

Before Tejinder Singh Dhindsa, J.

D.K. SHARMA—Petitioner

versus

STATE OF PUNJAB AND OTHERS—Respondents

CWP No.15066 OF 2008

January, 11 2013

Constitution of India, 1950 - Arts. 14, 16, 226, 227 - Punjab Medical Services Rules, 1978 - CL1 - Notification dated 23.04.2007 issued by Department of Medical Education and Research, Punjab - Petitioner was holding the post of Assistant Professor of Pharmacy (Since re-designated as Associate Professor) received pension form in which his date of superannuation was mentioned as 31.08.2008 i.e. 58 years - Retirement age of Medical Teachers under Punjab Medical Services Rules, Clause-I, is 60 years - Petitioner sought mandamus to allow him to continue upto age of 60 years in terms of State Government Notification dated 23.4.2007 - Held that Petitioner is entitled to continue in service till the age of 60 years - Writ Petition allowed.

Held, that a bare reading of the afore reproduced statutory provisions would leave no doubt that the petitioner while holding the post of Assistant Professor since re-designated as Associate Professor Pharmacy is a member of the Punjab Medical Education Service (Class I). The classification as regards medical and non-medical teachers as sought to be furnished on behalf of the State of deny to the petitioner the benefit of the notification dated 23.4.2007 (Annexure P-4) is not borne from 1978 Rules. At this stage, it would also be apposite to notice the clarification issued by the Director, Research and Medical Education, Punjab dated 27.08.2008 (Annexure P-9) on the issue pertaining to the retirement of the petitioner, wherein it has been categorically recited that the petitioner had been promoted as per the Punjab Medical Service (Class-I) Rules, 1978 and age of medical teachers, who are covered under these rules is 60 years.

(Para 10)

Further held, that the action of the State Government in retiring the petitioner w.e.f. 31.08.2008 i.e. upon attaining the age of 58 years is also found to be discriminatory and violative of Articles 14 & 16 of the Constitution of India inasmuch as Sh. Dharampal, who was Lecturer in Bio-physics in the Department of Physiology in the Government Medical College, Patiala and who as per the alleged distinction sought to be drawn by the State would be covered in the phraseology of "non-medical teachers" has been permitted to continue in service till attaining the age of 60 years. The aforementioned Sh. Dharampal was also admittedly a member of the Punjab Medical Education Service Class-I and likewise, the petitioner was vested with a right for parity of treatment with regard to enhancement of age.

(Para 12)

Gurminder Singh, Advocate, *for the petitioner.*

Sudeepti Sharma, DAG Punjab.

TEJINDER SINGH DHINDSA, J. (ORAL)

(1) The petitioner who was holding the post of Assistant Professor Pharmacy (Since re-designated as Associate Professor) filed the instant writ petition praying for the issuance of a writ in the nature of mandamus for directing the respondents to allow him to continue in service up to the age

of 60 years in terms of State government notification dated 23.04.2007 (Annexure P-4).

(2) The petitioner, who possesses the qualification of Master in Pharmacy joined as demonstrator in the Department of Pharmacy, Government Medical College, Patiala on 17.06.1972. He was promoted as Lecturer on 02.02.1982. The petitioner was thereafter promoted on adhoc basis as Assistant Professor pharmacy on 06.06.1987. The State of Punjab through the Punjab Public Service Commission advertised vacancies of Assistant Professors in different specialties to be recruited for the medical colleges in the State of Punjab. One post of Assistant Professor pharmacy was also advertised. It has been pleaded that the petitioner being eligible for such post applied for the same and having been successful in a regular process of selection, he was appointed on the post of Assistant Professor pharmacy in February 1991. The post of Assistant Professor was re-designated as Associate Professor in the pay scale of Rs. 16350-20100 on 22.05.2003 and as such, the petitioner was also re-designated as Associate Professor Pharmacy w.e.f. the aforesaid date. The petitioner thereafter has been discharging duties as Head of the department of pharmacy since 01.07.1996.

