

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1.CWP-27023-2014 (O&M)

Dr.Madhulika

....Petitioner

Versus

State of Punjab and others

..Respondents

2.CWP-1431-2016 (O&M)

Dr. Upasana

....Petitioner

Versus

State of Punjab and others

..Respondents

3.CWP-6360-2020 (O&M)

Dr. Vipin Kumar

....Petitioner

Versus

State of Punjab and others

..Respondents

4.CWP-6807-2021 (O&M)

Dr. Anil Kumar

....Petitioner

Versus

State of Punjab and others

..Respondents

Date of decision: 02.06.2023
Reserved on: 24.05.2023

CORAM: HON'BLE MR JUSTICE ANIL KSHETARPAL

Present:- Mr. Jatin Salwan, Advocate for the petitioner
in CWP-27023-2014 & 1431-2016

Mr. Vikas Chatrath, Advocate for the petitioner
in CWP-6360-2020

Mr. Vivek Slathia, Advocate for the petitioner
in CWP-6807-2021

Mr. Vikas Mohan Gupta, Addl. AG, Punjab

ANIL KSHETARPAL, J

1. With the consent of the learned counsel representing the parties, by this common order, a batch of four civil writ petitions i.e CWP-27023-2014, 1431-2016, 6360-2020 and 6807-2021 involving an identical issue with regard to the retirement age of the petitioner, shall stand disposed of.

2. While deciding the case, the reference would be made to the paperbooks of CWP-27023-2014 and CWP-6360-2020. At the outset, it is important to note that out of four writ petitions filed by the equal number of petitioners, three have already retired on attaining the age of 62 years whereas Dr.Anil Kumar is the only one who is still continuing in service.

3. All the petitioners were the members of the Punjab Civil Medical Services (PCMS), a Department that deals with providing health and family welfare. The doctors are posted in these services at the hospitals, clinics etc. There is another separate cadre in the Department for medical education that primarily deals with imparting education to the students in various Govt. medical colleges situated in the State of Punjab. Though, the petitioners were working as PCMS Doctors in the various Govt. Hospitals and clinics, however, on the basis of communication dated 14.12.2007, they applied for the post of Lecturer by way of transfer. This notice of recruitment was restricted to PCMS Doctors serving in the State of Punjab. It was notified that PCMS doctors possessing the requisite qualification and experience as per Annexure-II of the Punjab Medical Education State Service (Class II)

Rules, 1979 (hereinafter referred to as 'the 1979 Rules'), will be posted as Lecturer or Senior Lecturer by way of transfer. For the post of Lecturer, as per Appendix C of the aforesaid Rules the following minimum qualifications are required:-

"2. Lecturers:-

(i) Basic University Medical Qualification included in the First or the Second Schedule or part II of the Third Schedule to the Indian Medical Council Act, 1956, with good academic career except in the case of Bio-Chemistry where it is preferential.

(ii) Must be registered under the State or Central Medical Registration Act, except in the case of non-medical men.

(iii) Must possess at least two years teaching experience as Demonstrator, Registrar or Research Assistant in a teaching institution.

Note 1.- Benefit upto the extent of one year in allied basic or clinical subject and for rural service shall be admissible.

Note 2:- Experience on the post of Assistant Demonstrator or Assistant Registrar will be counted as half as compared to experience on the post of Demonstrator or Registrar.

Note 3:- (I) In the Departments of Anatomy, Physiology, Pharmacology and Microbiology, in the event of non-availability of suitable qualified medical men for teaching these subjects, non medical scientists possessing M.Sc qualification in the subject concerned preferably possessing doctorate qualifications and possessing requisite experience as laid down in the rules in respective subjects may be appointed upto a maximum of 30 per cent of the total strength of the teaching staff of the concerned department."

