

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

LPA-1505-2023(O&M)

Reserved on: 19.10.2023

Pronounced on: 30.10.2023

Dr. Arvinder Pal Singh Batra

... Appellant

Versus

State of Haryana and Another

... Respondents

**CORAM: HON'BLE MS.JUSTICE RITU BAHRI, ACTING CHIEF JUSTICE
HON'BLE MR.JUSTICE AMAN CHAUDHARY**

Present: Mr.Yesh Paul Malik and
Mr.Ankur Malik, Advocates, for the appellant

Mr.Deepak Balyan, Additional Advocate General, Haryana

AMAN CHAUDHARY, J.

1. The present intra-court appeal, under Clause X of the Letters Patent has been filed challenging the judgment dated 06.10.2023, whereby the civil writ petition preferred by the appellant came to be dismissed.

2. Learned counsel for the appellant would contend that he is eligible to be considered for the post of Director in terms of an advertisement issued vide public notice dated 03.06.2022, but for the condition of age prescribed therein to be minimum 50 years while he is 49. He relies on the draft rules on Haryana Medical Education Service Drafts Rule of Group A, 2011, as per Rule 5 whereof, the age prescribed for appointment to the post of Director, Medical Superintendent and Principal, Dental College is between 40-50 years. Learned Single Judge has fallen in error by considering the age as had been provided in a decision dated 05.02.2018 of the Government, which is contrary to the Rules and thus, wrongly prescribed in the advertisement.

3. Learned State counsel opposes on the ground that the Draft Rules, 2011 do not pertain to the Medical Colleges and the same have not been either accepted or notified. It is therefore, the Government has taken a decision vide

office letter dated 05.02.2018, Annexure R-2, appended with the written statement.

4. Heard learned counsel on either side.

5. Before proceeding further in the matter, the relevant para of the written statement filed by Deputy Director, Medical Education and Research, Haryana dated 28.09.2022, to the writ petition be referred to, which reads thus:

“It is pertinent to mention here that vide letter dated 05/02/2018 addressed to the then 03 Government Medical Colleges, the communication was sent that the service rules of University of Health Sciences, Rohtak/Post Graduate Institute of Medical Sciences, Rohtak be followed for all purposes till separate service rules are finalized. A copy of the letter dated 20/02/2018 is attached herewith as Annexure R-2. As there is no Statute/Legislative enactment to establish and administer these Government Medical Colleges so the Government has to make provisions to administer and run these Government Medical Colleges in its Executive capacity as there is no specific Act in which the Government has been empowered to make rules under legislative delegated capacity. Therefore, the Government in exercising its Executive power, made the executive Policy decision at its own and adopted the Haryana Medical Education Service Rules, 1988 to administer and regulate the services of all groups of employees in Government Medical Colleges *mutatis mutandis*. Therefore, these Rules of Haryana Medical Education Service Rules, 1988 (as amended in 2007) are not binding statutorily but due to the earlier Policy decision of the Government these rules are only guiding principles as Government itself for the purpose of administrative convenience follow these rules till any other appropriate Policy decision is taken. It is humbly submitted that the decision to advertise the posts of Director and Medical Superintendent for the 04 Government Medical Colleges of the State (P-12) is a decision in the executive capacity of the Government.”

6. A profitable reference can be made to the judgment in **B.N. Nagarajan vs. State of Mysore**, AIR 1964 SC 1942, wherein it was observed that it is not obligatory under the proviso to Article 309 of the Constitution to make rules of recruitment, etc., before a service can be constituted or a post created or filled, and, secondly, the State Government has executive power, in relation to all matters with respect to which the legislature of the State has power, to make laws and to the ratio of law laid down in **Ajay Kumar Bhuyan**

vs. State of Orissa, (2003) 1 SCC 707, that the administrative decisions can be taken and instructions issued by the authority which is competent to frame the recruitment rules.

7. Incontrovertibly, for the three new Government Medical Colleges, the Draft Rules of 2011 having not been notified, the Government had taken a decision that the service rules of University of Health Sciences, Rohtak/Post Graduate Institute of Medical Sciences, Rohtak be followed for all purposes till separate Rules are finalised. As per the same, the minimum age prescribed for appointment as Director is 50 years. Learned counsel for the appellant has not been able to persuade this Court to take a view distinct to the one taken by the learned Single Judge.

8. Pertinently, it is not for the candidate to choose the rules or method that must govern his recruitment, rather is a prerogative of the competent authority to lay down the criteria for filling up a post keeping in view the requirement /scope of the job and various relevant factors. There is no challenge to the decision of the Government.

9. In view of the law laid down as referred to hereinabove, the decision of the Government holds the fort, thus, there is no infirmity or illegality that can be found in the impugned judgment passed by the learned Single Judge. The appeal being sans merit, is hereby dismissed.

10. Since, the main appeal itself has been decided, no orders are required to be passed in CM-3851-LPA-2023.

(RITU BAHRI)
ACTING CHIEF JUSTICE
 30.10.2023
 mkk

(AMAN CHAUDHARY)
JUDGE

Whether speaking / reasoned: YES / NO

Whether Reportable : YES / NO