

(2011) 01 SC CK 0147

In the Supreme Court Of India

Case No : C.A. No. 899 of 2011 (Arising out of SLP (C) No. 1963 of 2010)

Dr. Archana Chouhan Pundhir

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 24-01-2011

Acts Referred:

Entrance Examination Rules, 2007 — Rule 2, 9

Citation : AIR 2011 SC 1166 : (2011) AIRSCW 1251 : (2011) 2 JLJ 80 : (2011) 2 SCALE 180 : (2011) 11 SCC 486

Hon'ble Judges : S. S. Nijjar, J;G. S. Singhvi, J

Bench : Division Bench

Advocate : Kunal Verma, for the Appellant; B.S. Banthia and Vikash Upadhyay, for the Respondent

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—Leave granted.

2. Whether the Appellant, who joined service under the Government of Madhya Pradesh as Assistant Surgeon on contract basis in November, 1999 and whose services were regularised with effect from 31.12.2005 under the Madhya Pradesh Regularisation of Public Health and Family Welfare Medical Cadre Contract Appointment Rules, 2005 (for short, "the 2005 Rules") was eligible to appear in Pre-P.G. Examination held in 2007 under the Madhya Pradesh Medical and Dental Post-Graduate Course Entrance Examination Rules, 2007 (for short, "the 2007 Rules") is the question which arises for consideration in this appeal.

3. The Appellant was appointed as Assistant Surgeon in District Hospital, Raisen on contract basis vide order dated 26.10.1999. The term of her contractual appointment was extended from time to time. After about four years, she filed Writ Petition No. 2158 of 2004 for issue of a mandamus to Respondent Nos. 1 and 2 to regularise her service. The same was disposed of by the learned Single Judge vide order dated 21.4.2004, the relevant portion of which (as contained in

Annexure P-1) is extracted below:

Having heard Mr. Shrotri, learned senior counsel for the Petitioners and learned Government Advocate, I am inclined to direct the Respondent No. 1 to consider the cases of the Petitioners for the purpose of regularization. If any intervention of higher authority is sought the same shall be taken recourse to by the Respondent No. 1. The entire exercise shall be completed by end of July, 2004. At the time of regularization the authority shall also keeping view the spectrum of salary, I may hasten to add I have not adverted to the merits of the case. All other aspects relating to merits are kept open. If there are a set of rules the State Government shall keep in view the same while deciding the case of regularization.

4. Although, in terms of the High Court's order the concerned authorities were required to consider the Appellant's case for regularisation of service within next three months, it took them almost three years to do the needful and by an order dated 10.4.2007, her services were regularised with effect from 31.12.2005.

5. In the meanwhile, the Appellant applied for admission to Post-Graduate course as an "in-service candidate". Her application was accepted by the concerned authorities and she was allowed to appear in the Entrance Examination, 2007. She secured 98.50 marks out of 200 but was not given admission because of non-award of marks in lieu of her 7 years' service.

6. Apprehending that she may not get admission in Post Graduate course, the Appellant filed Writ Petition No. 5157 of 2007 with the prayer that Rule 9.1 (a) and (b) of the 2007 Rules may be struck down and the Respondents be directed to admit her against the quota of "in-service candidates". By an interim order dated 26.4.2007, the Division Bench of the High Court directed the Respondents to allow the Appellant to participate in the counselling as an "in-service candidate". In compliance of that order, the Appellant was allowed to take part in counselling and she appears to have been admitted in the Post-Graduate course as an "in-service candidate". This inference is being drawn from the contents of last paragraph of the impugned order wherein it has been mentioned that the Appellant has spent two years in her education as an "in-service candidate".

7. The Respondents contested the writ petition by asserting that the Appellant was not eligible to apply as an "in-service candidate" because at the relevant time, she was serving on contract basis. In support of this assertion, the Respondents relied upon Rules 2(d) and 9.1(a) and (b) of the 2007 Rules. They also pleaded that regularization of the Appellant's service with effect from 31.12.2005 was inconsequential because order for that purpose was issued one day after declaration of the result of entrance examination.