(3) The department of Medical Education and Research, Punjab issued notification dated 23.04.2007 (Annexure P-4), whereby the age of superannuation of Medical, Dental and Ayurvedic teachers was enhanced from 58 years to 60 years with immediate effect. The petitioner received a communication addressed by the Principal, Government Medical College, Patiala dated 18.07.2008 (Annexure P- 5) in terms of which he was forwarded the copy of the pension form in which his date of superannuation was mentioned as 31.08.2008 i.e. taking his age of superannuation as 58 years instead of 60 years. It has further been pleaded that the petitioner immediately submitted representation staking his claim for continuing in service till 31.08.2010 i.e. till attaining the age of 60 years in the light of notification dated 23.04.2007 (Annexure P-4) but the same did not evoke any favourable response.

(4) It is against such factual background that the present writ petition was filed by the petitioner in this Court on 26.08.2008 i.e. prior to the respondents retiring him from service upon attaining the age of 58

years i.e. on 31.08.2008 with a prayer to direct the respondents to allow the petitioner the benefit of enhancement of retirement age in the light of notification dated 23.04.2007 (Annexure P-4) as also in terms of raising a prayer to restrain the respondents from relieving the petitioner from the post of Associate Professor and Head of the Department, Department of Pharmacy, Government Medical College, Patiala.

(5) On 27.08.2008, notice of motion was issued to the State for 29.08.2008 and on 29.08.2008, a Division Bench of this Court while granting time to the State for filing reply and adjourning the case to 11.09.2008, directed that in case the petitioner succeeds in the writ petition, he would be entitled to be reinstated.

(6) A written statement of the Director, Research & Medical Education, Punjab was filed on behalf of respondents no.1 & 2 in which a stand was taken that there are two categories of teachers' i.e. Medical and Dental Teachers and Non-medical Teachers. As such, the stand taken on behalf of the State to deny the petitioner the benefit of enhancement of the age of retirement till 60 years in the light of the notification dated 23.04.2007 (Annexure P-4) was to the effect that the petitioner would fall under the classification of "Non-medical Teachers" and it is only such teachers, who teach the MBBS or post graduate course classes who are vested with a right to continue in service till the age of 60 years.

(7) To substantiate such assertion, this Court vide order dated 08.01.2009 had directed for an affidavit to be filed of the Principal, Medical College, Patiala as to whether pharmacy was one of the subjects of MBBS course or not. In response thereto, an affidavit dated 27.01.2009 of the Principal, Government Medical College, Patiala was filed and taken on record and instead of furnishing a specific and categoric reply to the query raised by this Court, it was merely stated in the affidavit that diploma in pharmacy is not a subject of the MBBS course. Accordingly, on 27.01.2009, this Court had made an observation that respondent no.2 was trying to play hide and seek with the Court. To seek further clarity in the matter, on 06.09.2012, this Court had yet again called upon the State to file an affidavit of the Director, Research of the Medical Education, Punjab to furnish the names of such teachers who would be covered under the nomenclature of "Non-Medical Teachers" and who were retired upon completion of 58

years of age. In response thereto, an additional affidavit dated 18.09.2012 of the Director, Research & Medical Education, Punjab was filed and placed on record, wherein again, the State choose to evade the issue. The additional affidavit dated 18.09.2012 did not furnish the name of any such "Non-Medical Teachers", who was retired at the age of 58 years but on the other hand, disclosed the names of two teachers namely Sh. Dharampal, Lecturer Bio Physics and Sh. Paramjit Singh, Lecturer Bio-Chemistry, who were described as teachers not holding the medical qualifications but were permitted to continue in service till attaining the age of 60 years on the basis that such teachers had taught the MBBS and BDS students as per report received from the Principal, Government Medical College, Patiala.

(8) Counsel for the parties have been heard at length and the pleadings on record have been perused in detail.

