

(2013) 05 P&H CK 0106

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 11400 of 2013

Gajinder Pal Singh Kaler

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision: May 23, 2013

Acts Referred:

- Constitution of India, 1950 - Article 14, 15, 19(1)(g), 226, 227

Citation: (2013) 171 PLR 159 : (2013) 3 SCT 803

Hon'ble Judges: Rameshwar Singh Malik, J

Bench: Single Bench

Advocate: Anil Chawla, for the Appellant;

Final Decision: Dismissed

Judgement

Rameshwar Singh Malik, J.

The short issue involved in this writ petition, that falls for consideration of this Court is whether the Rural Medical Officer, working with Zila Parishad in the respondent-State, is also entitled to be considered within the zone of consideration for 60% seats for Post Graduate Degree/Diploma courses-Session-2013, in the Health Sciences Institutions (Medical/Dental) in the State of Punjab, to be filled up from amongst the eligible PCMS/PCMS (Dental)/PDES in-service doctors. The facts are hardly in dispute. It is the own pleaded case of the petitioner that he is working as Rural Medical Officers with Zila Parishad. Experience certificate to this effect has been issued by the Deputy Chief Executive Officer, Zila Parishad, which is appended at Annexure P-1. Petitioner claims himself to be Service Provider in view of the instructions dated 20.9.2006 (Annexure P-2) issued by the respondent-State. Reliance has been placed on para 14 of the instructions dated 20.9.2006 (Annexure P-2), at page 50 of the paper-book, to the effect that service rendered by the service providers in the rural dispensaries, should be counted as rural service for the purpose of Post Graduate Degree courses. It is further pleaded case of the petitioner that vide policy instructions dated 22.9.2011 (Annexure P-3), petitioner

has been granted same basic pay-scale, which was being paid to PCMS doctors in the Health Department. Categorisation of District Hospitals putting them in four categories as A=Major cities, B=Semi-Urban/Urban Areas, C - Other Difficult Areas and D = Difficult Rural Areas has been appended at Annexure P-4. Result of National Eligibility-cum-Entrance Test (Post Graduate) for admission to MD/MS/Post Graduate Diploma Courses 2013 admission session, has been appended at Annexure P-5. The prospectus for admission to MD/MS/PG Diploma and MDS Courses for the Session 2013, was issued by Baba Fairdkot University of Health Sciences, Faridkot-respondent No. 3, which has been appended at Annexure P-6.

2. Learned counsel for the petitioner submits that since the petitioner is serving as Rural Medical Officer under Zila Parishad, he is entitled to be treated at par with PCMS doctors, for the purpose of admission to Post Graduate Courses in question. He further submits that salary of the petitioner is also the same as being paid to PCMS doctors. He next contended that since the State Government has pervasive control over the Zila Parishads, the petitioner should be considered as State Government employee permitting him to compete with the PCMS doctors for 60% seats for in-service candidates. He also submits that clause 14(A)(a) and (ii) of the prospectus, so far as it denies opportunity to the petitioner for admission in Post Graduate Courses in the category of inservice candidates, was violative of Articles 14, 19(1)(g) and 29(2) of the Constitution of India. Reliance has been placed on interim orders dated 4.2.2011, 7.4.2011 and 5.10.2011 passed by this Court in CWP No. 1766 of 2011, which came to be modified by this Court vide order dated 20.5.2013. Finally, he prays for allowing the writ petition.

3. Having heard the learned counsel for the petitioner at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that the present one is not a fit case warranting interference at the hands of this Court, while exercising its writ jurisdiction under Articles 226/227 of the Constitution of India. To say so, reasons are more than one, which are being recorded hereinafter.

4. Since the issue involved herein revolves around clause 14 of the notification dated 5.4.2013, contained in Part-B of the prospectus, it would be appropriate to reproduce the relevant part thereof and the same reads as under:-

14. (1) Government Institution (Government Medical College Amritsar and Patiala, G.G.S. Medical College, Faridkot; Government Dental College Patiala and Amritsar.

