NITYA NAND

v.

STATE OF HARYANA AND ORS.

(Civil Appeal No. 7553 of 2009)

NOVEMBER 13, 2009

[TARUN CHATTERJEE AND R.M. LODHA, JJ.]

Haryana Medical Education Service Rules, 1988:

rule 10 – Floating Professor and Associate Professor are different categories of posts in Haryana Medical Education Service.

rule 10 – Seniority – Claim for – Appellant and respondent No. 4 promoted to the post of Senior Professor substantively on the same day – However, appellant not accorded seniority over respondent No. 4 as respondent No. 4 was already selected and appointed as Floating Professor from amongst Associate Professors under rule 10 and was drawing higher pay-scale – Respondent No.4, having been selected as Floating Professor while the appellant continued as a substantive Associate Professor prior to their promotion as Senior Professor, must rank senior to the appellant to the post of Senior Professor – Service law – Seniority.

The question which has arisen for consideration in the present appeal is whether "Floating Professor" and "Associate Professor" are different categories of posts in Haryana Medical Education Service and, if the answer is in affirmative then whether High Court is justified in holding that respondent No.4, having been selected as Floating Professor while the appellant continued as a substantive Associate Professor prior to their promotion as Senior Professor, must rank senior to the appellant to the post of Senior Professor.

Dismissing the appeal, the Court

HELD: 1.1. It is true that, as per rule 3 of Haryana Medical Education Service Rules, 1988, Haryana Medical Education Service comprises of the posts with

A designation, scales of pay and other allowances as shown in Appendix A to the Rules. It is also true that in appendix A, no separate post of "Associate Professor" and "Floating Professor" are mentioned. However, from the Rules, it is apparent that "Associate Professor" and
B "Floating Professor" are different categories of posts in the service. It is so because as per rule 10 only those Associate Professors who had been working for the last 10 years can be considered for selection to the post of Floating Professor. Sub-rule (1) of rule 10 begins with the expression, "The post of Floating Professor" and provides
C that these posts shall be created to the maximum of five posts under the scheme as set out in the rule. This gives an indication that Floating Professor is a different category of post in service. As a matter of fact, rule 10 is a special provision for appointment as Floating Professor. The
D selection procedure incorporates adjudgment of suitability for Floating Professorship by the selection committee. Moreover, had Floating Professor been not a distinct category, in rule 2(m) that defines "teacher", there would not have been mention of "Floating Professor". In so far as rule 9 is concerned, it has no application for
E selection and appointment as Floating Professor. The very fact that there is a statutory provision with regard to the appointment as Floating Professor shows that it is a separate category of post, more so, once an Associate Professor is selected and promoted as Floating Professor,
F he comes in a higher pay-scale. [Paras 10 and 11] [923-G-H; 924-A-G]

1.2. On completion of ten years as Associate Professor, the candidature of respondent No. 4 for appointment as Floating Professor was considered; he
G appeared before the selection committee and was found suitable for Floating Professorship and was in fact appointed as Floating Professor on July 19, 2006. The appellant had also completed ten years working as an Associate Professor but for the reasons best known to him, he did not choose to appear before the selection
H

committee and, consequently, he continued on the substantive post of Associate Professor, albeit, he was working on ad hoc basis as Professor. It is true that on the same date i.e. May 2, 2007, the appellant and respondent No. 4 were promoted to the post of Senior Professor substantively but the appellant could not have been accorded seniority over respondent No. 4 as respondent No. 4 was already selected and appointed as Floating Professor from amongst Associate Professors under rule 10 and was drawing higher pay-scale. It would be travesty of justice and rather absurd if respondent No. 4 who had already been appointed as Floating Professor and was drawing higher pay-scale than the appellant before his substantive promotion to the post of Senior Professor is made junior to the appellant who was only holding the substantive post of Associate Professor (re-designated as a post of Professor under amended Rules 2007) and was in the lower pay-scale on the date of promotion. Moreover, since the appellant and respondent No. 4 were in different categories of posts in service as per Rule 13, their seniority has to be determined separately. [Paras 13 and 14] [925-B-E]

P.S. Ghalaut vs. State of Haryana and Ors. **(1995) 5 SCC 625, referred to.**

Case Law Reference :

(1995) 5 SCC 625 referred to Para 6

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 7553 of 2009.

