
(2013) 07 P&H CK 0922

In the Punjab And Haryana At Chandigarh

Case No : CWP No's. 11538, 13214 and 13219 of 2013

Dr. Anjali Nagpal and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 29-07-2013

Acts Referred:

Citation : (2014) 1 SCT 141

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Advocate : Akshay Bhan in CWP No. 11538 of 2013, Mandeep K. Sajjan in CWP No. 13214 and 13219 of 2013 and Mr. Gurminder Singh in CM Nos. 9858-59 of 2013, for the Appellant; Karan Singh Sandhu, Advocate for Baba Farid University and Mr. Suresh Singla, Addl. A.G. Punjab, for the Respondent

Judgement

Rakesh Kumar Jain, J.—This order shall dispose of four writ petitions, namely, CWP Nos. 11538 of 2013 titled as "Dr. Anjali Nagpal and others v. State of Punjab and others", CWP Nos. 13214 of 2013 titled as "Dr. Ravinder Pal Singh and another v. State of Punjab and others" and CWP Nos. 13219 of 2013 titled as "Dr. Suresh Kumar v. State of Punjab and others" as the facts and the questions of law raised in all the petitions are common. However, for the sake of convenience, facts are being extracted from CWP Nos. 11538 of 2013 titled as "Dr. Anjali Nagpal and others v. State of Punjab and others". The petitioner has prayed for a writ in the nature of mandamus directing the respondents to consider her within the 60% quota reserved for the in-service PCMS Doctors for admission to the Postgraduate Medical Course/Diploma. It is also prayed that the condition of clearing of probation made mandatory in the eligibility criteria is arbitrary and unreasonable.

2. The brief facts of the case are that the petitioners joined as a Doctor in Zila Parishad in the Department of Rural Development and Panchayat, Punjab in June 2006. They remained in the service of Zila Parishad till August 2012. Thereafter they were appointed as PCMS Doctors with the Government of Punjab in August

2012. The National Board of Examinations issued notification for conducting NEET-PG for admission to MD/MS/Postgraduate Diploma Courses 2013. The petitioners appeared in that examination seeking admission to the Postgraduate Course, however, the result of the said examination was stayed by the Supreme Court on 13.12.2012 in Transferred Case (Civil) 101 of 2012 titled as "A.P. Private Medical and Dental College Management Association v. Dr. NTR University of Health Sciences and anr."

3. During the operation of stay, respondent No. 2 issued the notification dated 5.4.2013 for admissions to Postgraduate Degree/Diploma Courses in the State of Punjab on the basis of merit list of NEET-PG. According to Clause 14 of the said notification, 50% of the total seats in every institution were to be filled by the Government of India at All India level and the remaining seats through NEET-PG at State Level from candidates having Punjab Resident status. Out of the said remaining seats, 60% seats were to be filled up from the eligible PCMS in-service Doctors and 40% were thrown open for all eligible medical/dental graduates. In the eligibility criteria for 60% in-service seats, it is provided that the candidates must have completed probation. This condition has been challenged which forms part of Clause 14(1)(A)(a)(ii) of the said notification.

4. The result of NEET-PG exam was declared on 16.5.2013 and the State merit list was prepared.

5. The case set up by the petitioners is that they have been in the service of the State of Punjab, under the Department of Rural Development, for a period of six years and as per Clause 14(1)(A)(a)(ii) of the notification their services rendered as Rural Medical Officer under the Zila Parishad has been considered for giving them benefit of rural service. However, the condition in Clause 14(1)(A)(a)(iii) of the notification "clearing the probation period" as necessary has been challenged as unreasonable and arbitrary on the ground that the petitioners have already rendered six years of service in rural area as per Clause 14(1)(A)(a)(ii) of the notification and are entitled to the benefit of rural service.

6. It may be pertinent to mention that vide order dated 24.5.2013, interim order was passed in favour of the petitioners enabling them to attend the counselling but later on two applications have been filed bearing CM No. 9858 of 2013 by the in-service regular PCMS Doctors, claiming themselves to be eligible in all respect, for impleading them as parties; and CM No. 9859 of 2013 by them for vacation of the interim order dated 24.5.2013. Vide order dated 16.5.2013, CM No. 9858 of 2013 was allowed and the regular in-service PCMS Doctors were impleaded as parties but insofar as CM No. 9859 of 2013 for vacation of interim order dated 24.5.2013 is concerned, the same was kept pending on the ground that counsel for the petitioners had argued that the petitioners are in-service PCMS Doctors whereas interim order is operating in the case of Rural Medical Officers, who are not even in-service PCMS Doctors and their appeal bearing LPA No. 1068 of 2013 along with other connected appeals were pending before the Division Bench of this Court. The in-service regular PCMS Doctors, got impleaded themselves as

parties in the said case on the ground that if the petitioners, who are not eligible for admission are allowed to be considered under the interim order passed by this Court then it could adversely affect their chances though they fulfill all eligibility criteria, not only for the purpose of admission but also for getting particular discipline.

7. Learned counsel for the petitioners has argued that all most all the petitioners were working on contract basis from 1.6.2006 to 30.4.2011 under the Zila Parishad in the State of Punjab and thereafter their services were regularized w.e.f. 1.5.2011 to 1.7.2012 in the rural areas before they were selected in the PCMS service. He has referred to Clause 14(1)(A)(a)(ii) of the notification to contend that "once they were selected in PCMS, they will be given benefits of rural service rendered by them as RMOs under Zila Parishad". However, he has fairly conceded that the word "benefit of rural service" is not defined anywhere in the notification. He has further submitted that the benefit of rural service would mean that the petitioners have become eligible for admission to the Postgraduate Course being the in-service regular employees and for them it is not necessary to clear probation period as they had already rendered more than 5 years of contractual service and one year of regular service before they had taken requisite examination for entering into the PCMS service.

8. Learned counsel for the respondents have submitted that insofar as the validity of Clause 14(1)(A)(a) of the notification is concerned, the same has been upheld in CWP No. 11192 of 2013 decided on 22.5.2013 and approved in LPA No. 1019 of 2013 decided on 29.5.2013. It is further submitted that the Postgraduate Course of three years duration is funded by the State, as the in-service PCMS Doctors are paid not only their full salary but also increments and for this purpose a candidate who aspires to get admission in the 60% quota is required to fulfill all the eligible conditions mentioned in Clause 14(1)(A)(a) of the notification which also provides for clearing the probation period. He has referred to the Punjab Civil Medical Services (Class-I) Rules, 1972 [for short "the Rules"], applicable to the in-service PCMS Doctors, in which Part III deals with "Conditions of Service" and Rule 11 deals with the "Probation of persons appointed to the Service". It is submitted that service has been defined in Rule 2(c) of the Rules, which means the Punjab Civil medical Service (Class-I) and as per Rule 11 of the Rules, the persons appointed to the service shall remain on probation for a period of two years, if recruited by direct appointment and one year if recruited otherwise. It is also submitted that all the petitioners, in all the aforesaid petitions, have been recruited by direct appointment.

9. Learned counsel for the respondents have further argued that the purpose behind keeping an employee under probation is to watch his conduct and performance. If, the employer is of the considered opinion that the employee, who is on probation, is a deadwood, work shirker or having poor integrity, his/her services can be terminated before the probation period is over. If it is found that the employee is mediocre and can improve himself/herself, the probation

period can be extended and if it is found that the employee is good enough in all departments, an order can be passed of his clearing the probation period successfully after a period of two years. Thus, the condition of clearance of the probation period has a great significance especially in view of the fact that the entire course is sponsored by the Government at its own expenses. It is further submitted that none of the petitioners has completed two years probation period after entering into the PCMS service whereas Clause 14(1)(A)(a)(i) of the notification talks of a regular PCMS employees and not the RMOs. It is further submitted that insofar as the writ petition filed by the Rural Medical Officers is concerned that they have been discriminated in the grant of opportunity for doing the Postgraduate Course, has already been dismissed by the Division Bench of this Court. I have heard learned counsel for the parties and after perusing the record, I am of the considered opinion that all the writ petitions are without any merit because Clause 14(1)(A)(a)(ii) of the notification is a provision enabling the in-service PCMS Doctors, who have either four years of service in "very difficult" area (Category "D") or six years in "difficult" area (Category "C") or on appropriate combination of both and in case candidates, who have completed 5 years of service as on 1.1.2012, have completed 2 years of service in "most difficult" areas or 3 years of service in "difficult" area and Rural Medical Officers, who have once selected in PCMS are also given benefit of rural service rendered by them as RMOs under Zila Parishad. Meaning thereby, their services are equated with the aforesaid two kinds of services which has reference to the PCMS in-service Doctors in Category "D" & "C" and "most difficult" and "difficult" areas for a period of two years and three years but it does not mean that they could be considered without clearing the probation period. All the candidates are required to clear probation period of two years or if it is extended then the said period before he could be considered eligible, in terms of the Clause 14(1)(A)(a)(iii) of the Notification.

In view of the aforesaid discussion, I do not find any merit in all the writ petitions and the same are hereby dismissed.