4. The petitioners were selected and appointed as the Lecturers, however, on the objection of the Medical Council of India, the

petitioners and various other similarly situated doctors were redesignated as Tutor/Lecturer-cum-Medical Officer (hereinafter referred to as 'TLM'). On 23.12.2013, the Govt. took a conscious decision that the experience earned by the TLM would be treated as the teaching experience, however, they will be considered for promotion to the higher post as per the Punjab Medical Education State Service Rules on the basis of seniority/merit of the PCMS cadre. The relevant extract of the decision reads as under:-

“As per proposal dated 05.08.2013 submitted by Director, Research and Medical Education, Teaching job of Medical Officer as Tutor/Lecturer-cum-Medical Officer would be treated as Teaching Experience. The benefit of Experience Certificate would be treated for Teaching experience only and they will be considered for promotion to the higher post as per PMES Rules on the basis of Seniority/Merit of PCMS cadre.”

5. It may be noted here that pursuant to the directions of the High Court vide order dated 24.05.2019, issued by the High Court in CWP-26062-2018 decided on 24.05.2019, the Chief Secretary constituted a committee consisting of the Principal Secretaries of Department of Finance, Personnel and Medical Education & Research to reconsider the entire issue. After noticing the detailed facts, a speaking order was passed on 21.11.2019 (Annexure P-21 in CWP-6360-2020). The relevant part of the aforesaid order reads as under:-

“7. Whereas the department of Medical Education & Research issued orders vide no.1/21/2008-2HBIII/4124-37 dated 04.07.2008 and Endst. No.1/21/2008-2HBIII/5001-10 dated 12.08.2008 to designate all Medical Officers-cum-

Lecturers working at that time as Tutor/ Lecturer-cum-Medical Officer with immediate effect and that their terms and conditions of service will remain as per their original orders in PCMS/PCDS etc. This means that these doctors shall for all purposes, be governed as per the service rules of PCMS cadre, as applicable and the petitioner joined service in this department after the issue of these orders and as such, it is clear that his service conditions were to be governed by the service rules of PCMS cadre where he was working at the time of his joining this department. Taking the benefit of this provision, the petitioner enjoyed the benefit of upgradation of his pay scales after an interval of 4, 9 and 14 years I.e granting of higher pay scales after 4 years (15600-39100 + 6600), 9 years (15600-39100+7600) and 14 years (37400-67000+8600 with effect from 01.01.2011 which was allowed to him by Department of Health & Family Welfare vide orders dated 16.11.2018. These upgradations in the pay scales are admissible to a medical officer of PCMS and as such were given to the petitioner in the capacity of Medical Officer and not as Tutor/ Lecturer-cum-Medical Officer. Had he been governed under the Punjab Medical Education Service (Class-II) Rules, 1979, he would not have been eligible for getting the benefit of these higher upgradations. It is further stated that the petitioner very well knew that he is governed under the service rules of PCMS cadre and as such he himself applied for grant of higher upgradations of his pay scales as admissible to him as medical officer. The request made by him in this regard is enclosed as Annexure 1.

8. Whereas as regards the retirement of Dr. Pardeep Ballagan, Medical Officer, who was working as Lecturer in the department of Medical Education & Research, he was retired on 31.10.2010 on attaining the age of 60 years which was the age of superannuation of medical faculty at that time. This was a mistake on the part of the department of Medical Education & Research and he should have retired at the age of 58 years that is on 31.10.2008 as per relevant service rules. Now this mistake cannot

be treated as precedent for others to follows. There is no other case in which Medical Officer's who were appointed as Tutor/Lecturer-cum-Medical Officer have been given this benefit. The government, vide orders issued by this department Endst. no.1/83/2013-2HB3/1558-62 dated 05.03.2019 specifically clarified that the age of superannuation of Tutor/ Lecturer-cum-Medical Officers shall be 58 years as per Punjab Civil Services Rules with extension in service of 2 years as per government instructions.

