

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

116

CWP-13750-2023

Date of Decision: 18.07.2023

Dr. Haramritpal Kaur

.... Petitioner

Versus

Baba Farid University of Health Sciences,
Faridkot and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMAPresent: Mr. Ritesh Aggarwal, Advocate
for the petitioner.Mr. Nitin Kaushal, Advocate
for respondents No.1 and 2.

Mr. Paramjit Batta, Addl. A.G., Punjab.

SANJEEV PRAKASH SHARMA, J (ORAL)

1. This is a civil writ petition under Articles 226/227 of the Constitution of India moved by the petitioner for issuance of a writ in the nature of certiorari for quashing the order dated 29.03.2023 (Annexure P-15) and letter dated 09.06.2023 (Annexure P-20) assailing that the post mentioned against the subject of Anesthesia ought to be reserved for SC.

2. Learned counsel for the petitioner submits that earlier an advertisement was issued in 2017 wherein two posts of Anesthesia were advertised which is one for unreserved and one for SC. The post for SC could not be filled at that relevant time and has not been filled thereafter even though the post was advertised time and again mentioning it to be marked for SC. He further submits that the said post, therefore, should be treated as reserved post.

3. I have heard learned counsel for the petitioner at length and have considered the submissions.

4. This Court finds that the very basis of filing of the present petition is misconceived. So far as the advertisement issued by the University upto 2017 and subsequently upto 2019 are concerned, this Court finds that the advertisement invites applications from open market for filling up the post of Professor in the subject of Anesthesia. It is an advertisement for direct recruitment. As noticed, against the advertisement of 2017, the unreserved post in the subject of Anesthesia appears to have been filled but the post of SC remained vacant, which was advertised again, vide advertisement No.5/2019 but could not be filled. Again the same was advertised, vide advertisement No.9/2019 and the petitioner had applied against the said advertisement but he states that the said advertisement was not further processed with reference to the subject of Anesthesia. So far as the impugned order dated 29.03.2023 and 09.06.2023 are concerned, this Court finds that the said order is with reference to conducting of DPC in various subjects. The promotions are to be awarded on the post of Professor from Associate Professor and the orders reflect that one post of Anesthesia by way of promotion is available. It is a settled law that one post cannot be a reserved post and has to be kept open for all.

5. In view thereof, the claim of the petitioner, that the post should be marked as reserved, is wholly misconceived. It would be apposite to notice that in the case of *Ajit Singh Januja-II Vs. State of Punjab, 1999(7) SCC 209*, the Supreme Court over-ruled the judgment passed in the case of *Ashok Kumar Gupta Vs. State of U.P., 1997(5) SCC 201*, wherein the Apex Court had earlier taken a view that even one post can be kept as a reserved post. The relevant portion of the judgment is as under:-

“We may state that there are various other observations made in Ashok Kumar Gupta and we find that they run counter to the principles laid down by the nine Judge Bench in Indira Sawhney and the Constitution Bench in Sabharwal. In our view, these observations must, therefore, be treated as not laying down the correct law. Learned counsel for the parties were in agreement with this line of approach. We, therefore, leave Ashok Kumar Gupta and do not deal with it any further.”

6. Keeping in view the above, the present petition is found to be wholly misconceived and accordingly, the same is dismissed.

18.07.2023

D.Bansal

**(SANJEEV PRAKASH SHARMA)
JUDGE**

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