

In the High Court of Punjab and Haryana, at Chandigarh

1. Civil Writ Petition No. 15605 of 2013

Dr. Jagan Jyot and Others
... Petitioner(s)

Versus

State of Punjab and Others
... Respondent(s)

2. Civil Writ Petition No. 8435 of 2011

Dr. Daminder Singh and Another
... Petitioner(s)

Versus

The State of Punjab and Others
... Respondent(s)

3. Civil Writ Petition No. 26282 of 2013

Dr. Sumeeta Sandhu and Another
... Petitioner(s)

Versus

The State of Punjab and Others
... Respondent(s)

AND

4. Civil Writ Petition No. 9233 of 2015

Dr. Sumeeta Sandhu
... Petitioner(s)

Versus

The State of Punjab and Others
... Respondent(s)

Reserved on: 23.03.2023
Pronounced On: 12.04.2023

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And Other Connected Cases**

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Ms. Alka Chatrath and Ms. Sandeep Kaur, Advocates
for the petitioner(s) (In CWP-15605-2013) and
for the petitioner No.2 (In CWP-26282-2013).

Mr. Akshay Bhan, Senior Advocate
with Mr. Amandeep Singh Talwar, Advocate
for the petitioner No.1 (In CWP-26282-2013).

Mr. Vikas Arora, Assistant Advocate General,
Punjab, for the respondent No.1 to 4 (In all the writ
petitions).

Mr. D.S.Patwalia, Senior Advocate
with Ms. Sehar Navjeet Singh Sandhu, Advocate
for the respondent No.5 to 8 (In CWP-15605-2013).

Anil Kshetarpal, J.

1. In substance, the dispute is between the competing claims of the members of the teaching faculty and dental doctors (who are not the members of the cadre of teaching faculty). The petitioners herein were recruited as Medical Officers (Dental). At the relevant time, their services were governed by the Punjab Health Departmental Dental (State Service Class-II) Rules, 1968 and the Punjab State Dental Services (Class-I) Rules, 1980. These rules were subsequently superseded by the Punjab Civil Medical 'Group-A' (Dental Service) Rules, 2009 (hereinafter referred to as "the 2009 Rules"). On the other hand, there is a teaching faculty which is governed by the Punjab Dental Education Service (Class-II) Rules, 1977 (hereinafter referred to as "the 1977 Rules") and the Punjab Dental Education Service (Class-I) Rules, 1977, which are now replaced by the Punjab Dental Education (Group 'A') Service Rules, 2016 (hereinafter referred to as "the 2016 Rules"). The petitioners are aggrieved of the order

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2. Before proceeding further, it would be appropriate to notice the relevant facts. The petitioners were recruited as the Medical Officers in the Punjab Health Department (hereinafter referred to as “the Field Cadre”). However, it is the case of the petitioners that the dental education was suffering due to shortage of Teaching Faculty (Demonstrators) in the Dental Colleges. They were posted against the vacant posts of the Demonstrators/Assistant Professors. On the other hand, it is the stand of the State and the private respondents that the petitioners, on their request, were deputed to the teaching faculty. On 12.08.2008, a decision was taken to re-designate the Medical Officers, who were engaged in teaching in their respective colleges as Tutor/Lecturers-cum-Medical Officers in their existing pay scale. On the recommendations of the Departmental Promotion Committee, an order was passed promoting them as Associate Professors. Subsequently, the order was held in abeyance, partially. In substance, the orders promoting the petitioners as Assistant Professors Dentistry were not implemented. Since the promotion orders were not implemented, the petitioners filed the writ petitions which were disposed of in the following manner:-

“The petitioner apprehending denial of promotion and repatriation to the parent department has approached this Court. Her case is that the Medical Officers can also be brought to serve in the Medical Dental Colleges in public interest and it so permitted under the Rules/policy.

The question that arises for consideration is as to whether the petitioner or other Medical Officers who have spent substantial part of their service career in the

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Medical/Dental colleges as a members of the Teaching Faculty must be repatriated to accommodate the new entrants or will it be in the larger public interest to retain some of them (if not all) for imparting the experienced professional education. Such like questions ordinarily fall within the domain of the Executive and ought to be resolved by the State Government keeping in view, as noticed earlier, Institutional and public interest. One of the appropriate recourse in such like cases can be the blending of old and new entrants. It will minimize stagnation for the new entrants and at the same time shall provide qualitative professional education to the further Doctors. In other words, all the stake holders should take a holistic view in the matter. The writ petitions are accordingly disposed of, without expressing any final opinion, with the following directions:-

- i) The State Government shall address the grievances of the petitioners and other similarly placed medical officers who have spent sufficient number of years as members of the Teaching Faculty in Medical Dental College(s) and see as to how many of them can be adjusted in public interest as a part of teaching faculty. The adjustment can be made keeping in view that no stagnation is caused to the directly recruit members of the teaching faculty.*
- ii) The adjustment in the Medical/Dental colleges would necessarily follow the consequential service benefits including promotion as was decided earlier and thereafter only the orders like dated 23.07.2008 (Annexure P-9) can be given effect.*
- Iii) The State Government shall constitute a Committee of five experts including (i) the Director, Health and Family Welfare and (ii) the*

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Director, Medical Education & Research as its members and the appropriate decision on directions (i) and (ii) above shall be taken only after considering the view point of the Expert Committee.