In the Government institutions, 50% of the total seats in every such institution shall be filled by the Government of India at all India level through NEETPG-2013. The remaining seats shall be filled through NEET-PG at State Level from amongst candidates having Punjab resident status. Out of the remaining seats, 60% seats shall be filled up from amongst the eligible PCMS/PCMS (Dental)/PDES in service doctors and 40% shall be open to all eligible medical/dental graduates.

A. For 60% Seats in Post Graduate Degree for PCMS/PCMS (Dental)/PDES.

The Eligibility to 60% quota candidates will be as per letters of Deptt. Of Health and Family Welfare Endst. No. 26/12/94-5HB2/795-805 dated 31.01.2011; and Memo No. 26/12/94-5HB2/4456-58 dated 17.07.2012 No. 2/149/12-IHBI/7260-77 dated 13.09.2012 and any other notification issued from time to time.

a) The eligibility requirements are as under:

(i) Regular PCMS employee; and

(ii) Have completed four years" service in very difficult (Category D) area or six year service in difficult (Category C) or on appropriate combination of both and in case of candidates who have completed 5 year of service as on 01.01.2012, they should have completed 2 years of service in most difficult areas or 3 years of service in difficult areas; and RMO once they are selected in PCMS, they will be given benefits of rural service rendered by them as RMO"s under Zila Parishads.

(iii) Have cleared the probation period; and

(iv) Whose service record is good; and

(v) After completion of Post Graduate Course have minimum of 10 years" service left; and

(vi) There is no vigilance/departmental/disciplinary inquiry pending against the employee.

b) The period of rural service shall be computed as on March 31st of corresponding year.

c) Adhoc service rendered in respective category will be counted for purpose of computing the stipulated period of three years.

d) Weightage of 1.0 mark for each year"s service in difficult area and 1.5 marks for most difficult area over and above the eligibility of rural service shall be given, subject to a maximum of 5 marks.

5. A bare reading of clause 14(A)(a)(i) and (ii) would make it crystal clear that 60% seats, for admission to the Post Graduate Degree Courses, are meant only for PCMS/PCMS (Dental)/PDES, in-service doctors. Rural Medical Officers, like the petitioner, will be given benefit of their rural service rendered by them as RMOs under Zila Parishads, after their selection in PCMS. Further, it is specifically provided under clause 14 that 60% seals shall be filled up from amongst the eligible PCMS/PCMS (Dental)/PDES in-service doctors. It is the own pleaded case of the petitioner that he is not PCMS/PCMS (Dental)/PDES in-service doctor. Petitioner is Rural Medical Officer. However, he claims parity with PCMS/PCMS (Dental)/PDES in-service doctors, for the purpose of admission in question. Giving thoughtful consideration to the contentions raised on behalf of the petitioner, the same have

been found to be wholly misconceived and without any substance, thus cannot be accepted.

6. During the course of arguments, learned counsel for the petitioner could not put into service any convincing argument which may even remotely suggest that clause 14(A)(a) and (ii) is violative of Articles 14, 19(1)(g) and 29(2) of the Constitution of India. In fact, it is a matter of policy decision, which is exclusive domain of the respondent-State. Similarly, another fallacy in the argument raised on behalf of the petitioner is that despite admittedly serving under Zila Parishad, he is claiming himself to be the employee of the State Government. In the very nature of things, petitioner cannot be held to be the employee of the State Government, irrespective of the fact that State Government is having some kind of control over the Zila Parishads. Having said that, this Court feels no hesitation to conclude that the Rural Medical Officer cannot be equated with the PCMS/PCMS (Dental)/PDES in-service doctors, as per the provisions contained in the prospectus for admission to PG Courses.

7. The interim orders passed by this Court, reproduced in paras 21, 22 and 23 of the writ petition, are of no help to the petitioner for more than one reasons. What were the terms and conditions of the prospectus for admission to Post Graduate Degree Courses at that time, are neither pleaded nor argued on behalf of the petitioner. It is also not argued on behalf of the petitioner that similar clause, as clause 14 in the present case, reproduced here-in-above, was subject matter of consideration before this Court in CWP No. 1766 of 2011. Further, the interim orders passed in CWP No. 1766 of 2011 came to be modified by this Court vide order dated 20.5.2013, which reads as under:-

With the consent of learned counsel for the parties, the order dated 5.10.2011 is modified to the effect that petitioner(s)" admission shall not be affected. However, the interim order dated 5.10.2011 shall not be construed to operate for the admission process, which is yet to start and counselling whereof is stated to be held on 27.5.2013. It is further made clear that admission process which is going to start with the counselling on 27.5.2013, shall be governed under the notification dated 16.5.2013 issued by the respondent-State of Punjab and the interim order dated 5.10.2011 shall have no bearing qua the admission process commencing from 27.5.2013. On joint request, adjourned to 29.7.2013.