8. The Division Bench of the High Court dismissed the writ petition by observing that the Appellant was not eligible for admission in Post Graduate course because the result of entrance examination was declared on 9.4.2007 and order for regularisation of her service was issued on 10.4.2007. The Division Bench

referred to the judgments of this Court in *Aman Deep Jaswal v. State of Punjab* (2006) 9 SCC 597 ; *Dolly Chhanda Vs. Chairman, JEE and Others*, and *Paramjeet Gambhir v. State of M.P.* (2003) 4 SCC 276 and held that even though the 2007 Rules were superseded by the Madhya Pradesh Medical and Dental Post-Graduate Course Entrance Examination Rules, 2008, the Appellant cannot take advantage of the same because the new rules were not given retrospective effect.

9. We have heard learned Counsel for the parties. Rules 2(d). 1 and 9.1(a) of the 2007 Rules, which have bearing on the decision of this appeal read as under:

2(d) "In-Service Candidate" means, 1. Medical officer of Public Health and Family Welfare Department, who is serving under the Government of Madhya Pradesh and not serving on contract basis;

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9, Selection Criteria: (In Service Candidate)

9.1 Medical Officer

(a) Only those candidates, who have completed 5 years service on 30th April of year of examination as Medical Officer, in the Public Health and Family Welfare Department will be eligible. If a candidate was working on contractual basis in Public Health and Family Welfare Department of the State Government and has come in regular services while working on contractual basis, then experience of such contract service will also be considered.

10. A conjoint reading of the above reproduced rules makes it clear that only those candidates were eligible to apply for admission as "in-service candidates", who had completed 5 years service as Medical Officer in the Public Health and Family Welfare Department as on 30th April of the year of examination i.e. 2007. A Medical Officer serving on contract basis was not eligible to apply as an "in-service candidate", but if the services of such an appointee were regularised, then the experience gained by him/her by working on contractual basis was required to be taken into consideration for the purpose of selection.

11. It is not in dispute that as on 30th April, 2007, the Appellant had completed more than 7 years' service as Medical Officer in the Public Health and Family Welfare Department of the Government of Madhya Pradesh. Although, the Appellant's initial appointment was on contract basis but in the purported compliance of order dated 21.4.2004 passed by the learned Single Judge of the High Court in Writ Petition No. 2158 of 2004, the State Government regularised her services with effect from 31.12.2005.

12. While deciding the second writ petition filed by the Appellant, the Division Bench of the High Court completely overlooked that the concerned authorities of the Government of Madhya Pradesh were guilty of committing contempt of the order passed by the learned Single Judge and declined relief to her despite the fact that her services had been regularized with effect from 31.12.2005.

13. In our view, the date on which the order for regularisation was issued was purely fortuitous and the same could not be made basis for depriving the Appellant of her legitimate right to get admission as an "in-service candidate". At the cost of repetition it needs to be emphasized that in terms of the order passed by the learned Single Judge in writ petition No. 2158 of 2004, the concerned authorities were required to consider the Appellant's case for regularisation of service and pass appropriate order within three months, but the needful was done after a long time gap of almost three years. Even after framing of the 2005 Rules, the State Government took two years to complete the exercise for regularisation of the services of Medical Officers appointed on contract basis. If the State Government had issued order of regularisation before 5.3.2007 i.e. the last date fixed for receipt of application, the Appellant would have been saved of the harassment, mental agony and financial loss suffered by her on account of unwarranted and forced litigation. In any case, no premium could be given to the Respondents for their contumacious conduct of not complying with the High Court order and unexplained delay in issuing the order for regularization of the Appellant's service.

14. We are also of the view that the Division Bench of the High Court committed serious error by dismissing the writ petition and denying relief to the Appellant despite the fact that she had completed more than 7 years' service as on 30th April of the year of examination i.e., 2007.

15. In the result, the appeal is allowed. The impugned order is set aside, the writ petition filed by the Appellant is allowed and it is declared that the decision of the Respondents to treat the Appellant ineligible for admission to Post Graduate course as an "in-service candidate" was illegal and violative of her Fundamental Right to Equality. If the concerned authorities have so far not declared result of the Appellant's examination, then the needful shall be done within a period of four weeks' from the date of receipt/production of copy of this judgment. If, on the other hand, the result of the Appellant has already been declared and she has been admitted to Post-Graduate course, then she shall be allowed to complete the course and take examination.