From the Judgment & Order dated 30.4.2008 of the High Court of Punjab & Haryana Judicature at Chandigarh in Writ Petition (Civil) No. 18484 of 2007.

Aman Lekhi, Sandeep Jain, Rakesh Kumar, Jaspreet Singh, Rajeev Singh for the Appellants.

Manjit Singh, AAG, Dr. Bali Ram Gupta, Kamal Mohan Gupta, Suryanarayana Singh, Dharmendra Kumar Sinha, for the Respondents.

The Judgment of the Court was delivered by

A **R.M. LODHA, J.** 1. Leave granted.

2. In this appeal by special leave, the judgment of the High Court of Punjab and Haryana passed on April 30, 2008 has been challenged. By the said judgment, the High Court allowed writ petition filed by the present respondent No. 4 fixing his seniority B over appellant to the post of Senior Professor setting aside the communication of the Government of Haryana dated November 30, 2007 and consequential office order dated December 3, 2007 issued by the Director, PGIMS, Rohtak.

3. The question that falls to be determined in this appeal by special leave is: whether "Floating Professor" and "Associate C Professor" are different categories of posts in Haryana Medical Education Service and, if the answer is in affirmative; is High Court justified in holding that present respondent No.4, having been selected as Floating Professor while the appellant continued as a substantive Associate Professor prior to their D promotion as Senior Professor, must rank senior to the appellant to the post of Senior Professor.

4. The answer to the aforesaid question, obviously, must be found with reference to Haryana Medical Education Service Rules 1988 (amended in 2007) (hereinafter referred to as 'the E Rules') but before we do that, it will be appropriate that material and relevant facts are noticed first.

5. Dr. Nitya Nand (Appellant) and Dr. P.S. Ghalaut (Respondent No. 4) joined Haryana Medical Education Service as Lecturer in 1981. The appellant is said to have been confirmed as Lecturer in the Department of Medicine on July 12, F 1984 while respondent No. 4 was confirmed as Lecturer on July 26, 1984. The issue concerning inter-se seniority between appellant and respondent No. 4 as Lecturer reached this Court in C.A. No.7608/95, *P.S. Ghalaut vs. State of Haryana and Others*, (1995) 5 SCC 625, and this Court vide judgment dated G August 3, 1995 held that the appellant was senior to respondent No. 4 as Lecturer. The appellant as well as respondent No. 4 after they were allowed to cross 1st efficiency bar and on the fulfillment of the requisite qualifications and experience were re-designated as Reader and upon their crossing 2nd efficiency

H

bar and fulfilling the qualifications and experience for the post of Associate Professor, they were re-designated as Associate Professor. The Appellant was appointed and designated as Reader with effect from June 26, 1986 and Associate Professor with effect from June 26, 1991 while the respondent No. 4 was appointed and designated as Reader with effect from September 11, 1986 and Associate Professor with effect from September 11, 1991. In view of the vacant posts obtaining then, the appellant was promoted as ad hoc Professor on August 6, 1993, while respondent No. 4 was promoted as Professor on ad hoc basis on December 23, 1993 but both of them continued to hold substantive posts of Associate Professor. The respondent No. 4, vide order dated July 19, 2006 was selected as Floating Professor under rule 10 of the Rules. The appellant as well as respondent No. 4 were promoted as Senior Professor (erstwhile Professor) substantively with effect from May 2, 2007. It was clarified that their inter-se seniority shall be decided later on. Ultimately, vide communication dated November 30, 2007 inter-se seniority of the appellant and respondent No. 4 to the post of Senior Professor was decided by the Government whereby the appellant was accorded seniority over respondent No. 4 and office order came to be issued on December 3, 2007.

