

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-26839-2018 (O&M)

Date of decision: 09.05.2023

Reserved on :21.04.2023

Dr.Harshinder Kaur

....Petitioner

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MR JUSTICE ANIL KSHETARPAL

Present:- Mr. R.Kartikey,
Ms. R.Akanksha and
Ms. Sidhi Bansal Advocates for the petitioner

Mr. D.K.Singal, Addl. AG, Punjab

Mr. D.S.Patwalia, Sr. Advocate with
Mr. S.S.Behl, Advocate and
Mr. Gaurav Rana and
Mr. Adityajit Singh Chadha, Advocate for respondent no.4

Mr. Ranjit Singh Kalra, Advocate for respondent no.5

ANIL KSHETARPAL, J

1. Through this writ petition, the petitioner prays for the following substantive reliefs:-

“i) Issue a writ in the nature of Certiorari quashing the order dated 27.09.2018 (Annexure P-10) passed by the official respondents vide which the petitioner’s representations, seeking the fixation of her seniority in the cadre of Assistant Professors (Pediatrics) as per the “catch up Rule” have been dismissed arbitrarily;

ii) Issue a writ in the nature of Certiorari quashing the seniority list dated 27.09.2018 (Annexure P-11) as the same did

not apply the “catch up Rule” in determining the seniority of Assistant Professors (Pediatrics);

iii) Issue a writ in the nature of Mandamus, directing the respondents to re-work the seniority of Assistant Professors (Pediatrics) by treating the petitioner as senior to the respondent no.4;

iv) With a further prayer for staying the proceedings of the next Departmental Promotion Committee as well as promotion/appointment of the respondent no.4 as Associate Professor (Pediatrics).”

2. In substance, the applicability of ‘catch up rule’ as enunciated in **Union of India and others Veer Pal Singh Chauhan etc. 1995 (6) SCC 684** and subsequently elaborated in **Ajit Singh and others vs. State of Punjab and others 1999 (7) SCC 209** is the bone of contention between the parties. It would be appropriate to compile the information with respect to the private parties in the writ petition, in order to comprehend the respective submissions of the learned counsel representing the parties, which reads as under:-

Details	Dr. Harshinder Kaur (Petitioner)	Dr. Harjinder Singh (Respondent no.4)	Dr. Narinder Singh (Respondent No.5)
Date of Joining PCMS Cadre	03.01.1989	12.10.1995	05.02.1988 (short term) 1.09.1988 (Regular)
Promotion as Asst. Prof.	05.03.2014	23.09.2013	05.03.2014
Promotion as Associate Professor	18.09.2020	31.12.2018	17.07.2019

Promotion as Professor	-	20.12.2021	Eligible awaiting promotion
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3. Initially the post of the Assistant Professor was known as Senior Lecturer. Applicability of the Punjab Medical Education State Service (Class II) Rules, 1979 is not disputed between the parties. Rule 10 and the relevant part of Appendix C is extracted as under:-

“(3) All appointments to the Service by promotion shall be made by selection on the basis of seniority-cum-merit and seniority alone shall not give any right of appointment”

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“1. Senior Lecturers:

(i) Basic University Medical Qualification included in the First or Second or Part II of the Third Schedule to the Indian Medical Council Act, 1956, with good academic career; or

(ii) Post Graduate qualification in the particular speciality viz. M.S.F.R.C.S, M.D, M.R.C.P. D.P.H, DTD and

(iii) Must possess at least 3 years teaching experience in the particular speciality as Lecturer Registrar or Research Assistant in a teaching institution.

Note- Experience upto the extent of one year in obstetrics and Gynaecology, ENT and Ophthalmology, and in the basic subjects of Anatomy, Physiology, Pharmacology, Pathology and Microbiology would be countable for the post of Senior Lecturer in the Surgery and its specialities. Similarly benefit of experience upto the extent of one year in the basic subjects of Pathology, Microbiology, Anatomy, Pharmacology and Physiology would be countable for posts in the speciality of General Medicine. Experience in Anaesthesia and Radiology would be countable for Surgery and its specialities and General Medicine. However experience in the allied subjects as Registrar or Demonstrator would be given preference over experience in the same subject as Assistant Registrar or Assistant Demonstrator and

the experience in the latter would be counted as half of teaching experience in the former. Teaching experience as Assistant Registrar or Assistant Demonstrator in the main speciality would be countable as full. Credit upto the extent of one year would also be given for rural service. However, experience of the allied subjects and rural service put together should not exceed one year as two years experience in the main speciality is essential.”

