

(2019) 05 DEL CK 0156

In the Delhi High Court

Case No : Civil Miscellaneous Application No. 13354 Of 2019 In Civil Writ Petition No. 8748 Of 2018

Dr. Ankita Baidya

APPELLANT

Vs

Union Of India And Anr

RESPONDENT

Date of Decision : 30-05-2019

Acts Referred:

Citation : (2019) 261 DLT 421

Hon'ble Judges : C. Hari Shankar, J

Bench : Single Bench

Advocate : S.K. Dubey, Udit Malik, Rajmangal Kumar, Bhagvan Swarup Shukla, Mukesh Pandey, Saravan Kumar, Dushyant Parashar

Judgement

1. This application, at the instance of the petitioner Dr. Ankita Baidya, in the writ petition is, essentially, a follow up to the judgment, dated 1st February, 2019, rendered by me in W.P.(C) 8748/2018.

2. The controversy, in the writ petition, which stands decided by me in the aforesaid judgment dated 1st February, 2019, essentially dealt with the justification of the decision, of the AIIMS, to extend the course of D.M. (Infectious Disease) course, which was being undertaken by the petitioner, by six months beyond December, 2018, when the course would otherwise have come to an end, and the petitioner would have been entitled to appear in her final examination for obtaining the said qualification of D.M. (Infectious Disease).

3. The petitioner had availed leave, during the tenure of her D.M. (Infectious Disease) programme. The condition in the Memorandum, dated 4th December, 2015, of the AIIMS, whereby the petitioner was informed that she had been selected as a student for the said programme, contained, in respect of leave, and the available periods thereof, the following clause:

"He/she will be entitled for 90 days leave during three years i.e. 1st year 24, IIInd Year 30 days and IIIrd year 36. If leave is extended in a year then the

extended period is treated as Extra Ordinary Leave without pay and the registration period is also extended by postponing the Exam for one session."

4. It is not in dispute that the leave availed by the petitioner was not in excess of the periods of 24 days in the first year, 30 days in the second year and 36 days in the third year. Despite this fact, on the ground that the petitioner had availed the said leave, the AIIMS decided to extend the tenure of her course for a period of six months beyond December, 2018, when it would ordinarily have concluded. This decision was assailed, by the petitioner, before this Court in W.P.(C) 8748/2018, which stands decided by my aforesaid judgment dated 1st February, 2019.

5. I have, in my aforesaid judgment, proceeded on the premise that, so long as the periods of leave availed by the petitioner were within the stipulated 24 days in the first year, 30 days in the second year and 36 days in the third year of her D.M. (Infectious Disease) Programme, it could not be said that the period of leave had been "extended" in any particular year, so as to entitle the AIIMS to, on that ground, extend the tenure of her D.M. (Infectious Disease) Programme by six months.

6. I had, nevertheless, made it clear that the decision would be subject to the petitioner's fulfilling all other requirements and pre-condition, required to be fulfilled to enable her to write the examination in December, 2018.

7. The said judgment is, I am informed, presently under challenge before the Division Bench of this Court in LPA 270/2019.

8. During the pendency of the writ petition, the petitioner was permitted to appear in the final examination of her D.M. (Infectious Disease) Programme in December, 2018 vide order dated 16th November, 2018, albeit without creation of any equities thereby. She has done so. However, her result has not been declared.

9. It is in these circumstances that the petitioner has re-approached this Court by means of CM APPL.13354/2019, praying that the AIIMS be directed to declare her result.

10. The AIIMS has filed a reply, as well as an affidavit, in respect of the application of the petitioner.

11. Before proceeding to the said affidavit, and the grounds on which the AIIMS opposes the application of the petitioner, a submission, made by learned counsel for the AIIMS, may be noted, to the effect that the petitioner has actually undergone further training in her D.M. (Infectious Disease) programme for six months beyond December, 2018, and that the said training would come to an end in June, 2019.

12. Inasmuch as the opposition of the AIIMS, to declaration of the petitioner's result, was essentially premised on the petitioner having not undergone requisite

training during the prescribed 36 months of the D.M. (Infectious Disease) programme and, in view of the admission, on the part of the learned counsel for the AIIMS, that the said training would stand completed in June, 2019, I queried it, of learned counsel for the AIIMS, as to whether, once the said period of training was completed, the AIIMS would be willing to declare the result of the examination of the petitioner, as undertaken by her in December, 2018. Learned counsel for the AIIMS has categorically answered in the negative, stating that, after completion of the petitioner's training in June, 2019, she would have to re-appear in the examination in December, 2019, before the result could be declared.