(9) It is the admitted case between the parties that the conditions of service of the petitioner would be governed by the Punjab Medical Education Service Class I Rules, 1978 (hereinafter to be referred as '1978 Rules'). Rule 2 (d)(c), Rule 3, 4, 5, 7 and relevant extracts of Appendix A, B & C would be relevant for the controversy raised in the present writ petition and the same are extracted hereunder:

"2. DEFINITIONS- In these rules, unless the context otherwise requires:-

(a) "Commission" means the Punjab Public Service Commission.

(b) "Direct appointment" means an appointment made otherwise than by promotion or by transfer of an official already in service of the Government of India or of a State Government;

(c) 'Government' means the Punjab Government in the Health Department;

(d) "Service" means the Punjab Medical Education Service (Class I);

(e) "Department" means the specialty as listed in Appendix 'A';

(f) "Recognized University means -

(i) any university or institution incorporated by law in any of the States of India; or

(ii) the Punjab Sind or Dacca University in the case of Degree Diploma or Certificate obtained, as a result of examination held by these universities before the 15 August, 1947; or

(iii) any other universities which is declared by the Government to be recognized university for the purposes of these rules.

3. CONSTITUTION OF SERVICE- There shall be constituted a service to be known as the "Punjab Medical Education Service (Class I)" consisting of persons recruited to the Service under rule 9 after the commencement of these rules:

Provided that the persons holding the posts specified in appendix 'B' to these rules immediately before such commencement shall be deemed to be appointed to the service in accordance with the provisions of these rules on the designation, grade and any scale laid down in Appendix 'B' to these rules or the grade and pay scale for which they duly exercised their option.

PART II

APPOINTMENTS

4. NUMBER AND CHARACTER OF POSTS.- The Service shall comprise the posts shown in appendix 'B' to these rules:

Provided that nothing in these rules shall affect the inherent right of Government to add to or reduce the number of such posts or create new posts with different designation and scale of pay, whether permanently or temporarily.

5. APPOINTMENT TO SERVICE- All appointments to the posts in the Service shall be made by the Government.

6. XXX XXXY

7. AGE AND QUALIFICATIONS- *No person shall be recruited to the service by direct appointment unless he is less than 40 years of age in the case of Assistant Professor, Additional Professor or Professor; provided that the Government may in special circumstances to be recorded in writing relax the upper age limit. For the purpose of this rule, the age will be as on the last date of receipt of applications by the Commission.*

(2) No person shall be recruited by direct appointment, promotion or by transfer unless he possesses the qualifications and teaching experience as is specified in Appendix 'C'.

(3) A member of the service recruited by direct appointment shall not be retained in service unless he acquired knowledge of Punjabi language of matriculation standard within a period of 6 months from the date of appointment to the Service.

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APPENDIX 'A'

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|-----------------------------------|-----------------------------|
| 1. Anatomy | 16. Plastic Surgery |
| 2. Physiology | 17. Urology |
| 3. Bio-Chemistry | 18. Paediatric Surgery |
| 4. Pharmacology | 19. Gastroenterology |
| 5. Pathology including Blood Bank | 20. Orthopaedics |
| 6. Clinical Pathology | 21. E.N.T. |
| 7. Microbiology | 22. Ophthalmology |
| 8. Social and Preventive Medicine | 23. Obst and Gynae |
| 9. Forensic Medicine | 24. Anaesthesia |
| 10. Medicine | 25. Pharmacy |
| 11. Paediatrics | 26. Cardiology |
| 12. T.B. and Chest Diseases | 27. Cardio-Therasic Surgery |
| 13. Skin and V.D. | 28. Neurology |
| 14. Psychiatry | 29. Nephrology |
| 15. Surgery | |

APPENDIX 'B'

Name of the Department	Name of the post	Medical College, Amritsar,			Medical College, Patiala			Medical College, Faridkot.		
		Perma- nent	Tempo- rary	Total	Perma- nent	Tempo- rary	Total	Perma- nent	Tempo- rary	Total
1	2	3	4	5	6	7	8	9	10	11
Pharmacy	Professor	..	1	1	..	1	1	..	..	..
	Associate Professor	..	..	..	..	..	..	..	..	..
	Assistant Professor	1	..	1	..	..	1	..	1	1
XXX				XXXX						