4. From the information compiled, it is evident that the petitioner joined as PCMS cadre in January, 1989 whereas respondent no.4 joined on 21.10.1995. Hence, in the cadre of PCMS- Lecturer, petitioner was senior. As per the recruitment rule, the promotion to the post of Assistant Professor is by selection on the basis of seniority-cum-merit. As per Appendix C Lecturers possessing 3 years teaching experience, with basic qualification, are eligible to apply. The petitioner as well as the private respondents applied, however, there were only three vacancies. Two Lecturers who were senior to the petitioners were promoted against open vacancies. However, respondent no.4 was promoted against reserved vacancy. The petitioner could not be considered because the vacancy was for reserved category. In such circumstances, the question is whether the petitioner is entitled to the benefit of catch up rules or not?

5. The learned counsel representing the parties have also filed their respective notes of written submissions. The petitioner has contended as under:-

“4 That Rule 9 of the Punjab Medical Education Service (Class II) Rules, 1979 provides that no person shall be recruited to the service "by direct appointment or by promotion", unless he

possesses the qualifications and teaching experience specified in Appendix 'C'. Rule 10 provides that the method of appointment in case of Senior Lecturer shall be 75% shall be filed in by promotion from amongst the members of the PCMS (Class-II) Service possession the qualification and teaching experience as shown in Appendix C and 25% by direct recruitment. The present case pertains to the issue of promotion and not direct recruitment.

5. That the State in their additional affidavit dated 11.04.2023 has not placed on record Appendix 'C' attached to the aforementioned Rules, primarily with the motive to withholding such information which clarifies the position in favour of the petitioner. The criteria mentioned in the Appendix 'C' is as under-

(1) Basic University Medical Qualification:

(ii) Three years teaching Experience in the particular specialty.

Hence, the principles laid down in the case of Ajit Singh and others (II) v. State of Punjab and ors, 1997(7) SCC 209 shall apply to the facts of the present case.

6. That the facts and documents placed on record depict that the post in question was filled through promotion and the principle of Catch-Up will apply, which is evident from the following factual position:-

A. The advertisement appended with the Additional Affidavit dated 11.04.2023 submitted by the State reveals that the promotion was to be made on the basis of "Eligibility and Teaching Experience"

B. The check list prepared pursuant of the said advertisement (Annexure P.16/Pg.215) reveals that there were 2 vacancies of SC Candidates and 3 General Category vacancies which were available. The Rules governing the promotion are reflected at Pg. 208 and the names of the candidates as per seniority are reflected at Pg. 212, wherein then name of the petitioner finds mentioned at Pg. 214 and that of the Private Respondent at Pg. 217. The seniority list of the PCMS is appended at Pg. 222.

C. Thereafter the minutes of the meeting dated 04.09.2013 (Annexure P.14/Pg. 178) reveals that Respondent No. 4 (Pg. 183) was recommended for promotion against a reserved vacancy.

Thus, the principle of Catch-Up will apply.

7. That the petitioner was also considered and promoted as Assistant Professor on 28.02.2014 and promoted as Associate Professor on 05.03.2014 (Annexure P.18).

8. That on account of the aforementioned anomaly, Respondent no.4 was promoted as Associate Professor in the DPC held on 18.10.2018 (Annexure P. 19) against an unreserved vacancy on the basis of the benefit he had gained on the basis of accelerated seniority. Pertinently, on the said date the petitioner was also eligible for promotion as Associate Professor as she had the requisite 4 years experience. However, the wrong fixation of Seniority hampered her cause. Furthermore, the promotion of Respondent No.4 as Associate Professor is subject to the outcome of the present petition.

*9. That the petitioner in support of her case relies on the catch up principle and the law laid down by the Hon'ble Supreme Court in **Ajit Singh and others (II) v. State of Punjab and ors, 1997(7) SCC 209**, which was followed by this Hon'ble Court in **Nardeep Singh 2023 v. State of Punjab and Ors, PHHC:005737**.*

*10. That as far as the prayer of the Respondents that the principle of Seniority-cum-Merit will apply and therefore, catchup won't apply, it is submitted that in **B.V. Sivaiah and Ors. vs. K. Addanki Babu and Ors., (1998) 6 SCC 720**, the Hon'ble Supreme Court held as under:-*

18. We thus arrive at the conclusion that the criterion of seniority-cum-merit in the matter of promotion postulates that given the minimum necessary merit requisite for efficiency of administration, the senior, even though less meritorious, shall have priority and a comparative assessment of merit is not required to be made. For assessing the minimum necessary merit, the competent authority can lay down the minimum standard that is required and also prescribe the mode of assessment of merit of the employee who is eligible for consideration for promotion. Such assessment can be made by assigning marks on the basis of appraisal of performance on the basis of service record and interview and prescribing the

minimum marks which would entitle a person to be promoted on the basis of seniority-cum-merit."