9. *In view of the position explained in the above paras, it is very much clear that the petitioner was governed by the PSMS cadre service rules for all intents and purposes and the Punjab Medical Education Service (Class-II) Rules, 1979 were not applicable to him in any way. Therefore, the petitioner shall be eligible for the benefits under PCMS cadre service rules, as he has already availed the benefits explained in para 7 above and he is required to superannuate at the age of 58 years as per Punjab Civil Services Rules with optional extension in service for 2 years on yearly basis. The service rendered by him beyond the date of his superannuation at the age of 58 years I.e 31.10.2018 may be considered as extension in service which can be availed by the petitioner upto 31.10.2020 as per existing instructions dated 08.10.2012 and 20.09.2013 of the Department of Finance, Government of Punjab."*

6. This decision is the subject matter of challenge in CWP-6360-2020 filed by the petitioner Dr.Vipan Kumar.

7. Heard the learned counsel representing the parties and with their able assistance perused the paperbook. Sh. Vikas Chatrath, the learned counsel representing the petitioner in CWP-6360-2020 while drawing the attention of the Court to a communication dated 14.12.2007, an appointment letter dated 27.07.2010, an interim order dated 28.07.2010 and a no objection certificate issued to permit the petitioner

to join as a Lecturer in Physiology Department and duty register, submits that the petitioners are members of the Teaching faculty and hence, they are eligible to retire at the age of 62 years. He has also drawn the attention of the Court to affidavit dated 24.03.2015 of the Director, Research & Medical Education filed in CWP-23093-2012, the interim orders passed on 05.10.2016, 17.04.2017, 30.11.2017, 29.10.2018 and the final order dated 24.05.2019 while contending that the petitioners cannot be directed to file their pension papers on attaining the age of 58 years.

8. On the other hand, the learned State counsel has contended that the petitioners were not eligible to be appointed as Lecturers in the Teaching Faculty as they did not possess the requisite teaching experience as required under Appendix C of 1979 Rules, hence, on the objection of the Medical Council of India, the petitioners were redesignated as TLM in 2009 itself. Thereafter, they were never the part of the Teaching faculty. It has also been brought to the notice of the Court that a conscious decision was taken by the Government on 23.12.2013 which has already been extracted. While referring to the speaking order passed on 21.11.2019, the learned State counsel contends that the petitioners who have already received the advantage of pay scale upgradation after intervals of 4, 9 and 14 years, applicable to Medical Officer or PCMS cadre but not available to members of the 1979 Rules, are barred from seeking the benefit of the retirement age of 62 years. This retirement age is exclusively designated for teaching faculty who belongs to the teaching cadre. He also draws the attention of the Court to

the order passed in **Dr. Partap Singh Malhotra and others vs. State of Punjab and others** CWP-22580–2011 and another connected case decided on 22.08.2019 to contend that the petitioners were always treated as members of PCMS doctor cadre.

9. This Court has analyzed the arguments of the learned counsel representing the parties while going through the paperbook. First and foremost, it should be noted that the written statements filed by the State are deficient in material particulars. However, be that as it may. A detailed order has been passed by a high powered committee on 21.11.2019. It is not the case of the petitioners that they possess atleast 2 years teaching experience as Demonstrator, Registrar or Research Assistant in a teaching institution when they claim to have been appointed as Lecturer, which is the essential requirement for appointment as Lecturer as per the 1979 Rules. Moreover, it is also not in dispute that a conscious decision was taken on the objection of the Medical Council of India to re-designate the petitioners and other similarly situated Doctors as TLM in the year 2009. Furthermore, on 23.12.2013, the State in order to overcome the peculiar situation took a decision to treat the petitioners and other similarly situated persons for promotion on the basis of seniority/ merit in the PCMS cadre only. It is also the stand of the State that the petitioners were never made a part of the teaching faculty. At this stage, it is important to note that the retirement age of members of the PCMS cadre is 58 years whereas members of the teaching faculty, who are governed by the 1979 Rules, is 62 years. The

petitioners have failed to produce material to establish that the TLM were ever treated as members of the cadre of teaching faculty.