A photocopy of this order, under the signatures of the Court Secretary attached to this Bench, be supplied to the learned counsel for the State for onward transmission to the authorities concerned for compliance thereof...

8. The terms and conditions of prospectus have the force of law and are binding on each concerned. Learned counsel for the petitioner wants this Court, to read into above-said clause 14, that Rural Medical Officers like the petitioner is entitled to be treated at par with PCMS inservice doctors, which is not permissible in law.

9. The issue of value of a prospectus and the conditions thereof which have the force of law, came up for consideration before a Division Bench of this Court in [Ravdeep Kaur Vs. The State of Punjab and Others](#), . The view taken by Division Bench of this Court in Ravdeep Kaur's case (supra) came to be reiterated by Full Bench of this Court in [Amardeep Singh Sahota Vs. The State of Punjab etc.](#), . The relevant observations made by the Full Bench in para 22 of the judgment, which can be gainfully followed in the present case, read as under:

In [Ravdeep Kaur Vs. The State of Punjab and Others](#), a Division Bench of this Court had an occasion to consider the value of a Prospectus issued for admission to an entrance examination. It was held that the eligibility for admission to a course has to be seen according to the prospectus issued before the entrance examination and that the admission has to be made on the basis of instructions given in the prospectus as the instructions issued have the force of law. We agree with the view taken by the Division Bench. Since the Prospectus issued for admission to the 1992-93 course in the medical college has the force of law and the students appeared in the examination on the basis of the instructions laid down in the said Prospectus, it was not open to the State Government to issue contrary instructions and as such also the Notification dated July 13, 1992 issued by the State Government is invalid in law.

10. The law laid down by the Hon"ble Full Bench in Amardeep Singh Sahota's case (supra) was further reiterated by two later Full Benches of this Court in [Sachin Gaur Vs. Punjab University, Patiala and others](#), and [Rahul Prabhakar Vs. Punjab Technical University and Others](#), . Laying emphasis on the strict interpretation of the provisions contained in the prospectus, Hon"ble Full Bench of this Court, in Rahul Prabhakar's case (supra), observed as under:-

A Full Bench of this Court in [Amardeep Singh Sahota Vs. The State of Punjab etc.](#), had to consider the scope and binding force of the provisions contained in the prospectus. The Bench took the view that the prospectus issued for admission to a course, has the force of law and it was not open to alteration. In [Raj Singh Vs. The Maharshi Dayanand University and Others](#), another Full Bench of this Court took the view that a candidate will have to be taken to be bound by the information supplied in the admission form and cannot be allowed to take a stand that suits him at a given time. The Full Bench approved the view expressed in earlier Full Bench that eligibility for admission to a Course has to be seen according to the prospectus issued before the Entrance Examination and that the admission has to be made on the basis of instructions given in the prospectus, having the force of law. Again Full Bench of this Court in [Sachin Gaur Vs. Punjab University, Patiala and others](#), took the view that there has to be a cut off date provided for admission and the same cannot be changed afterwards. These views expressed by earlier Full Benches have been followed in CWP No. 6756 of 1996 by the three of us constituting another Full Bench. Thus, it is settled law that the provisions contained in the information brochure for

the Common Entrance Test 1997 have the force of law and have to be strictly complied with. No modification can be made by the Court in exercise of powers under Article 226 of the Constitution of India. Whenever a notification calling for applications, fixes date and time within which applications are to be received whether sent through post or by any other mode that time schedule has to be complied with in letter and spirit. If the application has not reached the Co-ordinator or the competent authority as the case may be the same cannot be considered as having been filed in terms of the provisions contained in the prospectus or Information Brochure. Applications filed in violation of the terms of the brochure have only to be rejected.