6. The present respondent No. 4 challenged the communication dated November 30, 2007 and the office order dated December 3, 2007 before the High Court of Punjab and Haryana. As noticed above the High Court set aside the communication dated November 30, 2007 and office order dated December 3, 2007; allowed the writ petition and held that respondent No.4 would rank senior to the appellant to the post of Senior Professor.

7. In rule 2 (l), "Service" means the Haryana Medical Education Service.

Rule 2 (m) defines "teacher" thus :

"teacher" means a lecturer, Reader and Associate Professor including those when appointed as Floating Professors under rule 10."

Rule 3 reads thus :

"The Service shall comprise the posts with designation,

A scales of pay and other allowances shown in Appendix A to these rules;

Provided that nothing in these rules shall affect the inherent right of the Government to make additions to, or reduction in the number of such posts or to create new posts B with different designation or scales of pay either permanently or temporarily."

Rule 9, to the extent it is relevant, reads thus:

"(1) Recruitment to any post in the Service shall be made as under :--

C (a) .....

(b) .....

(c) .....

(d) .....

D (e) .....

(f) in the case of Professors (Medical/Non-Medical) and Professors (Dental):--

(i) 50% by promotion from amongst the teachers, and

E (ii) 50% by direct recruitment, or by transfer or deputation of any officer/official already in the service of any State Government or the Government of India.:

Provided that the first post or vacancy of a F Professor in each Department shall be filled in by direct recruitment and the second by promotion and so on.

(g) in the case of Teachers (Medical/Non-Medical) and Teachers (Dental):--

G (i) appointment shall be made on the post of Lecturer only by direct recruitment and if no suitable person is available for appointment as Lecturer then by transfer or deputation from any State Government or Government of India H or any institution;

(ii) a lecturer shall be re-designated as Reader if he has been allowed to cross 1st efficiency bar and fulfils the qualifications and experience for the post of Reader as laid down in column 5 of Appendix B;

(iii) a Reader shall be re-designated as Associate Professor if he has been allowed to cross the 2nd efficiency bar and fulfils the qualifications and experience for the post of Associate Professor as laid down in column 5 of Appendix B:

Provided that the persons holding the posts of Lecturer or Reader on the commencement of these rules shall be re-designated as Reader or Associate Professor as the case may be if he fulfils the qualifications and experience as laid down in column 5 of Appendix B and is otherwise suitable for re-designation on the basis of record irrespective of the fact whether he has crossed the 1st or the 2nd efficiency bar, as the case may be;

2. Appointment by promotion shall be made on the basis of seniority-cum-merit and seniority alone shall not confer any right to such promotion."

Rule 10 makes provision for appointment as Floating Professors. It reads as follows :

"(1) The posts of Floating Professor under this scheme shall be created subject to the maximum of 5 posts.

(2) Only those Associate Professors who are working for the last 10 years as Associate Professors shall be considered for the post of Floating Professor.

(3) Promotion to the post of Floating Professor under this scheme shall mean an upgradation of the post which a promotee is holding. Hence the post will remain in abeyance till the incumbent is adjusted against the permanent post or retires.

(4) The person shall have to appear before the Selection Committee constituted for deciding his suitability for

A Floating Professorship.

(5) If the regular post of Professor falls vacant, the Floating Professor shall be required to compete for the regular post.

(6) On the retirement, adjustment, selection against permanent post, the post thus falling vacant shall be filled
B in as per procedures laid down above.

(7) As it is an upgradation of the post that a promotee is holding incumbent shall continue to perform the duties as heretofore."