10. Moreover, as noticed in the order passed on 21.11.2019, the petitioners, after having enjoyed the benefit of upgradation of their pay scale after intervals of 4, 9 and 14 years, which is not available to the teaching faculty, cannot now turn around and claim 62 years as their retirement age.

11. At this stage, it is appropriate to analyze the arguments of the learned counsel representing the petitioners. The first document referred by the petitioner is the order of the Hon'ble Governor of Punjab appointing the petitioner as a Lecturer. However, the learned counsel is overlooking the fact that vide a conscious decision dated 14.05.2009, Annexure R-2 with the reply of the State in CWP-27230-2014, the word 'Lecturer' was substituted with 'Tutor/Lecturer-cum-Medical Officer', which reads as under:-

“The word “Lecturer” is substituted with Tutor/Lecturer-cum-Medical Officer who were appointed as lecturers in their own pay scale vide Punjab Government Memo No.1/21/2008/2HB3/7567-7579 dated 19.09.2008, No. 1/21/2008/2HB3/7848-57 dated 30.09.2008, No. 1/21/2008/2HB3/8255-62 dated 16.10.2008, No. 15/27/05-2HB3/9327-9337 dated 08.12.2008 and No. 1/21/2008/2HB3/158-62 dated 13.01.2009.”

12. The next argument of the learned counsel is with regard to relieving the petitioner as PCMS and duty roster. This aspect shall be analyzed in the later part of the judgment.

13. The next argument of the learned counsel is with regard to the various stands taken by the Government from time to time as well as the interim orders passed by the Court. It may be noted that interim orders are only made for the purpose of soliciting response from the Court. The Court expresses its final decision by way of a final order or judgment. Hence, the interim orders passed from time to time would not debar/prevent the Court from deciding the issue in proper prospective. The final order passed in CWP-26062-2018 only results in direction to the Chief Secretary, Punjab, to constitute a committee to reconsider the entire issue. Hence, the interim orders merge in the final order. It is pursuant to the directions of the Court that a High Powered Committee was constituted, which has taken a conscious decision.

14. Learned counsel representing the petitioner has relied upon the judgment passed in **Chander Kanta vs. State of Haryana and others 2018 (3) SCT 237**. In this case, the Court held that once a person was appointed through regular channel then his regularization cannot be denied after a long time and experience is a good substitute of knowledge. The petitioner was appointed on the ad hoc basis as a Lecturer through the select committee. She retired without her services being regularized. In that context, the Court held that experience is a good substitute of knowledge. This judgment would not be applicable to the facts of the present case as all the petitioners continued to be in service of the Department till they attained the age of superannuation. They did not fulfill the minimum requisite experience as specified in the Rules. Moreover, it was in 2009 that they were re-designated as TLM.

In the year 2013, a decision was taken by the Government that these doctors will not be a part of the teaching faculty. The petitioners also took the benefit available to the PCMS cadre, which is not available to the teaching faculty. Hence, the judgment is not applicable. While referring to the judgment in **State of Orrisa vs. Dr.(Miss) Binapani Dei & others 1967 AIR (SC) 1279**, the learned counsel contends that the principles of the natural justice are required to be followed. In the present case, it is not the case of the petitioners that they have not been given an opportunity of hearing. Moreover, the impugned order in Vipin Kumar’s case has been passed pursuant to the directions of the Court. Learned counsel has not contended that the order is passed without following the principles of natural justice.

15. It is well settled that the speaking order passed by the competent authority, unless proved to be suffering from illegality, impropriety or arbitrariness, cannot be interfered with.

16. Consequently, the writ petitions are dismissed. However, no recovery from the petitioners shall be initiated on account of the fact that their retirement age was 58 years and not 62 years.

17. All the pending miscellaneous applications, if any, are also disposed of.

02.06.2023

rekha

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

**(ANIL KSHETARPAL)
JUDGE**