13. I have no option, therefore, but to decide this application on merits, as the via media, which, in my view, could have set the controversy at rest, has not been accepted by the AIIMS.

14. The opposition, of the AIIMS, to the petitioner's application is, essentially, founded on two premises; firstly, that the D.M. (Infectious Disease) programme was strictly of 36 months duration and, secondly, that there were various periods of training during the said 36 months which had to be undergone by every D.M. (Infectious Disease) candidate, which had not been undertaken by the petitioner.

15. Having heard learned counsel for the AIIMS at considered length, I find myself unable to agree with either of these grounds, as a legitimate basis for not declaring the petitioner's result.

16. Apropos the first submission, of learned counsel, to the effect that D.M. (Infectious Disease) programme was for a period of 36 months, learned counsel has only referred me to the initial pages of the prospectus of the AIIMS, which refers to the course being of 3 years duration. There is no gainsaying this fact.

17. Even so, where the AIIMS itself permits avilment of leave for stipulated periods for each of the three years of the D.M. course, and further provides that, in the event of extension of leave beyond the said periods, the tenure of the course was liable to be extended, I am of the opinion that, if the leave availed was within the said stipulated periods in each of the three years of the course, there could be no question of extending the course beyond 36 months. In other words, when working out the tenure of 36 months, or 3 years, of course the D.M., the permissible periods of leave have, necessarily to be factored in. Had there been any provision in the prospectus of the AIIMS dealing with the D.M. (Infectious Disease) programme, or in the Memorandum, whereby the petitioner was admitted to the said programme, to the effect that avilment of leave, for any period, would, ipso facto, result in extension of the tenure of the programme, perhaps the position might have been different. No such covenant, however, exists.

18. As such, the mere reference, in the prospectus of the D.M. (Infectious Disease) programme, as issued by the AIIMS, to the effect that the programme is of three years duration, cannot constitute a legitimate basis for the AIIMS to

oppose the petitioner's request for declaration of her result.

19. The second contention, urged by learned counsel for the AIIMS, to oppose the petitioner's prayer for declaration the result of her D.M. (Infectious Disease) examination, undertaken in December, 2018, is that there are various periods of training stipulated in the overall course curriculum for the D.M. (Infectious Disease) programme, which the petitioner had not fulfilled.

20. On the last date of hearing, it had come to my notice, from the records, that the petitioner had, in fact, been made to undergo certain courses of training in excess of the periods stipulated therefor. For example, while the overall course structure of the D.M. (Infectious Disease) programme stipulates that, the candidate has to serve for 0.5 months in the DOTS centre and for 0.5 months in the ART Centre, the petitioner was made to serve for 1.5 months in the DOTS centre and 1.5 months in the ART centre. There are other such assignments, too, for which the petitioner was deputed for periods in excess of those contemplated by the overall course structure.

21. To make matters clear, I may reproduce, hereinbelow, the said course structure, as contained in the memorandum of the AIIMS, thus:

1st yr

2nd yr

3rd yr

- Ward (6 months)
- Microbiology
-
- DOT Centre (0.5 month)
- Bacteriology + STD (2 months)
- Community Medicine, Tribal Health, AIIMS OR, OPD Jhajjar (3 month)
- ART centre (0.5 month)
- Parasitology (2 months)
-
- Pharmacology 1 (month)
- Virology (2 months)
- Critical Care (CII ICU, AB 8 ICU) (3 months)
- Paediatrics (1 month)
- Mycology (1 ½ months)

- 2-4 weeks posting in specialities including Neurology ICU, Nephrology, Gastroenterology, Dermatology Psychiatry, Medical Oncology)
- CCU & CTVS ICU (0.5 month)
- Hospital Infection Control (1 ½ months)
- Respiratory & Sleep lab (0.5 month)
- TB (1 month)
- Bronchoscopy Laboratory (1 month)
- HIV, Immunology + serology (1 month)
- Radiology (1 month)
- Anaerobic + Mycoplasma (1 week)
- Transplant Immunology (3 weeks)

22. I had, in my order, on the last date of hearing, required the AIIMS to file an affidavit explaining as to how if the AIIMS was at liberty to direct the candidate to serve in specified modules/assignments of the D.M. (Infectious Disease) programme for periods in excess of those contemplated in the course structure, the candidate could be bound down strictly by the said periods.