- iv) The Committee shall submit its report to the State Government within three months from the date of receipt of a certified copy of this order.*
- v) Till then, the petitioner or other similarly placed medical officers shall not be repatriated, however, their promotions shall also be kept in abeyance.”*

3. In compliance with the aforesaid directions, a Committee was constituted which, after finding that the petitioners cannot be promoted as Assistant Professors, recommended that these petitioners can be adjusted if the government takes a conscious decision to appoint them against the quota of direct recruits. Subsequently, the government, after taking opinion from the learned Advocate General, Punjab, passed a detailed order dated 08.07.2013 while withdrawing the orders dated 25.07.2008 and 27.07.2008, resulting in filing of this batch of writ petitions.

4. A detailed written statement has been filed by the respondents while contesting the writ petitions. It has been asserted that the petitioners who are the members of the field cadre are not entitled to be promoted to the post of Senior Lecturer/Assistant Professors in the teaching faculty as they were not eligible in the year 2008.

5. Heard the learned counsel representing the parties, at length and with their able assistance, perused the paper-books.

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6. At this stage, it would be appropriate to take notice of the relevant service rules. The services of the teaching faculty in the dental education services is regulated by the 1977 Rules. Rule 10 of the 1977 Rules reads as under:-

“10(1). Recruitment to the posts in the service shall be made in the following manner:-

(a) In the case of Demonstrators by direct appointment;

(b) In the case of Senior Lecturers;

(i) 75 per cent of the vacancies by promotion from amongst the Demonstrators governed by these rules.

(ii) 25 per cent of the vacancies by direct appointment.

(c) The Government may fill any vacancy by transfer or deputation of any official already in the service of Government of India or of a State Government and the person so recruited shall be adjusted in the quota of direct recruits.

(2) In case no suitable person possessing the qualifications and experience as prescribed in Appendix "B" is available for appointment to a post by promotion, that post may be filled in by direct appointment.

(3) All appointments to the posts in the Service by promotion shall be made on the basis of seniority-cum-merit, and no person shall have any right of promotion merely on the basis of seniority."

7. It is evident that the petitioners were never appointed as Demonstrators, though, they have worked for a sufficient length of time.

However, keeping in view the scope of judicial review, the Court, while

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deciding the writ petitions in the previous round, had directed the government to constitute an Expert Committee after observing that the scope of judicial review is limited. Now, the government has taken a conscious decision.

8. It would be noted here that the petitioners who are appointed as Medical Officers (Dental) are now governed by the 2009 Rules. They have a channel of promotion to the post of the District Dental Health Officer/Deputy Director (Health). Since they were not the members of the cadre, hence, as per Rule 10 of the 1977 Rules, they can only be considered for appointment by transfer which is required to be adjusted in the quota of the direct recruits. As per clause (b) of Rule 10(1) of the 1977 Rules, in the case of Senior Lecturers, 75% of vacancies are required to be filled up by promotion from amongst the Demonstrators, whereas 25% of the vacancies are to be filled by direct recruitment. Clause (c) of Rule 10(1) of the 1977 Rules enables the government to fill up the vacancies by transfer or deputation of any official already in the service of the Government of India or the State Government and the persons who are recruited shall be adjusted in the quota of direct recruits.

9. Keeping in view the aforesaid facts, this Court does not find any error in the impugned orders. It is evident that the petitioners and the private respondents are the members of separate cadres. Though, the petitioners have worked against the posts meant for the teaching faculty, however, they do not become members of the teaching faculty. They were never appointed as Demonstrators. Once, there are two separate cadres, the

petitioners cannot, as a matter of right, claim that they are entitled to be

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promoted as Senior Lecturers, now re-designated as Assistant Professors, from the promotion quota under the Rule 10.1 of the 1977 Rules. Moreover, it is the stand of the official respondents that the petitioners were not eligible to be promoted as Assistant Professors, at the relevant time.

10. Consequently, finding no merit, all the writ petitions are dismissed.

(Anil Kshetarpal)
Judge

April 12, 2023
“DK”

Whether speaking/reasoned :Yes/No
Whether reportable : Yes/No