Rule 13 provides for inter-se seniority of the members of
C service. It reads thus :-

"Seniority, inter se of members of the Service, shall be determined by the length of continuous service on any post in the service :

Provided that where there are different categories of posts
D in the service, the seniority shall be determined separately for each category :

Provided further that in the case of two or more members appointed by direct recruitment, the order of merit determined by the Commission or Selection Committee shall not be disturbed in fixing the seniority.
E

Provided further that in the case of two or more members appointed on the same date, the seniority shall be determined as follows :--

(a) a member appointed by direct recruitment shall be
F senior to a member appointed by promotion or by transfer ;

(b) a member appointed by promotion shall be senior to a member appointed by transfer ;

(c) in the case of members appointed by promotion or
G by transfer, seniority shall be determined according to the seniority of such members in the appointments from which they were promoted or transferred ; and

(d) in the case of members appointed by transfer from different cadres, their seniority shall be determined according to pay, preference being given to a
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member who was drawing a higher rate of pay in his previous appointment; and if the rates of pay drawn are also the same, then by the length of their service in the appointments, and if the length of such service is also the same, older member shall be senior to the younger member."

8. Mr. Aman Lekhi, learned senior counsel for the appellant submitted that the faculty, as per the Rules, has two cadres viz; 'Teacher' and 'Professor' (now designated as Senior Professor in the amended Rules, 2007). Section 2(m) defines 'Teacher' which means Lecturers, Readers, Associate Professor and Floating Professor (now called Assistant Professor, Associate Professor and Professor) respectively and once cadre seniority has been fixed, the same cannot be altered and therefore, the appellant having been held senior to the respondent No. 4 in the cadre of 'Teacher' and inter-se seniority in the cadre of 'Teacher' having been settled right upto this Court, the appellant was rightly made senior to respondent No. 4 by the Government on their promotion to the post of Senior Professor. He submitted that High Court seriously erred in holding that respondent No. 4 having been selected as a Floating Professor, he would get seniority over the appellant when the post held by both of them is the same viz, 'Teacher'. Learned senior counsel would submit that sub-rule (5) and (7) of rule 10 of the Rules cannot be disregarded while considering sub-rule (1) of rule 10 since the selection as Floating Professor keeps the selectee in the cadre of 'Teacher' as defined in rule 2(m) of the Rules. The learned senior counsel strenuously urged that High Court has mis-interpreted and mis-construed the Rules.

9. On the other hand, Mr. Balram Gupta, learned senior counsel appearing for respondent No. 4 supported the view of the High Court.

10. It is true that, as per rule 3, Haryana Medical Education Service comprises of the posts with designation, scales of pay and other allowances as shown in Appendix A to the Rules. It is also true that in appendix A, no separate post of "Associate Professor" and "Floating Professor" are mentioned. However, from the Rules, it is apparent that "Associate Professor" and

A "Floating Professor" are different categories of posts in the service. It is so because as per rule 10 only those Associate Professors who had been working for the last 10 years can be considered for selection to the post of Floating Professor. Sub-rule (1) of rule 10 begins with the expression, "The post of B Floating Professor" and provides that these posts shall be created to the maximum of five posts under the scheme as set out in the rule. This gives an indication that Floating Professor is a different category of post in service. Sub-rule (3) of rule 10 provides that promotion to the post of "Floating Professor" shall mean an upgradation of the post which a promotee is holding C and by virtue of Sub-rule (7), the promotee continues to perform the duties hitherto being done by him. As per sub-rule (4), the suitability for Floating Professorship is to be decided by a Selection Committee and a candidate has to appear before such Committee. Although appointed as a Floating Professor, if the D regular post of the Professor falls vacant, as per sub-rule (5), he is required to compete for the regular post. The survey of scheme contained in rule 10 leaves no manner of doubt that the Rules do provide for the post of Floating Professor and that it is a different category of post. As a matter of fact, rule 10 is a special provision for appointment as Floating Professor. The selection E procedure incorporates adjudgment of suitability for Floating Professorship by the selection committee. Moreover, had Floating Professor been not a distinct category, in rule 2(m) that defines "Teacher", there would not have been mention of "Floating Professors".