23. In the affidavit filed by it in compliance with the said directions, the AIIMS has categorically admitted, thus:

"d. I say that as stated in point 1 above and also detailed in the response to the Skeletal submission and Rejoinder, the break-up of months etc. on page 84 of the WRIT PETITION paper book is variable and the variability has never been contested by the petitioner during the entire tenure of her training.

e. I say that that the Course Structure on page 23 is indicative of the individual postings, their duration and timing within the 3 year period but the actual individual postings, their duration and timing is not sacrosanct.

That it is further submitted that the actual nature, duration and timings of individual postings within three year course are variable.

f. I say that TABLE A below shows the curriculum schedule envisaged in the prospectus at page 23 and Dr. Baidya"s adherence to this schedule. If this schedule were to be sacrosanct towards course completion, any training done outside the envisaged periods, or of different nature or duration, would not be considered towards fulfillment of requirements of the course and the respondent would be short of training by 24 months.

Table A

Schedule of posting

Done SACROSANCT as envisaged in prospectus (nature, period and duration)

Shortfall

1st year posting

Ward (6 months)

6 months

0

DOTS centre (0.5 months)

0

0.5 months

ART Centre (0.5 months)

0

0.5 months

Pharmacology (1 month)

0

1 month

Pediatrics (1 month)

0

1 month

CCU and CTVS ICU (0.5 months)

0

0.5 months

Respiratory and Sleep lab (0.5 months)

0

0.5 months

Bronchoscopy laboratory (1 months)

0

1 month

Radiology (1 month)

0

1 month

2nd year posting

Bacteriology + STD (2 months)

0

2 months

Parasitology (2 months)

0

2 months

Virology (2 months)

0

2 months

Mycology (1.5 months)

0

1.5 months

Hospital Infection Control (1.5 months)

0

1.5 months

TB (1 month)

0

1 month

HIV, Immunology, Serology (1 month)

0

1 month

Anerobic + Mycoplasma (1 week)

0

1 week

Transplant Immunology (3 weeks)

0

3 week

3rd Year posting

Ward (3 months)

3 months

0

Community medicine, tribal health, AIIMS or OPD Jhajjar (3 months)

0

3 months

Critical care (CII ICU, ABB ICU) (3 months)

0

3 months

2-4 months postings in specialities including Neurology ICU, Nephrology, Gastroenterology, dermatology Psychiatry, Medical Oncology

3 months

0

g. I say that the actual nature, duration and timing of rotation posting within the 3 year curriculum are variable due to a number of reasons.

(i) Apart from training, the residents are required to provide clinical services and based on exigencies of hospital and patient-care requirements, the postings may be varied.

(ii) Resident doctors are entitled to various types of leaves. Due to this, other resident doctors may have to be posted in their place based on the work requirements.

(iii) Due to leaves, resident doctors themselves may miss relatively more important postings and the Head of Department in the interest of the student, may rearrange postings to give them exposure in an area missed during the leave.

(iv) Resident doctors join on different dates during the course and have different learning requirements. The Head of Department may thus rearrange postings to address their needs.

(v) The DM-ID course is new and started only in 2016. As a result, the department has felt the need to modify some of the envisaged postings in the curriculum and have replaced them with other postings. However, it is submitted that the core duration of training of 36 months is mandatory and has been maintained, as for all such academic residency programme at AIIMS New Delhi.

h. I say that it is pertinent to mention here that the Applicant/Petitioner has not contested this policy of variability at any time during her training period. She was given posting schedules in advance, usually for 6 months at a time, during her training and had never objected to these posting schedules. On the contrary, she

has claimed benefit of such variability in the posting chart that she has submitted to the court. In many postings, she has spent more time than envisaged in the prospectus. Many postings have been done at times other than as envisaged in the prospectus. If the prospectus were to be strictly adhered to, none of the extra time that she has spent in some postings would count towards her training and she would fall even further short of the training requirements as explained in TABLE A above.

i. I say that TABLE B below shows the actual posting schedule of the responded as prescribed for her by AIIMS. This summary table is based on the actual rosters issued to the responded from time to time by AIIMS and a true copy of the orders containing the respondent's posting schedules is annexed herewith and marked as ANNEXURE-3. The respondent has never contested these posting schedules which have been given to her on timely intervals by the department.

j. I further say that these rosters adjust various postings, including the postings that the respondent claims were "dropped" by replacing them with other courses considered essential by the department. They are provided to the candidate six monthly in advance and the respondent has never contested these rosters. Therefore, her attempt to include "dropped postings" in her comparative chart is malafide and misleading.