The aforementioned view was followed in Tek Chand v. Bhakra Beas Management Board, CA No. 4482 of 2021."

6. On the other hand, learned State counsel has made the following submissions:-

"1. Dr. Harshinder Kaur at present working as Associate Professor at Government Medical College, Patiala since 18.09.2020.

2. She was selected as Assistant Professor w.e.f 06.03.2014 as per advertisement dated 12.03.2012 as per relevant Rules 9 & 10 of Punjab Medical Education State Services (Class II) Rules 1979.

3. At time of selection, through DPC in 2013, there were 3 posts of General category and 2 posts were reserved and the petitioner was at merit No.5 due to her seniority in parent cadre of PCMS at that time. Therefore, she was not selected in the DPC conducted in 2013. Thereafter, she was selected in the next DPC conducted on 2014 on the basis of seniority in the PCMS cadre as per the 1979 rules.

4. The petitioner challenged the seniority of Assistant Professor's fixed on 27.09.2018 (Annexure P-11) by the Department, in which the seniority was fixed from the date of joining in this department.

5. The petitioner was placed below the respondent No.4 (i.e Dr.Harjinder Singh) who joined on 23.09.2013 as Assistant Professor and the petitioner joined this department on 06.03.2014.

6. The Respondent No.4 joined as PCMS on 12.10.1995 and his service No.6454 and the petitioner joined as PCM on 03.01.1989. On the basis of her seniority in PCMS cadre, the petitioner is demanding to apply catch up formula as per the govt. instruction and declare her senior to respondent No.4 (i.e Dr.Harjinder Singh)

7. Catchup formula is applicable within the cadre and the cadre PCMS and PMES are two different cadre and two different department also

(i.e Health and Family Welfare and Medical Education and Research).

8. *As per Rule 8 of Common Condition Service Rules 1994, the seniority is decided on the basis of length of service within the cadre. Hence, respondent No.4 is senior to the petitioner as the joining in the department.”*

7. Similarly, learned senior counsel representing respondent no.4 has filed a written note of submission, relevant part whereof reads as under:-

i) As per the 1979 Rules, the rules which were in existence at the time the petitioner as well as the respondent no.4 were appointed, all appointments were to be made on the basis of seniority-cum-merit, the relevant portion of the Rule is reproduced hereinunder:-

9(3) all appointments to the service by promotion shall be made by selection on the basis of seniority-cum-merit and seniority alone shall not give any right of appointment.

A perusal of the aforesaid provision reveals that all the appointments have to be made by selection on the basis of seniority-cum-merit and no candidate shall have any right to seek appointment only on the basis of seniority. The Respondent No.4, being eligible for the post of Assistant Professor, applied for the same and got selected much prior to the petitioner herein. As per the aforesaid rule, the appointment to the post of Assistant Inspector, is by way of ‘selection’ on the basis of seniority-cum-merit and thus, seniority in a previous cadre/post shall have to be taken into consideration while making the appointments.

ii) The respondent no.4 was promoted to the post of Associate Professor on 31.12.2018 and thereafter was promoted as a Professor on 20.12.2021. The petitioner was promoted as an Associate Professor on 18.09.2020. As per the Punjab Medical Education Service (Group A) Service Rules, 2016 (hereinafter referred to as ‘2018 Rules’),

3 years experience as an Associate Professor is mandatory to seek promotion to the post of Professor. As per Appendix 'B', 3 years experience in the concerned subject is mandatory to seek promotion to the post of Professor. Relevant portion of Appendix 'B' is reproduced hereinunder:-

"7. Professor, From amongst the Associate Professor-

(I) Who have an experience of teaching for a minimum period of three years in the concerned subjects and

Considering the fact that the petitioner was promoted as an Associate Professor on 18.09.2020, he did not possess the mandatory 3 years experience as per the aforesaid rule at the time the respondent No.4 was promoted to the post of Professor. Moreover, even as of today the petitioner does not possess 3 years experience on the post of Associate Professor and thus she is not eligible to seek promotion to the post of Professor as per the 2016 Rules.