11. The view taken by this Court also finds support from the judgment of this Court in [Dr. Harbir Singh Vs. State of Punjab and others](#), which is closer to the facts of the present case. In Dr. Harbir Singh's case (supra) Medical Officers working with Punjab Agriculture University, Ludhiana, were claiming parity with the PCMS in service candidates for 60% seats for the Post Graduate Courses, similarly as the petitioner is claiming in the present case. After detailed deliberation on the issue, this Court, while rejecting the similar claim, observed in paras 7, 8 and 9 of the judgment, as under:-

7. After having thoughtfully considered the submission of Shri Sharma that the service rendered by the petitioner as Medical Officer under the P.A.U. should be treated as service rendered under the Government, I find no merit in it. No doubt, the P.A.U. is a body corporate established by an Act of Legislature and the Government does have some administrative control over the working of the University inasmuch as a number of officers are on the Board of Management of the University, but the autonomous and independent status of the University cannot altogether be ignored and it cannot be held that the P.A.U. is a part of a Government department. The very fact that the University has been established under the P.A.U. Act, 1961, and it is an independent autonomous body negates the theory of the University being a part of the Government. The exercise of some administrative or financial control by the Government, in order to oversee that the funds provided by the Government are properly utilized cannot obliterate the character of the University as an independent institution and a person serving the University cannot be treated as a civil servant. An employee of the University cannot be transferred to a Government department except by way of deputation. Similarly, a Government servant cannot be transferred to the service of the University except by way of deputation.

The services under the University are totally independent of the Government services. The University has got separate rules regulating recruitment and conditions of service of its employees and they have nothing to do with the Government services. The Government does not have any control in the matter of recruitment etc. of the employees of the University. Therefore, the service rendered

by the petitioner as Medical Officer under the P.A.U. cannot be equated with and cannot be treated as a part of the service rendered by him under the Government. As a logical corollary, the petitioner cannot claim that he should be treated as a member of the P.C.M.S. or at least a Government servant for the purpose of admission to the Post Graduate Medical Course against the 60% seats.

8. Argument of the learned counsel that the reservation of 60% seats only for the members of the P.C.M.S. and P.C.M.S. (Dental)/P.D.E.S. candidates is discriminatory and violates the fundamental rights guaranteed to the petitioner under Articles 14 and 15 of the Constitution of India does not require adjudication in this case because in my opinion the petitioner is not entitled to claim admission against the 60% seats earmarked for the in-service candidates because he does not fulfill the requirement of three years rural service. A plain reading of para 1.2(i) clearly shows that the Entrance Test is open only to those candidates who have completed three years rural service in P.C.M.S. The P.C.M.S. (Dental)/P.D.E.S. candidates with three years service are also treated as eligible in case such candidates have rendered two years service in difficult border areas. In my opinion, this provision is mandatory in character. The very use of the word "shall" in the opening line of this paragraph, in the light of the object of reservation of seats for the in-service candidates shows that the provision is mandatory. The Government is undoubtedly possessed with the power to lay down conditions for admission to the Post Graduate Medical Courses and if in its wisdom the Government has thought it proper to lay down three years rural service as a condition precedent for admission of the members of the P.C.M.S., the provision cannot be treated as directory nor can it be said to be arbitrary. The object underlying the incorporation of such a condition is to encourage the Doctors to serve in the rural areas. A large segment of the population of this country, including the State of Punjab, lives in rural areas and the medical facilities available to this section of the population of the country are meager. In spite of the Herculean efforts made by the Government during the last four decades, the rural population has not been provided with proper medical facilities. One factor which has largely contributed to the meager medical facilities to the rural population is the non-availability of the competent Doctors who are inclined to serve the rural masses. The efforts made by the State to fulfill one of the goals enumerated in the Preamble to the Constitution read with Article 47 has remained unfulfilled on account of the paucity of Doctors to man the hospitals and dispensaries in the rural areas and with a view to provide proper medical services to the rural population and at the same time to encourage the Doctors to serve in the rural areas, the Government has thought it proper to incorporate the condition of three years rural service as a condition precedent to admission to the Post Graduate Medical Courses in so far as the in-service Doctors are concerned. This policy of the Government fulfills two objectives. In the first place, it encourages those Doctors to serve in the rural areas who intend to go in for higher medical education. Secondly, it provides sufficient number of Doctors for services in the rural areas of the State. An ancillary

