
(2012) 06 P&H CK 0021
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 13034 of 1994

Dr. Barjinder Singh Sohal and another	Vs	APPELLANT
The State of Punjab and others		RESPONDENT

Date of Decision : 01-06-2012

Acts Referred:

Citation : (2012) 06 P&H CK 0021

Hon'ble Judges : A.N. Jindal, J

Bench : Single Bench

Advocate : J.S. Bhatia, for the Appellant; Manish Kumar, AAG, Haryana, for the Respondent

Final Decision : Allowed

Judgement

A.N. Jindal, J.—The petitioners have sought this Court to quash the order dated 12.7.1994 (Annexure P-7) and issue a direction to the respondents to release salary of the petitioners for full duration of 3rd year Residency Course of Post Graduate Course or to issue any other appropriate direction. The petitioners, after passing of their MBBS examination, did diploma and thereafter joined the Post Graduate Course under three years residency system through entrance test from 1991 to 1994 and completed the same in August, 1994. They were already in service since 1980 and 1982. As per policy (Annexure P-1) dated 3.8.1987, all PCMS-II officers who had served the State for five years on selection for admission to PG Courses were to be given full pay during the permissible period of the course. In January, 1991, the Guru Nanak Dev University, Amritsar had invited applications for admission to both for 2 years and 3 years PG courses for Medical College, Amritsar as well as Patiala. The eligibility for admission in the Post Graduation Course was that the candidate should possess diploma in the same subject. No-Objection Certificate was issued to the petitioners on 25.6.1991 and 22.7.1991, respectively for seeking admission. As per Clause-II of the said Certificate, the petitioners were entitled to full pay during the admissible period of course, provided they were having 5 years of service including three

years of rural service. It was also directed by the respondents to execute 8 years bond for Post Graduate Course and in default they were to deposit Rs. 1,00,000/- . Earlier the PCMS-II doctors who had joined Post Graduate Course for two years after completion of one year diploma, their salaries were stopped for 2nd year of the Post Graduate Course by the respondents on the ground that salary had been paid while doing diploma course as well as for the first year of Post Graduate Course and, therefore, for the 3rd year no salary would be paid as the privilege of full pay will not be available for more than two years throughout the service. Aggrieved by the order, those doctors had filed CWP No. 15262 of 1992 titled as Dr. Ajit Pal Singh vs. State of Punjab, which was decided on 8.4.1993. The said writ petition was allowed and the Hon'ble Bench had ordered to pay full salary for the permissible period of the Course. Similarly, two other writ petitions i.e. CWP 17207 of 1991 and 2593 of 1991 were allowed. Even prior to that Hon'ble Mr. Justice N.K. Sodhi in CWP No. 622 of 1988 which was decided along with many other writ petitions directed the State Government to pay full salary to the in-service candidates joining the Post Graduate Course wherein it was observed as under:

In the result, the writ petitions are allowed and the decision of the State Government contained in Annexure P-4 with the writ petition is quashed to the extent to which it denies to the PCMS Class II doctors with less than five years service their full pay during the period of the post-graduate course. The State Government, thus directed to pay to all the PCMS Class-II Officers their full pay for the duration of the Post-graduate course, if not already paid. The petitioners shall have their costs which are assessed at Rs. 500/- in each petition.

Sept: 17, 1991 Sd/- (N.K.SODHI) JUDGE

LPA filed against the said order was also dismissed.

2. The petitioners were also paid salary up to June 1993 whereas they had completed their courses in July/August 1994. Their salary was stopped after June-1993. Meaning thereby, they were denied full salary for the 3rd year of the course without any justification for which they are entitled.

3. The reply to the writ petition was filed wherein the respondents No. 1 to 3 while admitting the petitioners to be their employees having passed course and taken admission to the Post Graduate Course, further stated that No Objection Certificate of the Post Graduate Course as framed by the Punjab Government vide their Memo No. 8868-IHBV-83/39147 dated 7.12.1983 imposed the following conditions:

- i) P.C.M.S. Officers (excluding adhoc) seeking admission to diploma courses would be given one year leave of the kind due irrespective of their length of service.
- ii) P.C.M.S.-II officers (excluding adhoc) seeking admission in degree courses would be given leave of the kind due provided they have completed 2 years

regular service.

Subsequently, the State Government amended the policy for issuing No Objection Certificate to the P.C.M.S. Medical Officers vide Punjab Government Memo No. 7/2/5HBIII-87/18469 dated 3.8.1987. The relevant extract of the policy is reproduced as under:

a) All PCMS doctors, who have served the State for a period of five years including three years as rural service on selection for admission to Post Graduate course be given a full pay during the permissible period of the course.

Petitioners were selected for doing three years Residency System Course during the session-1991. No Objection Certificates issued to them for doing the said Residency System Course during the session-1991, inter alia, imposed the following condition:-

(iii) It should be ensured that he has not availed the privilege of full pay and allowances/stipend previously. This privilege of full pay and allowances/stipend will not be available to any candidate for more than three years throughout service.

4. The petitioners accepted the conditions and joined the course in the session-1991. Since the petitioners obtained the benefit of full pay for three years i.e. one year during their diploma course and two years during Residency System Course, therefore, as per the conditions laid down in their No Objection Certificates, they were not entitled to the benefit of full salary for the 3rd year of the course. Replication was filed.

Arguments heard. Record perused.

5. There is no denying the fact that as per Annexure P-1, the petitioners had already served the State for 5 years before their selection for Post Graduate Course. It is also not in dispute that those candidates who had served for 5 years were given full pay during the permissible period of the course. As per para-1 of Memo dated 3.8.1987 (Annexure P-1), all the PCMS-II doctors were to be given full pay during the said permissible period of the course. This policy was never changed by the State Government. Though the petitioners had received full salary while completing diploma course but they could not be deprived of the benefit of full salary for the Post Graduate Course. The conditions in the No Objection Certificates cannot override the policy and are of no consequence. This issue is no more res integra. This court took the view in case of similarly situated doctors while deciding CWP 15262 of 1992 titled: Ajit Pal Singh vs. State of Punjab which is reported as 1993 (3) RSJ 481, wherein it was observed as under:-

4. In this case, the petitioner's counsel subsequently placed on record memorandum issued by Punjab Government dealing with the grant of no objection certificate for undergoing Post Graduate Course. In this circular, decision of this Court is duly noted. The period mentioned in the circular is three

years and full salary is payable during the course. The benefit of this circular is also admissible to the Doctors whose term of first course has not expired. This benefit of salary is now being given for a period of three years by the State Government and as such the stand taken by the Respondent in the written statement is of no avail. The memo above referred to was issued on 20.1.1993 and the written statement in this case was filed earlier to the issuance of the above memo. As such the petitioner would be entitled to full salary for the full duration of the Course. As a matter of fact the State Govt. has given such benefit to other Doctors whose names have been given in para 14 of the writ petition.

In this view of the matter, this writ petition is allowed the petitioners would be entitled to one year salary with all consequential benefits.

All C.Ms. also stand disposed of.