

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Sr. No.: 231

Civil Writ Petition No.13770 of 2022 (O&M)

Date of Decision: *October 06, 2023*

Dr. Arvinder Pal Singh Batra

..... PETITIONER(S)

VERSUS

State of Haryana and another

..... RESPONDENT(S)

. . .

CORAM: **HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA**

. . .

PRESENT: - Mr. Yesh Paul Malik, Advocate for the petitioner.

Mr. Sanjeev Kaushik, Addl. AG, Haryana.

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Tribhuvan Dahiya, J. (Oral)

Challenge in the writ petition is to advertisement dated 03.06.2022, Annexure P-12, whereby four posts each of Director and Medical Superintendent in various Government Medical Colleges in the State of Haryana have been advertised, on the ground of its being contrary to provisions of the relevant rules.

2. However, during pendency of petition, the respondents have withdrawn from advertisement four posts of Medical Superintendent with immediate effect, vide public notice dated 25.11.2022.

3. It is pleaded that the petitioner is working as a Professor of Anatomy in Bhagat Phool Singh Government Medical College for Women, Khanpur Kalan, Sonapat, since 12.01.2012. He is less than fifty years of age, and has good service record with twenty-three years of teaching experience in the College. Except for the age bar, he is eligible to be considered for the post of Director.

4. The only argument advanced by learned counsel for the petitioner is that minimum age of fifty years for the post of Director, prescribed in the advertisement is contrary to the rules. As per him, the applicable service rules in the three Government Medical Colleges – (i) BPS Government Medical College for Women, Khanpur Kalan, Sonapat, (ii) Shaheed Hassan Khan Mewati, Government Medical College Nalhar, Mewat, and (iii) Atal Bihari Bajpai Government Medical College, Faridabad, are ‘Haryana Medical Education Service Rules Draft Rules of Group A, 2011’. Rule 5 thereof requires that no person shall be appointed to the post of Director, Medical Superintendent and Principal, Dental College, who is less than forty years or more than fifty years of age. Since, the advertisement prescribes minimum age of fifty and maximum age of sixty-two years for the post of Director, it is contrary to the rules, and wrongly disentitles the petitioner to be applicant for the post in these three Colleges. He has further relied upon Haryana Government notification dated 11.03.2011, Annexure P-6, whereby selection committee for selection of Teachers and Doctors for three new Medical Colleges, was constituted. It prescribes that process of selection of suitable candidates may be carried out in accordance with the Draft Rules, 2011. Therefore, the advertisement being in violation of the Draft Rules becomes unsustainable.

5. Learned State counsel, on the contrary, contends that the Draft Rules, 2011, referred to and relied upon by learned counsel for the petitioner, are not applicable to the Medical Colleges. These draft rules made were not finally accepted or notified. In fact, the Government has taken a conscious decision regarding service rules for all the Government Medical Colleges vide office letter dated 05.02.2018, that service

rules of the University of Health Sciences, Rohtak/Post Graduate Institute of Medical Sciences, Rohtak, are to be followed for all purposes till separate rules are finalised. Accordingly, the impugned advertisement has been issued in compliance with the Rules/Statutes of the University, which prescribes fifty years as minimum age for the post of Director. He further submits that service rules for the Medical Colleges are in the process of being finalized; since its formulation was taking time, in the interregnum the aforesaid decision, dated 05.02.2018, was taken by the Government in public interest.

6. Heard.

7. As per facts apparent on record, respondent No.2 has taken a decision, dated 05.02.2018, that Service Rules of University of Health Sciences will be followed for all purposes in the Government Medical Colleges. This decision/letter is not under challenge. The University was set up by the 'Pandit Bhagat Dayal Sharma University of Health Sciences, Rohtak, Act, 2008'. Statute 3 of the University Statutes, framed under Section 2(s) and 30 of the Act, prescribes minimum age of fifty years for appointment as Director. It reads as under:

3. (1) Director shall be appointed by the Chancellor on the recommendations of the Government having following qualifications and experience:-

(a) to (c) xxxx xxxx

(d) He shall not be below the age of 50 years as on the last date of receipt of applications.

(e) xxxx xxxx

8. Undisputedly, impugned advertisement also requires that

minimum age of the applicants on the date of publication of the advertisement shall not be less than fifty years. The stipulation is accordingly in terms of the applicable Rules/Statutes, and no exception can be taken to it.

9. Therefore, the argument advanced by learned counsel for the petitioner that the stipulation is illegal being contrary to the Draft Rules of 2011, has no substance. These Rules were never notified and given effect to. Besides, the notification, dated 11.03.2011, has no application to the facts of the case. It is regarding constitution of a committee for selection of Teachers and Doctors only, and not for Director of the Medical Colleges.

10. In view of the discussion, there is no merit in the petition.

11. Dismissed.

12. Pending miscellaneous application(s), if any, stand(s) disposed of as having been rendered infructuous.

(Tribhuvan Dahiya)
Judge

October 06, 2023
payal

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No