

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-6126-2015 (O&M)

Reserved on 28.11.2023

Pronounced on 25.01.2024

Dr. Alka Dinesh Kale

... Petitioner

VS.

Pt. BD Sharma University of Health Sciences, Rohtak ... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. RK Malik, Sr.Advocate with
Mr. Kartikeya Chaudhary, Advocate for the petitioner

Mr. Anurag Goyal, Advocate and
Mr. Amit Rao, Advocate for respondent (CWP-6126-2015)

Mr. Sanjay Kaushal, Sr.Advocate with
Mr. AP Setia, and Mr. Pawel Sidhu, Advocate
For respondent No.2 (CWP-9546 & 9601-2015)

Sandeep Moudgil, J.

(1). This order shall dispose of the CWP Nos.6126, 9546 & 9601 of 2015 involving similar facts and questions of law to be adjudicated. CWP-6126-2015 is treated as the lead case.

(2). The petitioner has filed the present writ petition invoking the jurisdiction of this Court under Article 226 of the Constitution of India with a prayer for issuance of a writ in the nature of *certiorari* quashing the advertisement (Annexure P2) for the post of Senior Professor (Dental) Oral Pathology which debars the petitioner from consideration and for a further direction to the respondent-University to advertise the post strictly as per the decision of the Executive Council dated 08.03.2011 (Annexure P1).

(3). The respondent-Pt.B.D Sharma University of Health Sciences, Rohtak issued an advertisement for recruitment to various posts including the post of Senior Professor (Dental) (Oral Pathology) wherein the maximum age

limit prescribed was 50 years. The date of birth of the petitioner is 26.03.1961 and on the date of advertisement, the petitioner had attained more than 50 years of age and as such, being otherwise eligible in terms of the qualification and experience, the petitioner has been rendered ineligible on the sole of having cross the age bar of 50 years.

(4). Learned counsel for the petitioner submitted that the petitioner is BDS, MDS (Oral Pathology & Microbiology) and Ph.D. (Oral Pathology & Microbiology) and has a health experience in the said field in various reputed institutions across the country. It is averred that earlier the age prescribed for the post of Assistant Professor was 25 to 50 years and for Senior Professor from 25 to 58 years, however, the Executive Council in its meeting held on 08.03.2011 (Annexure P1) increased the maximum age from 50 to 55 years in the case of Assistant Professor and for the post of Senior Professor, the Executive Council increased the maximum age limit from 58 to 62 years.

(5). The arguments raised on behalf of the petitioner(s) is that the advertisement in question runs contrary to and is in contravention to the Executive Council decision dated 08.03.2011, referred to above, inasmuch, hundreds of candidates, who were otherwise eligible and qualified have been deprived of being considered, which action is violative of Articles 14 and 16 of the Constitution of Bharat and as such, the advertisement in question deserves to be quashed outrightly solely on this ground.

(6). It is vehemently argued that even before the decision of the Executive Council, the maximum age limit for the post in question was 58 years only as is evident from the advertisement No.2/2007 (Annexure P4).

He sought to draw logic behind prescription of maximum age limit to contend that for the post of Senior Professor, 9 years teaching experience is required and as such, there is no justification to prescribe 50 years as maximum age limit for both lower as well as higher posts.

(7). Learned counsel further urged that various representations have been moved by similarly situated colleagues of the petitioner to the effect that in the advertisements issued in 2011 to 2013, the age prescribed for the post of Professor was upto 62 years but no action has been taken thereupon.

(8). Notice of motion was issued on 01.04.2015 and thereafter, about more than 1½ years, the respondent-University filed its reply as reflected from the order dated 01.12.2016 and since then the case is lingering on for no valid reason.

(9). As per written statement filed by respondent-University on 19.01.2016, it is averred that the minutes of the Executive Council dated 08.03.2011 under Agenda Item No.97 for increasing the maximum age limit in case of Senior Professor from 58 to 62, was approved by the Chancellor and thereafter incorporated in the services rules. It is submitted that the superannuation age of Dental faculty is still 62 years and for Medical faculty is 65 years, as per Statute No.54 of Act No.26 of 2008 of the University.

(10). The respondent-University in sub-para (iii) of para 6 of the written statement has categorically and fairly admitted that the upper age limit for the post of Senior Professor (Dental) was 58 years and due to human error, the upper age limit was mentioned as upto 50 years for the post of Senior Professor (Dental).

(11). It was for this reason that the respondent-University came up with a stand that it shall provisionally consider all persons who are otherwise qualified notwithstanding the fact that they are more than 50 years of age or that they have not even applied therefor, as is depicted from the order dated 06.04.2015 passed by a Coordinate Bench of this Court, which reads as under:-

“Learned counsel for the respondent-University seeks an adjournment to file reply.

Learned senior counsel for the petitioner argues that the interview is fixed for 08.04.2015 and not only the petitioner but there are other persons also who are ousted from the process of consideration altogether.

Learned counsel for the respondent-University argues that there is no illegality in the action of the respondent-University but states that provisionally all persons who are otherwise qualified will be considered notwithstanding the fact that they are more than 50 years of age.

Learned senior counsel for the petitioner argues that at this stage this assurance is empty because the petitioner and other persons have not even applied under the advertisement.

Learned counsel for the respondent-University states that even if the petitioner and other persons have not applied they can now bring their application along with them and they all will be considered provisionally.

Adjourned to 25.05.2015.”

(12). On a query and apparently, it is informed that the petitioners and/or other persons have not appeared before the respondent-University for being considered in terms of the assurance given by learned counsel for the respondent-University on 06.04.2015.

- (13). Heard learned counsel for the parties.
- (14). Though, on merits, it is undeniable that the upper age limit for appointment to the post of Senior Professor (Dental) stood increased from 58 to 62 by the Executive Council and the decision thereof was approved by the Chancellor also. To that extent, the respondent-University has very fairly admitted that due to human error the upper age limit of 62 years could not be depicted in the subject advertisement.
- (15). But in the circumstances where the respondent-University itself undertook to consider the petitioner and other similarly situated candidates notwithstanding the fact that they have not even applied for the said post and the petitioner(s) chose not to appear before the respondent-University for reasons best known to them, this Court is left with no option but to dismiss this writ petition as it seems that the writ petition is nothing but a cruel trick to stall the whole selection and not to stake their claim for appointment. It is axiomatic that the petitioner(s) has not genuinely come forward to espouse their cause and their litigious venture is guided by ulterior motive and is nothing but a publicity gimmick.
- (16). Dismissed without any order as to costs.

25.01.2024
V.Vishal

(Sandeep Moudgil)
Judge

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

Yes/No
Yes/No