(iii) The sine-qua-non for the applicability of the catch up rule is well settled. If an employee gets accelerated promotion on account of reservation and a general category candidate is subsequently promoted then the general category candidate who was senior in the feeder cadre shall be placed above/before the reserved category candidate who got accelerated promotion in the seniority list. However in the present case appointment to the post of Assistant Professor (PMES) is by way of 'selection' from eligible candidates belonging to a different cadre i.e PCMS. The promotion to the post of Assistant Professor as per the 1979 Rules is on the basis of seniority-cum-merit and not by way of seniority alone."

8. The undisputed facts, as noticed, are that out of the total cadre strength of Assistant Professors, 75% posts are to be filled up by promotion or transfer of the Lecturers and Senior Lecturers already in service of the Government, whereas the remaining 25% posts are filled

by way of direct recruitment. As per Rule 12 of the Punjab Medical Education State Service (Class II) Rules, 1979 (hereinafter referred to as the '1979 Rules'), the seniority is to be determined on the basis of their continuous appointment in that category. No doubt, as per Appendix C, the appointment to the post of Assistant Professor by way of promotion is through selection on the basis of seniority-cum-merit and the seniority alone shall not give any right of appointment. However, in this case, respondent no.4 was given accelerated promotion on account of reservation. Once there is no dispute that the third vacancy was a reserved vacancy, which resulted in the promotion of respondent no.4, the catch-up rule would become applicable. As per the catch-up rule, if a junior official, on account of accelerated promotion, gets promoted to a higher post, prior to the senior and the senior is later on promoted if the junior official in the feeder cadre is still in the promoted post of next level then as per the catch-up rule, the senior would regain his seniority on the next higher post, even though he was promoted subsequently. In the present case, the petitioner was a senior to respondent no.4. However, as already noticed, respondent no.4 was promoted in 2013 whereas the petitioner was promoted in 2014. At that time, respondent no.4 was an Assistant Professor. Hence, in the seniority list of Assistant Professors by the application of catch up rule, the petitioner will be placed as a senior to respondent no.4.

9. Now this Bench proceeds to analyze the arguments of the learned counsel representing respondent no.4.

10. As regards argument no.(i), it may be noted that this argument has already been dealt with. It may be noted here that from the facts noticed above, respondent no.4 was promoted only because of reservation. Hence, the promotion by way of selection, particularly, when it is on the basis of seniority-cum-merit, would not exclude the applicability of the catch-up rule.

11 As regards argument no.(ii), it may be noted that in the present case, this Court is not called upon to decide the inter-se seniority of the parties as Professor or eligibility of the petitioner either as Professor or Associate Professor. Hence, it would not be appropriate to go into the aforesaid aspect of the matter.

12. As regards argument no.(iii), it may be noted that it is similar to argument no.(i). Hence, needs no repetition.

13. Learned senior counsel representing respondent no.4 has relied upon the judgment passed in **Sudhakar Babu Rao Nangnure vs. Noreshwar Raghunath Rao Shende and others (2020) 11 SCC 399**. In this case, the Supreme Court examined the issue in a different context. The appellant before the Supreme Court did not fulfill the eligibility criteria of three years experience as Joint Director, Town Planning. The Supreme Court in the peculiar facts of the case held that seniority and eligibility are distinct concepts in service jurisprudence and seniority itself cannot prevail when senior lacks eligibility for promotion to a higher post. Hence, the aforesaid judgment, with highest respect, is not applicable to the facts of the present case. The next judgment relied upon by the counsel is in **Urmila Devi and another vs. State of Punjab**

and others (CWP-10167-2021). On a careful reading of the aforesaid judgment, it is evident that the case was decided on the particular facts because the petitioners were senior to the private respondents in the feeder cadre. Secondly, the promotion was subject to qualifying the type writing test. On the day the petitioner cleared the test, respondent no.3 and 4 were not eligible to be considered for the promotion. In that context, after relying upon the judgment passed in **Sudhakar's case (supra)** the writ petition was allowed. It was held that the catch-up rule is not applicable. In fact, the learned counsel representing the petitioner has already submitted the detailed arguments, which are not required to be re-stated. Hence, the writ petition is allowed.

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

09.05.2023

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE