
(2015) 05 DEL CK 0154

In the Delhi High Court

Case No : Writ Petition (C) 2724/2015 and CM No. 4887 of 2015

Amulya Mysore

APPELLANT

Vs

National Board of Examination and Others

RESPONDENT

Date of Decision : 14-05-2015

Acts Referred:

Citation : (2015) 150 DRJ 667

Hon'ble Judges : Vibhu Bakhru, J

Bench : Single Bench

Advocate : Preerna Singh, Guntur Pramod Kumar and Prashant Mathur, for the Appellant; Rakesh Gosain, Advocates for the Respondent

Final Decision : Allowed

Judgement

Vibhu Bakhru, J.

1. The petitioner is aggrieved by a decision of the National Board of Examination (hereafter referred to as "NBE"), communicated by a letter dated 07.08.2013, holding the petitioner to be ineligible for the Diplome of National Board Final Examination held in December 2012. Although the petitioner had successfully cleared the said examination, as a consequence of the aforesaid decision, her candidature has been cancelled. The petitioner represented against the said decision pursuant to the liberty granted by this Court. However, the same was also rejected by a letter dated 31.12.2014.

2. In the aforesaid circumstances, the petitioner, inter alia, prays that the letter dated 31.12.2014 be set aside and NBE be directed to issue Diplome of National Board (hereafter "DNB") Certificate to the petitioner. The petitioner's candidature for the December 2012 examination was cancelled, as according to NBE, the petitioner had not completed her practical training before the cut off date of 30.06.2013. The petitioner disputes the said finding and contends that her training was completed on 29.06.2013, that is, prior to the cut off date.

3. Briefly stated, the relevant facts necessary to appreciate the controversy in

the present petition are as follows:

3.1. The petitioner appeared for the Centralised Entrance Test (CET- NBE) for DNB and successfully cleared the same. On 02.05.2011, the petitioner registered herself with the respondent no. 1 - NBE for the Secondary DNB Pediatrics Course and joined respondent no. 3 - Rainbow Children's Hospital (hereafter the "Hospital"), Hyderabad for DNB training in the speciality of Pediatrics for a period of two years i.e. from 02.05.2011 to 01.05.2013.

3.2. Candidates undertaking the Secondary DNB Pediatrics Course are required to sit for theory as well as practical examinations. In addition, the candidates are required to undergo two years mandatory practical training.

3.3. The petitioner was permitted to sit for the theory examination in December 2012 on the premise that the petitioner would complete her training before 30.06.2013. The petitioner successfully cleared the theory examination conducted on 08.12.2012 and 09.12.2012. The petitioner states that she conceived thereafter. The petitioner developed certain pregnancy related complications and, consequently could not attend to her duties at the Hospital; she had to proceed on leave from 10.01.2013. By a letter dated 25.01.2013, the Hospital informed NBE of the leave taken by the petitioner. By letter dated 01.03.2013, NBE replied to the letter dated 25.01.2013 and requested the hospital to provide leave records of the petitioner along with supporting medical documents. NBE further stated that re-joining of the petitioner shall be provisional subject to acceptance of the supporting medical documents by NBE. By a letter dated 13.03.2013, the Hospital provided the relevant leave records and supporting medical documents to NBE. The petitioner rejoined the course on 18.03.2013 and the same was informed to NBE by the hospital by letter dated 25.03.2013.

3.4. Subsequently, the petitioner cleared the practical examination conducted on 30.05.2013 and 31.05.2013. The petitioner continued to work at the Hospital till 22.07.2013 and by letter dated 24.07.2013, the hospital informed NBE that the petitioner has "completed the mandatory two years of training on 22nd July 2013."

3.5. On receipt of the aforesaid letter, NBE cancelled the candidature of the petitioner and declared the petitioner as ineligible for the December 2012, DNB Final examination, because the petitioner - as per the DNB training completion certificate - completed the DNB training on 22.07.2013 instead of 01.05.2013 and thus had failed to fulfil the eligibility criteria as prescribed in the Information Bulletin December 2012. This was communicated to the petitioner by a letter dated 07.08.2013, the relevant extract of which reads as under:

"As per the clause 4.1 (C) of the Information Bulletin for DNB final examination held in December, 2012, candidates who have registered with the Board and completing their prescribed training (as per the registration Letter) by the 30th June 2013 are eligible (admission Session, January 2011) Submission of Training

Completion Certificate for DNB trainees is an essential prerequisite. In case the candidate does not submit the training completion certificate (as per applicable format given in Annexure v. and VI) with the application form, his/her application may be rejected.

As per the DNB training completion certificate submitted by you, your DNB training has been extended up to 22/07/13 instead of the scheduled completion on 01/05/2015, after completion of academic term i.e. on 30.06.2013.

In view of the above, I am directed to inform you that your candidature for DNB Final Examination December, 2012 cannot be considered and you have been declared INELIGIBLE as you have failed to satisfy the prescribed eligibility criteria."

3.6. During the course of the arguments, the petitioner had handed over a communication dated 13.08.2013 sent by the Hospital to NBE. This communication clearly indicates the manner in which the extension of training period had been calculated by the Hospital. This communication was immediately followed by another communication dated 14.08.2013 explaining the reason for the earlier certificate dated 24.07.2013. The relevant extract of the said communication dated 14.08.2013 is as under:

"This is in reference to your letter dated 7th Aug., 2013, Ref. No : Ped/1222311469 / Dec. / 2012 NBE / 5385 to Dr. Mysore Amulya, D/o Dr. M. Sudhir, regarding her candidature for DNB final examination which can't be considered on account of completion date of the training i.e. 22nd July 2013.

Sir, Dr. Amulya at the time of appearing for theory exams has fulfilled all the criteria as per DNB to be eligible to appear for exam. However after theory she took leaves for 56 working days on medical grounds for her pregnancy. She has rejoined the institute as a full time from 18th Mar 2013. She has worked on Sundays and Public Holidays to compensate the 56 days leaves. Based on her leave eligibility including Casual Leaves, Academic leaves she has technically completed the course on 29th June 2013.

She continued to work as Senior Registrar upto 22nd July 2013 because of which the earlier certificate was issued. We certify that the completion date of mandatory two years of training is 29th June 2013."

3.7. Thereafter, the petitioner filed a Writ Petition being W.P.(C) 6864/2014 before this Court seeking quashing of NBE's letter dated 07.08.2013. The said Petition was disposed of by an order dated 01.10.2014 directing the petitioner to file a representation to NBE within two weeks and NBE was directed to decide the same on or before 31.12.2014.

3.8. In compliance with the order dated 01.10.2014, petitioner filed a representation with NBE on 04.10.2014. NBE rejected the petitioner's representation by the letter dated 31.12.2014.

4. According to the petitioner, she had taken leave of 56 days from 10.01.2013 to 17.03.2013. The petitioner claims that her training was extended by 56 days, which she completed by attending the Hospital from 01.05.2013 to 29.06.2013. The said period included eight Sundays (which were holidays) out of which the petitioner had worked on four Sundays to complete her training programme prior to the cut off date.

5. NBE disputes the above as according to NBE, the petitioner was on leave for 117 days during the training period from 02.05.2011 to 01.05.2013. Since a maximum of only 50 days leave were permissible during the two year training period, the petitioner's leave was in excess of the permissible limit by 67 days. Thus, the respondent could not have completed her training prior to the cut off date of 30.06.2013.

6. In the aforesaid facts, the dispute between the petitioner and NBE is in respect of two aspects; the first being the quantum of excess leave availed of by the petitioner and the second being the period of extension of training required to be undergone by the petitioner to compensate for the excess leave availed of by the petitioner.

7. According to NBE, the leave availed of by the petitioner during the period of her training from 02.05.2011 to 01.05.2013 is as under:-

8. The petitioner does not dispute that she had availed of 50 days leave during the calendar years 2011 and 2012, but according to her the leave taken by her from 10.01.2013 to 17.03.2013 would amount to only 56 days.

9. This contention is also supported by the Hospital as the Hospital in its communication dated 13.08.2013 sent to the Executive Director, NBE had provided the details of the leave availed of by the petitioner in a tabular form. The said table is quoted below:-

10. It is apparent from the above that while the petitioner and the hospital have excluded Sundays and holidays for calculating the quantum of leave availed by the petitioner, NBE has included Sundays and holidays as leave availed of by the petitioner. This accounts for the variation in the leave as claimed by the petitioner and as asserted by NBE.

11. The aforesaid controversy is to be addressed with reference to the NBE Leave Rules. Article 16 of the "Handbook for DNB CET" issued by NBE provides for NBE Leave Rules (hereafter "NBE Leave Rules"). Rule 2 of NBE Leave Rules is relevant and is quoted below:-

"16. NBE Leave Rules

1. xxxxx

2. A DNB candidate can avail a maximum of 20 days of leave in a year excluding regular duty off/ Gazetted holidays as per hospital/ institute calendar/ policy."

12. It is apparent from the plain reading of the above that for purposes of calculating the maximum leave, the regular duty off/Gazettes holidays as per the hospital policy are to be excluded. In the present case, the Hospital itself has excluded the Sundays and Gazetted holidays for calculating the leave availed of by the petitioner. The learned counsel for NBE has not drawn the attention of this court to any other Rule or any policy document which indicates that Sundays and Gazetted holidays are to be included within the leave availed of by a candidate. The language of Rule 2 of NBE Leave Rules is clear and unambiguous and, therefore, NBE's contention that Sundays, which fall within the period of leave availed of by a candidate should be included while calculating a number of days of leave, cannot be accepted.

13. Rule 6 of the NBE Leave Rules further provides that the leave of one year should not be carried forward to the next year but it also provides that in exceptional cases such as prolonged illness the leave across DNB training programme may be clubbed together. In this case, NBE has not denied this facility to the petitioner as it is the stand of NBE that the petitioner had consumed her permissible 50 days leave till December 2012 and since she had availed 67 days excess leave, her training period had to be extended by at least 67 days. Thus, the dispute is limited to the calculation of the number of days of excess leave in the calendar year 2013 and the period of extension of training required to compensate for the excess leave.

14. Although, as per Rule 3 of the NBE Leave Rules, a female candidate is entitled to maternity leave of 90 days once during the span of the entire DNB course without any extension in the training programme, the said benefit is not available to the petitioner as it is necessary that the expected date of delivery should fall within the duration of the maternity leave. Thus, if the expected date of delivery was before 01.05.2013, the petitioner could have availed of maternity leave of 90 days and yet the date of completion of her training would be taken as 01.05.2013. However, the petitioner had given birth to a child on 27.08.2013, which was after the completion of her DNB training program; thus, she was disentitled to maternity leave even though the leave availed by her was on account of medical complications related to pregnancy.

15. Rule 7 of the NBE Leave Rules expressly provides that any other leave, which is beyond the leave provided, is not permissible and would lead to extension/cancellation of DNB course. Rule 8 of the NBE Leave Rules is also relevant as it expressly provides that extension of training for more than two months beyond the schedule completion date is permissible only in extraordinary circumstances with prior approval of NBE. The said Rules are quoted below:-

"7. Any other leave which is beyond the above stated leave is not permissible and shall lead to extension/cancellation of DNB course.

8. Any extension of DNB training for more than 2 months beyond the scheduled completion date of training is permissible only under extra-ordinary

circumstances with prior approval of NBE. Such extension is neither automatic nor shall be granted as a matter of routine. NBE shall consider such requests on merit provided the seat is not carried over and compromise with training of existing trainees in the Department."

16. In the present case, the excess leave is within the stipulated period of two months and, thus, the rigor of Rule 8 of the NBE Leave Rules is not applicable.

17. It is an admitted position that the petitioner's training was liable to be extended as a result of the excess leave availed of by her.

18. According to the petitioner and the Hospital, the petitioner had continued to work from 02.05.2013 to 22.07.2013. The hospital had further confirmed that the petitioner had also worked for three Sundays during the month of May 2013 and one Sunday during the month of June 2013 and had completed the 56 days additional training in lieu of the excess leave availed of by the petitioner. The same was communicated by the Hospital to NBE by its communication dated 13.08.2013. the relevant extract of the said communication is quoted below:-

"We submit that the candidate served extended period to compensate leave of 56 working days from (10th Jan., 2013 to 17th Mar,2013), just in case leave for the same tenure was not considered (Details as mentioned below)

Hence, we certify that the revised completion date of mandatory two years of training is 29th June, 2013.

It is also certified that the candidate has worked during the above stated period as a resident doctor strictly in accordance with leave guidelines of NBE."

19. In the circumstances, the only question that remains to be considered is whether the petitioner could work on Sundays to complete additional training of 56 days.

20. The additional affidavit was filed on behalf of NBE where it was affirmed that NBE as a matter of policy treats the DNB training period of two years as two calendar years and this period is fixed irrespective of the intervening Sundays and holidays; the Sundays and holidays falling within the training period are not counted as extra or additional days of training. It is further asserted that the training period cannot be shortened by working on Sundays and holidays. It was emphatically submitted on behalf of NBE to ensure that minimum standards of medical education are maintained.

21. NBE has not produced any policy document or any other document which indicates the manner in which the extension of training period is to be calculated. Rule 7 of the NBE Rules only indicates that leave beyond the permissible limit would lead to extension of DNB course. Thus, it would stand to reason that the period of leave availed of by a candidate should be compensated by working the number of days of excess leave. The Hospital has certified that the petitioner had worked for 56 days to compensate for excess leave and as such her training was

concluded on 29.06.2015. There is no provision in the Rules or any other document to contradict the manner in which the petitioner and the Hospital have considered the period of extension of DNB training.

22. As pointed out by the learned counsel for NBE, the DNB training is based on calendar years. Clearly, the period of DNB training cannot be shorten by working on holidays and after normal working hours. There could be no dispute as to this position as the duration of the NBA training programme is expressed in years. However, this does not necessary imply that the extension of the training programme on account of excess leave - which is over and above the original period of training - must also necessarily be expressed in terms of calendar months or weeks. The extension of the training programme is based on the number of days of leave availed in excess of the permissible limit. The maximum leave available to a candidate is specified in number of days excluding regular duty off/Gazetted holidays. Thus, the extension of DNB training programme beyond the original duration, would thus necessarily have to be based on the number of compensatory days worked by a candidate. I see no prohibition either under the NBE Leave Rules or under any policy, which prevents a candidate for compensating the number of days of excess leave by working equivalent number of days. Both the excess leave and the extension of training are expressed in calendar days; there is no provision which mandates that Sundays and holidays should be excluded.

23. It is also relevant to note that although the training programme is conducted under the Ageis of NBE, the candidate effectively works as a quasi employee of a hospital/institute which imparts the necessary training and experience. It has been explained by NBE that the DNB programme is structured and monitored by NBE. However, the candidate after clearing the centralised entrance examination is enrolled as a DNB trainee with an accredited hospital/institute, the trainee thereafter works as a junior resident doctor. The NBE ensures that the training structured and the standards are maintained by ensuring various parameters for accreditation of hospital/institute including ensuring 1:1 teacher resident ratio. Since the DNB trainee effectively works as a junior resident doctor he/she is also paid stipend by the concerned hospital/institute. Thus, it is apparent that the DNB trainee forms an integral part of the work force at a hospital. Therefore, in absence of any specific rule or policy framed by NBE, it would be necessary to take into account the policy of the hospital/institute while considering the period of extension of the training programme. If it is the policy of the institute/hospital not to permit trainees to work on Sundays and holidays towards fulfilling their training programme, the extension of training period for compensating excess leave would have to be computed after excluding Sundays and holidays. This would not be apposite where the hospital/institute permits the candidate to work on Sundays and holidays for the purposes of training and/or gaining experience. In such cases, the extension of the training period would necessarily have taken into account the number of days worked by a candidate, which may include Sundays and holidays.

24. The learned counsel for NBE further argued that if the petitioner's contention was accepted, a candidate may also seek to complete his/her training by working additional hours beyond the regular working hours. Clearly, this would not be sustainable as the candidate would have to work the number of days equivalent to excess leave availed by the candidate. There is no question of working any additional hours as leave is not expressed in hours but in calendar days.

25. The petitioner's representation had been rejected by NBE as the NBE concluded that the Hospital was colluding with the petitioner. A plain reading of the communication dated 31.12.2014, indicates that this conclusion was based on the following reasons:

(a) That the hospital had issued three different certificates and the last certificate dated 14.08.2013 which certified that the petitioner had completed her training by 29.06.2013 had been issued after the petitioner's candidature had been cancelled.

(b) That the leave beyond 50 days was required to be approved by NBE.

(c) That the petitioner has herself treated her period of training as ending on 22.07.2013 and had further requested that the extension be condoned.

26. Insofar as the first reason is concerned, the hospital had clearly explained the reason for the varying certificates. Apparently, the first certificate was a provisional certificate issued on 25.09.2012, that is, prior to the excess leave availed of by the petitioner. This certificate is not a subject matter of any controversy. The hospital furnished another certificate dated 24.07.2013 which indicates that the petitioner had joined the course on 02.05.2011 and had completed the mandatory two years training on 22.07.2013. It is on the basis of this certificate that petitioner's candidature had been cancelled.

27. In view of the aforesaid, the petitioner had also, by a letter dated 11.08.2013, stated that her training was completed on 22.07.2013 and had further requested that the extension be condoned. However, subsequently, the hospital had analyzed the excess leave availed of by the petitioner and based on the same had certified that the petitioner had technically completed her training on 29.06.2013. The hospital had clarified that the earlier certificate was issued because the petitioner continued to work as a senior registrar with the hospital upto 22.07.2013. Since the hospital had explained the reasons for issuing the earlier certificate dated 24.07.2013, and the hospital had also furnished the complete data with regard to the number of days worked by the petitioner, the assumption that the hospital had colluded with the petitioner may not be justified. In the circumstances, the petitioner's representation could not be rejected for the reason that the Hospital had allegedly colluded with the petitioner.

28. With respect to the second reason, it is relevant to note that the Hospital had duly informed as to the dates on which the petitioner had proceeded on leave, as

well as the dates on which the petitioner had resumed duties. It is not in dispute that by a letter dated 25.01.2013, the Hospital had informed NBE that the petitioner was suffering from threatened abortion and had been advised complete bed rest with hormonal support. Subsequently, the petitioner was on leave from 10.01.2013 on medical grounds. This was acknowledged by NBE by a letter dated 01/05.03.2013 and the Hospital was required to furnish the leave records. The NBE had further stated that rejoining of the candidate would be subject to the submission of the information sought by NBE. NBE was informed of the details of the leave availed of by the petitioner till the end of 2012 (sic. 2013). Subsequently, on 25.03.2013, NBE was also informed that the petitioner had rejoined her training. There was no objection raised by the NBE with regard to the petitioner rejoining her training or the leave availed of the petitioner till 31.12.2012. Even in these proceedings, NBE has not contested the leave availed of by the petitioner till December 2012 or her rejoining the training. The dispute has been limited to the period of extension. Paragraph 6(n) of the counter affidavit filed by the petitioner also indicates the same and is quoted below for ready reference:-

"(n) In response to contents para 6 (n) it is submitted that the petitioner had already consumed her permissible 50 days leave till December 2012. It is admitted position of Petitioner and the Respondent No. 3 that she had availed 67 days of leave from 10th January 2013 and had rejoined on 18th March 2013. Hence, her training had to be extended for at least 67 days."

29. In the circumstances, the rejection of petitioner's representation on the ground that the leave availed of by the petitioner had not been approved by NBE cannot be sustained.

30. Lastly, the petitioner's representation had also been rejected on the ground that she in her earlier communication admitted that her training period had come to an end on 22.07.2013. In my view, this admission cannot be held against the petitioner as the details of the leave availed of by the petitioner had been furnished to NBE and although the petitioner is stated to have worked with the hospital till 22.07.2013, the details of the leave availed of by the petitioner indicate that her training was completed on 29.06.2013.

31. In view of the above, the petition is allowed and the letter dated 31.12.2014 is set aside and NBE be directed to issue DNB Certificate to the petitioner. Pending application also stands disposed of. No order as to costs.