation Ltd. and another vs. Smt. H.L. Kaveri and others, (2020) 3 SCC 108***, the petitioner had not enclosed the experience certificate and the writ petition was

dismissed by the learned Single Judge. The order was reversed by the Division Bench on the ground that the person had secured higher marks in the qualifying examination for the post of Senior/Junior Assistant and mere non-enclosure of the experience certificate of the applicant was not a ground to deny her claim for consideration. The Apex Court held that 106 applications were rejected by the Corporation and, therefore, merely because the petitioner had approached the Court would not mean that she should be considered eligible in terms of the advertisement as it would amount of over reaching the rights of the candidates who were otherwise eligible for appointment.

In the present case also, by virtue of the amendment of the Rules, the field has opened up to a large number of aspirants and as the State has pointed out that they have received 13 applications, which is in sharp contrast to the limited response on account of the onerous condition which had been put in the 2016 Rules. Admittedly, the persons who did not have the teaching experience of the post graduate medical colleges would not have applied qua the earlier advertisement as they were never eligible. Their right of consideration to the subsequent advertisement dated 03.02.2021 would be seriously prejudiced if the contest is restricted now between Dr. Gurleen Kaur and Dr. Shivani. The State would also be denied of the benefit of a better choice for appointment to the post of Assistant Professor, Pharmacology. It is open to both the petitioners namely Dr. Gurleen Kaur and Dr. Shivani to appear in pursuance of the fresh advertisement as no relief can be granted to them herein. Accordingly, the present writ petitions stand dismissed and the State shall proceed to fill up

the posts and all interim orders stand vacated. All pending miscellaneous applications stand disposed of in view of the above observations. The State shall proceed to fill up the vacancies as per the fresh advertisement.

(G.S. SANDHAWALIA)
JUDGE

06.07.2022
shivani

(VIKAS SURI)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No