objective served by this policy is that the inservice Doctors get a opportunity to equip themselves with higher knowledge and learning in various specialties. This knowledge and learning ultimately benefit the Doctors and the society at large. Therefore, I am of the considered opinion that the requirement of three years rural service is not only mandatory but it must be enforced rigorously by the Government, before giving admission to the in-service P.C.M.S. Doctors. Dilution of this requirement in favour of an individual or a group of individuals is wholly unwarranted and in any case relaxation in the requirement of three years rural service in one or more than one cases cannot entitle others to claim similar relaxation as a matter of right.

9. In so far as the petitioner is concerned, he has served as a P.C.M.S. Doctor only for a period of 2 years 10 months and 14 days. Clearly, he does not fulfill the requirement of three years rural service as envisaged in the notification dated 8-6-1994. Therefore, he is not entitled to admission to the Post Graduate Medical Course against the 60% seats.

12. The above-said judgment in Dr. Harbir Singh's case (supra) came to be challenged before the Division Bench of this Court in LPA No. 472 of 1995. The Division Bench, while dismissing the LPA vide order dated 21.7.1995, held that University was an autonomous body. Service rendered in the University cannot be equated with the service of PCMS in-service candidates. Eligibility criteria framed by the State Government reserving 60% seats for eligible PCMS in-service candidates was not discriminatory or violative of Article 14 of the Constitution of India. While upholding the above-said judgment, the Division Bench observed as under:-

The State Government has framed rules for admission to the post-graduate degree courses in medical education according to which 60 per cent seats are reserved for eligible P.C.M.S./P.C.M.S. (Dental)/P.D.E.S. Medical/Dental graduates. On consideration of the scheme we are of the opinion that it is difficult to treat non-P.C.M.S. as P.C.M.S. It may be stated that the Universities, Corporations or the Boards are not before us and it is not possible to decide this contention in their absence in this letters patent appeal. A University is an autonomous body. The eligibility criteria framed by the State Government reserving 60 per cent seats for the eligible in-service candidates cannot be said to be discrimination or violative of Article 14 of the Constitution. The learned Single Judge has dealt with this submission in detail and we are in agreement with the reasons given by the learned Single Judge. It may also stated that it is not that the appellant is debarred from applying to the post-graduate degree courses against 40 per cent seats available to the non-P.C.M.S. eligible candidates. If the appellant is desirous of seeking admission to the post- graduate degree course, he may do so against 40 per cent seats earmarked for non- P.C.M.S. eligible candidates. There is no substance in this letters patent appeal. The letters patent appeal to stand summarily dismissed.

Coming to the writ petition, the petitioner has not put in three years" rural service in P.C.M.S. Before joining the Punjab Agriculture University. The petitioner had served as P.C.M.S. Doctor for a period of two years ten months and fourteen days and is thus short of three months. The petitioner sought to take advantage of his earlier two years and none months" service when he was serving on ad hoc basis as a Government Medical Officer. It is not possible to connect the earlier service rendered by the petitioner on ad hoc basis as a Medical Officer with the Punjab Government. Since we have already dismissed the letters patent appeal holding that there is no discrimination as contended by the appellant in reserving 60 per cent seats for the in-service (P.C.M.S.) eligible candidates, the question of considering the petitioner"s service in the rural area, does not arise in this case. There is no substance in the writ petition.

