

220

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: November 23, 2022
1. CWP-11034-2018(O&M)

Mukesh Kumar and others

....Petitioners

versus

State of Haryana and others

....Respondents

2. CWP-11137-2020 (O&M)

Krishan Lal and others

....Petitioners

versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Sunil K. Nehra, Advocate for the petitioners
in CWP-11034-2018.

Mr. Sajjan Singh, Advocate for the petitioners
in CWP-11137-2020.

Mr. Saurabh Mohunta, DAG Haryana.

ARUN MONGA, J. (ORAL)

Vide this common order and judgment, above-mentioned two writ petitions are being disposed of, since the controversy and issues raised therein are common.

2. Petition (CWP-11034-2018), *inter alia*, is for issuance of a writ in the nature of Certiorari for quashing impugned non-speaking order dated 09.04.2018 (Annexure P-11) passed by the Director, Bhagat Phool Singh, Government Medical College for Women, Khanpur Kalan, Sonapat, Haryana (respondent No.3) vide which claim of the petitioners for promotion to the

post of Lab Technician has been rejected in violation of order dated 09.03.2018 (Annexure P-10) passed by this Court in CWP-5814-2018.

3. Pledged case is that petitioners were appointed by respondent No.3-College on the post of Lab Attendant vide appointment letter dated 15.05.2013 (Annexure P-1). Selection of the petitioners was made on the basis of recommendation of selection committee constituted by the Haryana Government and with the approval of the Director General, Medical Education and Research, Haryana. As per relevant Rules i.e., Haryana Health Department Laboratory Technical (Group C) Service Rules, 1998, 25% of posts of Lab Technician are required to be filled up by way of promotion from the post of Lab Attendants. Petitioners submitted a representation dated 27.06.2017 (Annexure P-3) to respondent No.3 for promotion as per the aforesaid rules.

3.1 An advertisement was issued by the respondent-College vide which 31 posts of Laboratory Technician were advertised. As per RTI information dated 08.03.2017 (Annexure P-5) sought by one Sandeep Singh, there are 42 sanctioned posts of Laboratory Technician in the College, and out of them, 11 have been filled and 31 are vacant which will be filled up by way of direct recruitment. It was also informed that service rules of the Institute have not been approved by the Government so far and the service rules of the PGIMS, Rohtak are being followed. As per service rules of PGIMS, Rohtak, post of Laboratory Technician is only being filled up by way of direct recruitment or by way of transfer or deputation and there is no provision in the rules for promotion from the post of Laboratory Attendant to the post of Laboratory Technician. Respondent-College is following the

Rules of Haryana Government for promoting its employees from time to time, but in the case of the petitioners, all the posts of Laboratory Technician have been advertised to be filled up by way of direct recruitment.

3.2 Petitioners approached this Court by way of CWP-5814-2018, which was disposed of vide order dated 09.03.2018 (Annexure P-10) directing respondent authorities to consider the claim/ grievance of the petitioners as also their representation dated 27.06.2017 and pass a comprehensive order assigning reasons in support thereof. Further, it was directed that till appropriate orders, as indicated above, are passed, 10 posts of Laboratory Technician shall not be filled by direct recruitment.

3.3 Respondent No.3 rejected the representation of the petitioners by passing a non-speaking order dated 09.04.2018 (Annexure P-11), on the ground that Rules of PGIMS, Rohtak are applicable in the respondent-College and service Rules of Haryana Health Department Laboratory Technician (Group C) are not applicable.

4. Petition (CWP-11137-2020), *inter alia*, is for issuance of a writ in the nature of Certiorari for quashing impugned order dated 05.02.2018 (Annexure P-12), whereby service rules of University of Health Sciences, Rohtak/ Post Graduate Institute of Medical Sciences, Rohtak were ordered to be followed for all purposes, till separate service rules are finalized, being contrary to the terms and conditions of the appointment letters of the petitioners and Haryana Health Directorate Ministerial (Group-C) Service Rules, 1984 (Annexure P-4) and Haryana Health Department Subordinate Offices Ministerial Staff (Group-C) Service Rules, 1997 (Annexure P-5).