Table-B

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Postings of Dr. Ankita Baidya, DM(ID-3 yrs) Residents

S. No.

Place of Postings

Period/ Dates of postings

Long leave

1st year (1.1.2016 to 31.12.2016)

Medicine Ward Posting

12 months

6 months March 8 to Sept. 2, 2016 (Maternity Leave)

2nd year (1.1.2017 to 31.12.2017)

ART

1 month

DOTS

1 month

ICU

1 month

Casualty

1 month

Paediatric

2 months

IDI

1 month

Cardiology/CT VS

1 month

ID2/SRB Lab

2 months

Neurosurgery/ Neurology

1 month

Surgery/Gynae cology

1 month

3rd year (1.1.2018 to 31.12.2018)

IDI*

3 months

ID 2/SRB Lab

1 month

Dermatology

1 month

Elective

1 month

ART/DOTS

1 month

Microbiology

2 months

Nephrology

1 month

Med Oncology

1 month

Gastroenterology

1 month

* Clerical error in this submission in previous affidavit dated 27.4.2019 by the Registrar, AIIMS, New Delhi: Total posting ID1+ ID2 of 4 months is correct but ID1 was 3 months and ID2 was 1 month

24. To a query from the Bench, learned counsel for the AIIMS candidly accepts that the individual training periods stipulated in the overall course structure, was at the discretion of the concerned authorities of the AIIMS depending on various factors including the necessity for patient care etc. These periods, therefore, are admittedly not sacrosanct, but are variable.

25. That apart, it is also clear from the affidavit of the AIIMS that several of these assignments were actually deleted by the AIIMS, so that there could be no question of petitioner being in a position to undertake the said assignments. Though the affidavit states that there were other courses substituted in place of the deleted courses, it is not clear, from the records placed on record, by the AIIMS, as to the nature of such "substitute" courses.

26. Be that as it may, in view of the admission, by the AIIMS, that the various postings, which were assigned to the DM candidates, were variable, and that a candidate had no say therein, the second plank of the arguments advanced by the AIIMS, in opposing the application for declaration of her result, too, cannot sustain.

27. For the above reasons, I find that the objection by the AIIMS, to the prayer, of the petitioner, for declaration of the result of the D.M. (Infectious Disease) examination undertaken by the petitioner in December, 2018, cannot be said to be legally sustainable. The request, therefore, deserves to be allowed.

28. That apart, it is an admitted position that, the petitioner would be completing, by June 2019, all the periods of training in which, according to the AIIMS, she was deficient. The period of six months beyond the three year tenure, by which the AIIMS has extended her course would also come to an end in June, 2019.

29. The petitioner has, admittedly, undertaken the D.M. (Infectious Disease) examination in December, 2018, albeit under orders of this Court.

30. Once she has done so, and given the fact that the extended period of six months are also coming to an end in June, 2019, I see no reason why the result of the petitioner's D.M. (Infectious Disease) examination as undertaken by her in December, 2018, should not be declared, and treated as her result in the final

D.M. (Infectious Disease) examination.

31. The stand of the AIIMS as vocalized by learned counsel before this Court to the effect that the petitioner would have to re-appear in the examination all over again, in December, 2019, appears to me, to be markedly unreasonable.

32. Learned counsel for the AIIMS has sought to rely on two decisions of the Supreme Court in the University of Mysore v. C.D.Govinda Rao, AIR 1965 SC 491 and State of Tamil Nadu v. K. Shyam Sunder, AIR 2011 SC 3470. Besides the fact that these cases involved different issues, involving qualifications of faculty for recruitment, and the power of courts to interference therewith, the proposition, that learned counsel for the AIIMS would seek to press home, on the basis of these decisions, to the effect that courts should be circumspect in interfering with policy matters involving medical education, can hardly brook cavil.

33. The present case, however, does not involve any such exercise on the part of this Court. As such these decisions cannot be said to act as a fetter in allowing the application of the petitioner.

34. He also submits that, unless the petitioner completes the requisite periods of theory and practical, she would not be entitled to declaration of her result, as given in the academic programme.

35. In response, Mr. Dubey submits that the AIIMS has never contended that the petitioner has not completed the requisite theory and practical and had, rather, in its reply to the present application, taken a stand that "the petitioner had not completed her entire course curriculum and had yet to undertake clinical postings of six months.". The submission of learned counsel for AIIMS to the effect that the petitioner had not completed the requisite theory and practical is, therefore, Mr. Dubey submits, an afterthought.

36. For the aforesaid reasons, the application is allowed. The respondent is directed to declare, forthwith, the result of the D.M. (Infectious Disease) examination undertaken by the petitioner in December, 2018.

Needless to say, this declaration would abide by the outcome of LPA 270/2019, pending before the Division Bench of this Court.