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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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Date of Decision: 08.01.2025

PT. B.D. SHARMA, UNIVERSITY OF HEALTH SCIENCES, ROHTAK
AND OTHERS

. . . . Appellants

Vs.

DR. DHARA BALLABH DHAULAKHANDI

. . . . Respondent

**CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA**

Present: Mr. Sanjeev Kumar Aggarwal, Advocate with
Mr. Ojas Bansal, Advocate
Mr. Tejas Bansal, Advocate
Mr. Nissim Aggarwal, Advocate
for the appellants.

Mr. R.K. Malik, Sr. Advocate with
Mr. Varun Veer Chauhan, Advocate
For the respondent.

Mr. Vivek Chauhan, Addl. A.G., Haryana.

SANJEEV PRAKASH SHARMA, J.(Oral)

1. This is an appeal preferred by the University- PT. B.D. Sharma, University of Health Sciences, Rohtak assailing the order dated 22.10.2019 passed by the Single Judge whereby the writ petition preferred by the respondent/writ petitioner was allowed; the respondents (therein) were directed to consider the case of the writ petitioner as per Rules for promotion to the post of Senior Professor;



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and the exercise was directed to be done within a period of two months, holding the Haryana Medical Education Service (Amendment) Rules, 2007 ('Rules of 2007') to be applicable for the post of Professor in the Department of Biotechnology and Molecular Medicine, Post Graduate Institute of Medical Sciences, Rohtak.

2. The case set up by the petitioner before the Single Judge was that he was appointed as a lecturer on contract basis on 22.09.2006 and continued up to 24.01.2007, whereafter he was appointed as Assistant Professor on contract basis from time to time, and was appointed on regular basis on 28.01.2009 and continued as Assistant Professor up to 28.01.2013, and was re-designated/promoted as Associate Professor with effect from 29.01.2013, in the Department of Biotechnology and Molecular Medicine.
3. He has further prayed in his petition to set aside the order, whereby his claim for promotion as Senior Professor and a direction to the respondents to promote him as Senior Professor with effect from 29.01.2017 along with all consequential benefits has been ignored.
4. Learned counsel for the petitioner has stated that the petitioner had earlier preferred a writ petition before this Court for seeking consideration of his case for promotion, and this Court had disposed of the writ petition with directions to the respondents therein to decide his representation wherein he has claimed his promotion. The said directions were resulted in passing of a speaking order dated



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09.10.2017 wherein the Dean, PGIMS, Rohtak stated that the qualifications and experience required for re-designation/promotion/appointment to the post of Professor and Senior Professor in the Department of Biotechnology and Molecular Medicine, have not been approved by the Government as yet, and the Rules which have been approved by the Government, require the petitioner's case to be considered afresh for the post of Associate Professor. It has been stated that the re-designation of the petitioner as Associate Professor has not been done in accordance with the Rules which had been approved by the State Government.

5. The Single Judge has, after taking into consideration the contentions, proceeded to observe that as per Rule 9(1)(e) of the Haryana Medical Education Service (Amendment) Rules, 2007, method of recruitment on the post of Senior Professor is 75% by promotion and 25% by direct recruitment, and the qualifications have been laid down in the Schedule.
6. It has been stated that the petitioner acquired four years of service in speciality as Associate Professor in 2017, and was thus eligible for promotion.
7. The learned Single Judge has also noticed clause 7 of the appointment letter which states that the services of the petitioner would be governed by Haryana Medical Education Service Rules, 1988/Haryana Medical Education Service (Amendment) Rules, 2007 as amended from time to



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time. The contents of the decision of 04.06.2008 were also noticed which reflected that the Government has approved the proposed qualification and experience for different posts in Biotechnology and Molecular Medicine Departments, and proceeded to hold as under:

“once University had already sought the approval of the Government in fixing the educational qualification and experience, in the year 2008, no explanation has come forth in not introducing the Rules or promulgation of new Rules, thus, in such circumstances, the aforementioned Rules would be applicable. Petitioner concededly was redesignated as Associate Professor w.e.f 29.012013, after gaining four years of experience in the speciality concerned. The stand of the respondents that aforementioned Department i.e. Biotechnology was not included in the definition 2(b) , therefore, non-applicability of the Rules, is not able to cut an ice, for the reason that terms and conditions of the appointment letter would be sacrosanct between the parties.”

8. Learned counsel appearing for the appellant submits that so far as Rules of 2007 are concerned, the department of Biotechnology and Molecular Medicine was not included in the Rules, and only clinical departments as mentioned in Clause 2(b) were included. The earlier Rules of Haryana Medical Education Service Rules, 1988 (‘Rules of 1988’) also did not include the non-clinical departments in the Rules. He therefore submits that the Rules of 1988 or Rules of 2007 would have no application to govern the promotion exercise and qualifications laid down for the department of Biotechnology and



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Molecular Medicine, and therefore separate approval was sought for qualification.