4.1 Petitioners were appointed on the post of Steno-Typist vide appointment letters (Annexure P-2 colly). Petitioner No.2 was promoted to the post of Junior Scale Stenographer (JSS) vide order dated 07.09.2015. Petitioners No.3, 4 and 5 were promoted as Junior Scale Stenographer (JSS) vide order dated 01.06.2016. Respondent-State framed Haryana Health Directorate Ministerial (Group-C) Service Rules, 1984, whereby, recruitment to the post of Assistant will be made by promotion from amongst the post of Clerks/ Store Keepers/ Junior Scale Stenographers/ Steno-Typists/ Junior Auditors. Respondent-State framed Haryana Health Department Subordinate Offices Ministerial Staff (Group-C) Service Rules, 1997 (Annexure P-5). Appendix-B at Sr. No.4 in Column No.4 of said Rules, provides qualifications/ experience for appointment to the post of Assistant-cum-Accountant and Senior Scale Stenographer and the relevant portion is extracted herein below:-

<i>“4. Assistant-cum-Accountant cum-Junior Auditor</i>	<i>5 years experience as Junior Scale Stenographer of Steno-Typist as Clerk”</i>
--	--

4.2 Petitioners also passed State Eligibility Test in Computer Appreciation and Applications (SETC). Respondent-State has issued promotion orders thereby promoting Clerks/ Steno-Typists of Directorate to the post of Assistant on the basis of provisions contained in Haryana Health Directorate Ministerial (Group-C) Service Rules, 1984. Respondent-State has been making promotions to various posts including Assistant, Deputy Superintendent and Superintendent etc. in the respondent-College on the basis of Haryana Health Directorate Ministerial (Group-C) Service Rules, 1984.

4.3 Respondent No.2 issued impugned order dated 05.02.2018 (Annexure P-12) thereby mentioning that service Rules of University of Health Services, Rohtak/ Post Graduate Institute of Medical Sciences, Rohtak will be followed for all purposes till separate service rules are finalized for the respondent College. Petitioners made representation to frame common seniority list of Clerks and Steno-Typists. Despite multiple representations, respondent-Department issued impugned seniority list dated 11.03.2020 (Annexure P-15) thereby excluding the petitioners from the seniority list and only issuing the same *qua* Clerks. Petitioners submitted objections (Annexure P-16), in this regard.

4.4 Respondent No.2 issued letter dated 08.06.2020 (Annexure P-21) merging the post of Store Keeper into the nomenclature of Clerk as per Government instructions dated 08.11.2013 (Annexure P-6). On the contrary, respondents are not applying the Government letter dated 17.11.2018 (Annexure P-22). Petitioners submitted representation dated 29.06.2020 (Annexure P-23), in this regard. Respondents issued impugned fresh tentative seniority list dated 25.06.2020 (Annexure P-24), thereby including Store Keeper-cum-Computer Operator-cum-Record Clerk by merging (change of nomenclature) them in the cadre of Clerks.

5. I have heard rival contentions of learned counsel for the parties and gone through the record.

6. In the return filed (in CWP-11034-2018) factual matrix is not disputed. The controversy herein, is in a very narrow compass as to which Rules are applicable *qua* the petitioners to govern their service conditions. It appears that at one stage, the Director, Bhagat Phool Singh, Government

Medical College for Women, Khanpur Kalan, Sonapat had taken an unequivocal stand that in terms of Para-6 of the appointment letters issued to the petitioners, State Government Rules shall be applicable, as is borne out from Para-4 of the short reply dated 15.01.2019 filed by the then Director of respondent-College, which is extracted herein below:

“4. That it is submitted that as the government i.e., respondent No.2 has issued clarification regarding following the Haryana service rules as mentioned at condition no.6, in their appointment letter, hence the instant civil writ petition has been rendered infructuous, at this stage.”

7. In the aforesaid background, it would also be apposite to reproduce condition No.6 of the appointment letter. For ready reference, the same reads as below:

“6. You will be subject to Government Employees Conduct Rules 1996 as amended from time to time. You will be governed by the provision of the Civil Services Rules and the relevant recruitment and conditions of Service Rules as applicable to your post as existing from time to time. For all other matters not specified herein, you will be subject to rules, regulations and instructions of Haryana Government as in force from time to time.”

8. However, subsequent to the aforesaid stand taken, it appears that there was a change of incumbent in the Director, Medical Education & Research, Panchkula and perhaps also change of Director in the respondent-College, resulting in the contradictory stand taken by both of them, as enumerated in succeeding paras.