13. Further, the Hon"ble Supreme Court, in the case of [Government of Andhra Pradesh and Others Vs. Dr. V. Nagaraju and Others](#), while making clear distinction between the in-service candidates prosecuting Post-Graduate Courses and other candidates outside such reserved quota, made following observation in para 8 of the judgment:-

The meaning to be attributed to the expression "in service candidates" in Rule 19(2) will have to be understood with reference to Rule 3(2) along with explanation thereof. The candidates who have been selected against the quota reserved in rule 3(2) have got to be in rural service of two years on duty or more and have got to be selected in the appropriate subjects leading to their being deputed for post-graduate studies. If we read rule 19 along with Rule 3(2) it becomes clear that an inservice candidate is one who has put in a minimum of two years service in respective fields in the rural areas and is selected against the reserved quota and not all candidates who have put in 2 years" rural service and are selected to postgraduate studies. Thus the view taken in the Tribunal on the meaning of inservice candidates suffers from fallacy of reading rules in compartments and not together. The intention of the Government in framing these rules is clear that it is only those candidates who have been selected against the reserved quota who will be entitled to be deputed and not others that is why sub-rule (2) of Rule 19 provided that if any candidate in Government service other than the inservice candidates is selected for any post graduation courses he should not be entitled to any kind of leave including extraordinary leave without allowances for prosecuting Post-Graduate Courses, unless he has put in a minimum of two years of service on duty in the respective service. In government service, there are two kinds of candidates-those who are selected against reserved quota and those who are selected otherwise than such quota. Those candidates who are covered by Rule 3(2) are those who have been selected against the quota reserved for the in-service candidates while others who are in Government service are selected are those who fall outside such category. The former will be entitled to extraordinary leave or other kinds of leave for prosecuting the Post Graduate studies and the condition thereto is

that they should have put in minimum of two years service. Therefore, the view taken by the Tribunal that the respondents will be treated at par with the other inservice candidates cannot be upheld and the order made by the tribunal is set aside.

14. Since the issue involved herein pertains to the policy matter, which is the exclusive domain of the respondent-State, no interference is called for at the hands of this Court, while exercising its writ jurisdiction under Articles 226 of the Constitution of India. In this regard, the Hon"ble Supreme Court in a recent judgment, in the case of [State of H.P. and Others Vs. Himachal Pradesh Niz Vyavsayik Prishikshan Kendra Sangh](#), observed as under:-

The High Court has lost sight of the fact that education is a dynamic system and courses subjects have to keep changing with regard to market demand, employability potential, availability of infrastructure, etc. No institute can have a legitimate right or expectation to run a particular course forever and it is the pervasive power and authority vested in the Government to frame policy and guidelines for progressive and legitimate growth of the society and create balances in the arena inclusive of imparting technical education from time to time. Inasmuch as the institutions found fit were allowed to run other courses except the three mentioned above, the doctrine of legitimate expectation was not disregarded by the State. Inasmuch as ultimately it is the responsibility of the State to provide good education, training and employment, it is best suited to frame a policy or either modify/alter a decision depending on the circumstance based on relevant and acceptable materials. The Courts do not substitute their views in the decision of the State Government with regard to policy matters. In fact, the Court must refuse to sit as appellate authority or super legislature to weigh the wisdom of legislation or policy decision of the Government unless it runs counter to the mandate of the Constitution. With regard to the importance of human resources, especially manpower requirement in various professional and technical fields, the Government is free to frame its policy, alter or modify the same as to the needs of the society. In such matters, the Courts cannot interfere lightly as if the Government is unaware of the situation.

15. Respectfully following the law laid down by the Hon"ble Supreme Court as well as this Court and reverting back to the facts of the present case, it is unhesitatingly held that petitioner cannot be equated with PCMS in-service doctors. He is not eligible to be considered, within the zone of consideration, for 60% seats meant for PCMS inservice doctors, for the purpose of admission to the Post Graduate Degree Courses. It is not permissible in law to read something extra in abovesaid clause 14, which was never intended by the respondent-State.

16. It is not even the pleaded or argued case on behalf of the petitioner that there was any ambiguity in clause 14 of the prospectus, reproduced here-in-above. Neither, the impugned clause can be said to be arbitrary nor unreasonable. Object

as well as intention is clear. There is no latent or patent ambiguity in the provisions of clause 14. Thus, the contentions raised on behalf of the learned counsel for the petitioner have been found to be misconceived and without any force.

17. No other argument was raised. Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present writ petition is bereft of any merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, the instant writ petition stands dismissed.