9. It is stated that the State Government has only given approval for educational qualifications up to the post of Associate Professor, and the qualifications for promotion to the post of Professor/Senior Professor have not been approved by the State Government. Resultantly, the petitioner could not be considered for promotion and the directions issued by the learned Single Judge for adopting the Rules of 2007 for consideration of case of the petitioner for promotion was erroneous. It is his submission that the State Government is required to give approval for qualifications for the post of Professor/Senior Professor whereafter the case of the petitioner will be considered for promotion, and the Single Judge could not have given directions for directly adopting the Rules of 2007, as the department was not included in the Rules.
10. The State Government was asked to file its affidavit, and it has filed an affidavit wherein a stand has been taken that so far as the establishment of Biotechnology and Molecular Medicine Department is concerned, the same was done by the University without taking any prior approval of the State Government.
11. It is further stated that so far as the Rules of 1988 and Rules of 2007 are concerned, they are also applicable on non-medical posts as



provided in Appendix B of the Rules of 1988 as amended in 2007. It reads as under:

“(v) It is further humbly submitted that the said rules of 1988/2007 are also applicable on the non-medical posts as provided in the Appendix B of the Haryana Medical Education Service Rules, 1988 as amended in 2007 at serial no. 09, 13, 16 and 19, the post of Senior Professor (Non- Medical), Professor (Non-Medical), Associate Professor (Non-Medical) and Assitant Professor (Non-Medical) have been mentioned.”

12. The State Government has also taken a stand that they had approved one post of Senior Professor in Department of Biotechnology vide memo dated 03.06.2008, and the same can be filled and re-designation can be done on the post of Senior Professor (Non-Medical) in terms of qualifications and experience laid down in Appendix B of the Rules of 1988/2007.
13. The affidavit further proceeds to state that without informing the Government regarding establishment of department of Biotechnology and Molecular Medicine and that the same does not come within the MCI purview, the approval was given in 2008 for the qualifications and posts were also approved. The University never communicated the Government regarding any objection about legality and existence of the department of Biotechnology and Molecular Medicine, and therefore, even if the Government sanctions the post, still these Rules shall be in contradiction with the MCI guidelines as the University



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itself has stated that the department of Biotechnology and Molecular Medicine does not come within the purview of MCI.

14. It further claims that it is only the MCI which can give further sanction of department of Biotechnology and Molecular Medicine in the University.
15. We have given our careful consideration to the aforesaid submissions.
16. The petitioner is claiming consideration for promotion to the post of Senior Professor. Admittedly, no case of promotion is being conducted by the University. So far as the question regarding approval of the qualification of Professor as suggested by the University to the Government is concerned, we are of firm view that once the State Government gets a requisition for a non-clinical post, they must come out with a clear stand whether the qualifications as mentioned in the Rules of 2007 would apply to the department of Biotechnology and Molecular Medicine, and while they have approved the qualifications for Assistant Professor and Associate Professor, they ought to also take a decision with regard to the post of Professor and Senior Professor.
17. So far as the contention in the affidavit is concerned as noted above, we find that it is a case of the State Government in avoiding to pass specific orders with regard to approval to be given for the post which has been duly sanctioned by them for the department of Biotechnology and Molecular Medicine. It is a settled law that once a post has been sanctioned by the State Government, they must also lay down the



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educational qualifications and experience qualifications for filling up the said post.

18. So far as the directions issued by the Single Judge directing the University to adopt a particular service rule namely Rules of 2007 and the Appendix thereto is concerned, we are afraid that we cannot accept the said directions to be in accordance with law, as the Court under Writ Review jurisdiction, would not be empowered to direct University to adopt a particular rule. It is for the State Government and the University to take a decision in this regard.

19. However, we find that so far as the writ petitioner is concerned, he has been waiting for his due promotions since long, and also in terms of the Rules which are applicable to the other clinical departments, he possesses the minimum qualifications. If the said same qualifications are required to be adopted for the department of Biotechnology and Molecular Medicine, the petitioner would have been eligible, but as the approval has yet to be given by the State Government, the decision taken by the University in not considering the case of the petitioner for promotion cannot be objected to. The order passed by the University-appellant, therefore, cannot be said to be unjustified or illegal.

20. In view thereto, the order dated 22.10.2019 passed by the Single Judge is set aside. We, therefore, direct the State Government to take a decision regarding approval of qualifications for the post of Professor/Senior Professor for the department of Biotechnology and



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Molecular Medicine, PGIMS, Rohtak, within a period of three months from today.

21. If the approval is given, the University would be free to conduct the exercise accordingly, and if the exercise is being conducted, the case of the writ petitioner shall be considered for promotion to the post of Professor/Senior Professor, department of Biotechnology and Molecular Medicine, within a period of three months thereafter.
22. Appeal is accordingly allowed to the aforesaid extent.
23. All pending applications also stand disposed of accordingly.

(SANJEEV PRAKASH SHARMA)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

08.01.2025

Mohit goyal

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| 1. Whether speaking/reasoned? | <i>Yes/No</i> |
| 2. Whether reportable? | <i>Yes/No</i> |