APPENDIX 'C'

Name of the post experience required	Qualifications	Teaching
(c) Assistant Professor Pharmacy	Ph.D. (Pharmacy) in any of the allied subject of Pharmacy	Should have teaching of experience as Lecturer in Pharmacy for a minimum period of three years;
	OR	OR
	M. Pharmacy	Should have teaching experience as Lecturer in Pharmacy for period of five years."
XXX		XXX

(10) A bare reading of the afore reproduced statutory provisions would leave no doubt that the petitioner while holding the post of Assistant Professor since re-designated as Associate Professor Pharmacy is a member of the Punjab Medical Education Service (Class I). The classification as regards medical and non-medical teachers as sought to be furnished on behalf of the State to deny to the petitioner the benefit of the notification dated 23.04.2007 (Annexure P-4) is not borne from 1978 Rules. Rather, the Directorate of Research & Medical Education, Punjab issued a gradation

list of the doctors/officers of the teaching cadre (Annexure P-2), wherein Pharmacy Department has been noticed as a separate department and the post of Assistant Professor pharmacy has also been noticed. That apart, in such gradation list, wherein a total number of posts of teachers sanctioned for the Government Medical Colleges for the State department wise has been depicted, 3 posts of Assistant Professors in the department of Pharmacy find a mention. Even the details of the teaching posts sanctioned for the State Medical Colleges have been furnished in the gradation list and in which the post of Assistant Professor in the Department of Pharmacy stands covered. At this stage, it would also be apposite to notice the clarification issued by the Director, Research and Medical Education, Punjab dated 27.08.2008 (Annexure P-9) on the issue pertaining to the retirement of the petitioner, wherein it has been categorically recited that the petitioner had been promoted as per the Punjab Medical Service (Class-I) Rules, 1978 and age of medical teachers, who are covered under these rules is 60 years.

(11) As such, the question as regards the petitioner being a member of the Punjab Medical Education Class-I service and having been depicted as a member of the teaching cadre and accordingly, whether he would be entitled to the benefit regarding enhancement of retirement age i.e. up to 60 years in the light of the State Government notification dated 23.04.2007 (Annexure P-4) is answered in the affirmative.

(12) That apart, the stand of the State in attempting to draw a distinction between medical teachers and non-medical teachers would pale into insignificance as the specific pleadings on behalf of the petitioner in the replication to the effect that the subject of pharmacy is included in the syllabus of second professional MBBS and that such subject has been taught by Professors from the field of pharmacy including Dr. Sukhdev Singh, Dr. T.N. Gangoo, Dr. Avtar Singh Sooch, Mr. Kuldev Singh and Mrs. Pushpa Sharma have gone un-rebutted at the hands of the State. The action of the State Government in retiring the petitioner w.e.f. 31.08.2008 i.e. upon attaining the age of 58 years is also found to be discriminatory and violative of Articles 14 & 16 of the Constitution of India inasmuch as Sh. Dharampal, who was Lecturer in Bio-physics in the Department of Physiology in the Government Medical College, Patiala and who as per the alleged distinction sought to be drawn by the State would be covered in the phrasology of "non-medical teachers" has been permitted to continue

in service till attaining the age of 60 years. The aforementioned Sh. Dharampal was also admittedly a member of the Punjab Medical Education Service Class-I and likewise, the petitioner was vested with a right for parity of treatment with regard to enhancement of age.

(13) For the reasons recorded above, the present writ petition is allowed. It is held that the petitioner is entitled to continue in service till 31.08.2010 i.e. till the date of attaining the age of 60 years in the light of notification dated 23.04.2007 (Annexure P-4). The action of the respondent-authorities in retiring the petitioner on 31.08.2008 i.e. upon completion of 58 years of age is held to be bad in law. Accordingly, the petitioner would be deemed to have continued in service till 31.08.2010 and is also held entitled to all the consequential benefits in the nature of arrears of pay for such extended period of two years, fixation of pay as also the revised pensionary benefits as a result thereof.

(14) Petition allowed.

A. Jain