

In the High Court of Punjab and Haryana, at Chandigarh

Civil Writ Petition No. 6702 of 2021

Date of Decision: 02.03.2023

Dr. Parminderjit Kaur and Others

... Petitioner(s)

Versus

The State of Punjab and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Saurabh Arora, Advocate
for the petitioner(s).

Mr. D.K.Singal, Additional Advocate General,
Punjab, for the respondents.

Anil Kshetarpal, J.

1. The petitioners pray for the issuance of a writ in the nature of certiorari to quash the reply/order dated 15.02.2018 by which the petitioners' claim has been rejected. Essentially, the petitioners pray for the issuance of a writ in the nature of mandamus to direct the respondents to consider the past service rendered by them w.e.f. December, 1996 to February, 2000, for the purpose of their seniority and further promotion.

2. The relevant facts, in brief, are required to be noticed. In order to fill 64 posts of Ayurvedic Medical Officers, the department had issued the recruitment notice in the year 1996. The petitioners, on being recruited, were issued the appointment letters. However, their selection was challenged. The High Court, vide judgment dated 11.05.1998, quashed the selection. Though the Supreme Court had initially granted the interim protection, however, the

appeal was dismissed on 11.01.2000 while upholding the judgment of the

High Court. Thereafter, fresh interviews of the candidates including the petitioners were conducted and they were, again, appointed on 08.02.2000. They were treated as new recruits for all intents and purposes and they were, also, required to undergo the probation period. The petitioners claim that since they were re-appointed on 09/10.02.2000, therefore, they are entitled to the seniority from the date of their initial joining i.e. December, 1996.

3. The learned counsel representing the petitioners submits that the petitioners were not required to undergo fresh physical examination and their general provident fund number continued to be the same. They were also continuously working on the post. He also relies upon the judgment passed in *Joginder Pal and Others v State of Punjab and Others (2014) 6 SCC 644*.

4. This Court has considered the submissions and perused the record. In this case, the petitioners' selection and consequent appointments were quashed by the High Court and were declared illegal. The aforesaid judgment was upheld by the Supreme Court. Hence, the petitioners' experience, during the period for which their selection has been quashed, cannot be counted towards the seniority. Moreover, the petitioners' services are regulated by the Punjab Ayurvedic Department (Class I and II) Service Rules, 1963 (hereinafter referred to as "the 1963 Rules"). As per Rule 10 of the 1963 Rules, the seniority is to be counted from the date of continuous length of service or in case of merit list prepared for the same batch, in accordance with such merit list. The petitioners cannot be held to be born in the cadre of Ayurvedic Medical Officers before their subsequent re-appointment in the year 2000. Merely because their general provident fund

number has continued to be the same and they were not required to undergo

a fresh physical examination in order to assess their suitability, would not be sufficient to hold that the petitioners have continued for the purposes of determining seniority. In *Joginder Pal's case (supra)*, the Supreme Court was examining the correctness of the judgment passed by the High Court in the second round. Originally, the Supreme Court, in *Inderpreet Singh Kahlon and Others v. State of Punjab and Others (2006) 11 SCC 356*, had directed the High Court to constitute a Committee of three Judges to segregate the tainted and non-tainted candidates. After numerous endeavours, the Committee was able to segregate the tainted candidates from the non-tainted ones. Moreover, the State has also come forward and showed its willingness to take back the aforesaid candidates who were found to be non-tainted. In these circumstances, the judgment passed in *Joginder Pal's case (supra)*, is given in the facts of the case. The said judgment relates to the recruitment to the posts of PCS (Executive Branch Class-I and Class-II), whereas, the petitioners, herein, are appointed at the post of Ayurvedic Medical Officers.

5. Keeping in view the aforesaid facts, this Court does not find it appropriate to issue the writ. Consequently, the present writ petition is dismissed.

(Anil Kshetarpal)
Judge

March 02, 2023

"DK"

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No