F 11. In so far as rule 9 is concerned, it has no application for selection and appointment as Floating Professor. The very fact that there is a statutory provision with regard to the appointment as Floating Professor, no doubt is left that it is a separate category of post, more so, once an Associate Professor is G selected and promoted as Floating Professor, he comes in a higher pay-scale. In this view of the matter, we hold, as it must be, that the Rules provide for appointment as Floating Professor and it is a separate category of post.

12. Having held that, the question then arises whether High Court is justified in its view that the present respondent No. 4 H

having already been appointed as Floating Professor must rank senior to the appellant to the post of Senior Professor. A

13. On completion of ten years as Associate Professor, as noticed above, the candidature of respondent No. 4 for appointment as Floating Professor was considered; he appeared before the selection committee and was found suitable for Floating Professorship and was in fact appointed as Floating Professor on July 19, 2006. The appellant had also completed ten years working as an Associate Professor but for the reasons best known to him, he did not choose to appear before the selection committee and, consequently, he continued on the substantive post of Associate Professor, albeit, he was working on ad hoc basis as Professor. It is true that on the same date i.e. May 2, 2007, the appellant and respondent No. 4 were promoted to the post of Senior Professor substantively but for the reasons indicated above, the appellant could not have been accorded seniority over respondent No. 4 as respondent No. 4 was already selected and appointed as Floating Professor from amongst Associate Professors under rule 10 and was drawing higher pay-scale. It would be travesty of justice and rather absurd if respondent No. 4 who had already been appointed as Floating Professor and was drawing higher pay-scale than the appellant before his substantive promotion to the post of Senior Professor is made junior to the appellant who was only holding the substantive post of Associate Professor (re-designated as a post of Professor under amended Rules 2007) and was in the lower pay-scale on the date of promotion. B C D E

14. Moreover, since the appellant and respondent No. 4 were in different categories of posts in service as indicated above, as per Rule 13, their seniority has to be determined separately. The High Court in this regard considered the matter thus: F

> "The post of Floating Professor, though is part of teacher under Rule 2(m) of the Rules, but the appointment as Floating Professor is governed and regulated by Rule 10 of the Rules. Sub-Rule (1) contemplates maximum 5 posts of Floating Professor. Still further, promotion to the post of Floating Professor means an upgradation of the posts G H

A which a promotee is holding. Hence, the post held by the Floating Professor is to remain in abeyance till the incumbent is adjusted against permanent post of the lecturer [refer Sub-Rule (3)]. Still further, the candidate has to appear before the Selection Committee for deciding his suitability for Floating Professorship. Thus, Floating Professor is a distinct category of a teacher though part of Service as teacher. Floating Professor is promoted from amongst eligible Associate Professors after the Selection Committee finds him suitable. Rule 13 contemplates that the Seniority shall be determined by the length of continuous service on any post in the Service. It is further explained that where there are different categories of posts in the Service, the seniority shall be determined separately for each category, therefore, the post of Floating Professor is a separate category than that of Associate Professor and as such the seniority of Floating Professor has to be determined separately than that of Associate Professor (since amended to read as Floating Senior Professor).

No doubt, it is correct that five posts of Floating Professors have been created out of the cadre of teachers alone and such Floating Professors carry their posts with them but the number of posts or the nature of promotion is not relevant for determining the seniority. The seniority has to be determined in respect of each category of posts in Service. The petitioner who has been promoted as Floating Professor in the pay-scale of Rs.16400-21800/- is in separate higher category than the Associate Professor (re-designated as Professor) in the pay-scale of Rs.14300-18300/-. Both categories of posts are not in the same category and therefore, not comparable."

15. We find no legal infirmity in the consideration of the matter by the High Court. The view of the High Court calls for no interference.

16. In what we have discussed above, appeal must fail and is dismissed with no order as to costs.

D.G. Appeal dismissed.