9. Vide an office order dated 22.07.2015 (Annexure R-2) issued by the Additional Chief Secretary, Haryana Govt. Medical Education & Research, following stand was taken:

***“Subject: Regarding Publication of Gazette Notification from retirement in attaining age of 62 years in respect of non-teaching staff.*”**

With reference to your letter No.DGMER/A-4/2015/4613 dated 01.07.2015 on the subject noted above.

In this context of subject, you are intimated/ requested that the provision of retirement age of non-teaching in PGIMS Rohtak is of 62 years. The preparation of service rules of the three medical college of the state can take time. The service rules of PGIMS Rohtak shall be followed till the preparation of service rules of the three medical colleges.”

10. In terms of aforesaid order, office of Director, Medical Education & Research, Panchkula informed the respondent-College vide an office order dated 05.02.2018 (Annexure R-3) as below:

“Sub: Regarding Service Rule to all the Govt. Medical Colleges.

Refer on the subject cited above.

I am directed to inform you that the service rules of University of Health Sciences, Rohtak/ Post Graduate Institute of Medical Sciences, Rohtak be followed for all purposes till separate service rules are finalized.”

11. However, subsequently as a bolt from the blue, there was a complete somersault *qua* the aforesaid decision conveyed to the respondent-Medical College, and vide an office order dated 26.12.2018 (Annexure R-4), it was conveyed as below:

“Sub: Regarding promotion of the post of Laboratory Technician.

With reference to your office letter No.BPS/ME-III/2018/1301 dated 08.10.2018 on the subject noted above, it is to inform you that the promotion of Laboratory Attendants to the post of Laboratory Technician working in your institute will be governed by the provisions of the Haryana Government Civil Service Rules and the relevant recruitment and conditions of service rules existing from time to time as per condition no.6 of the appointment letter and also informed that the Director, BPS Govt. Medical College for Women Khanpur Kalan Sonapat is competent for the recruitment and promotion of Group C and D.

DA: As above (notification).”

12. A collective reading of the above leaves this Court baffled to say the least as to which stand the respondents want to take. In the appointment

letters, it is stated that services are to be governed by the provisions of the Civil Services Rules followed by return dated 15.01.2019 confirming the same, but subsequently taking a U-turn and saying that Additional Chief Secretary has directed that the PGIMS, Rohtak Service Rules shall be applicable, and yet again going back to the same what has been stated in Para-6 of the appointment letters vide Annexure R-4 that it is Haryana Civil Service Rules, which shall be applicable.

13. While the order was under dictation, at this stage, learned State counsel fairly points out that even the aforesaid stand taken in letter dated 26.12.2018 (Annexure R-4 in CWP-11034-2018) was also once again reiterated, as is borne out from the office order dated 27.06.2019 (Annexure R-5), whereby, it was conveyed that Rules of UHS/ PGIMS Rohtak shall be applicable.

13.1 In Para-3 of the preliminary submissions of the written statement dated 07.04.2022 filed on behalf of respondent No.1 to 3 in CWP-11137-2020, it is stated that petitioner No.1 could not be promoted to the post of Junior Scale Stenographer as he did not take the departmental stenography test, which is an essential requirement for promotion to the post of JSS.

No replication/ affidavit has been filed to controvert the aforesaid position.

14. In the overall premise, writ petition is disposed of with a direction to respondent No.1 to either take expeditious steps to frame an independent set of Service Rules for respondent No.3-Bhagat Phool Singh, Government Medical College for Women, Khanpur Kalan, Sonapat or in the alternative, till the same is done, to apply the Haryana Civil Services Rules in

terms of service conditions conveyed to the petitioners at the time of their appointment. Needless to say that in case fresh Rules are framed, then on the elementary principle of service jurisprudence, the same cannot be to the detriment of the employees and the terms and conditions conveyed vide appointment letters shall be maintained in the contemplated Rules to be framed.

15. Till the final decision is taken by respondent No.1, interim order dated 04.05.2018 in CWP-11034-2018 passed while issuing notice of motion shall continue to operate and 10 posts of the Laboratory Technician shall not be filled up.

16. In case Rules are not framed within a period of 6 months, case of the petitioners in CWP-11137-2020 shall be processed *qua* the claim of their promotion in terms of Haryana Civil Services Rules.

17. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

November 23, 2022

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No