

(1991) 09 P&H CK 0109

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 6315 of 1991 and Civil Miscellaneous No's. 5315 and 5435 of 1991

Dr. Bhushan Lal and others

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 24-09-1991

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 227

Citation : AIR 1992 P&H 177 : (1991) 3 RCR(Civil) 635

Hon'ble Judges : V.K. Bali, J

Bench : Single Bench

Advocate : M.S. Bedi and I.S. Saggu, Rajiv Narain and Raina, A.A.G, for the Appellant; Rajiv Atma Ram, Puneet Kansal, N.K. Nagar and S.S. Rana, for the Respondent

Judgement

1. The claim of the petitioners in the present writ petition under Arts. 226/227 of the Constitution of India is that even though they are working on ad hoc basis as medical officers under the Punjab Government they are as good as regular Punjab Civil Medical Service (For short, PGMS) Class II doctors for all intents and purposes and are, therefore, entitled to be considered for admission to the Post Graduate Degree/Diploma Courses conducted by the Punjab Government in medical colleges against the 60% quota reserved for PGMS Class II doctors. In wake of their aforesaid claim, the prayer is to quash orders Annexures P2 and P3 in so far as the same confer eligibility only to doctors who are in regular employment of the Government. Before, however, merits of the case as projected by Mr. Bedi, learned counsel for the petitioners, are commented upon, it will be useful to give bare minimum facts that have driven the petitioners to invoke the extraordinary jurisdiction of this Court.

2. All the petitioners passed their MBBS examination from the State medical colleges in Punjab from 1983 to 1985 and thereafter all of them completed one-year Internship, as also their House-jobs, as per details given in para 3 of the

writ petition. Bhushan Lal, petitioner, was selected as medical officer and appointed as such by the Punjab Government on 11th September, 1987 and till date he is working on the said post. Lalit Kumar, petitioner, came to occupy the post of medical officer on 18th December, 1987, and he too is continuing on the post till date. Sanjay Kapoor, petitioner, was appointed to the post of medical officer on 17th March, 1987, and he too is holding the said post to date. Anil Kumar, petitioner, who was appointed as medical officer on 28th September, 1987, is also continuing as such on the post till date. The details of places of posting of the petitioners, as have been given in para 4 of the petition, would go to show that all the petitioners since the very first date of their appointment are serving in the rural areas and each one of them has completed his service in the rural area for a period of three years, or more which is uninterrupted and continuous. The respondent-Government issued the notification on 23rd November, 1990, by which it ordered that selection of students for admission to the three years post-Graduate degree course for the session 1990-91 in Government Medical College Patiala and Amritsar shall be made by holding a Post Graduate Entrance Test by taking into account academic achievements of the candidates. The said test was to be conducted by Guru Nanak Dev University Amritsar and Panjabi University Patiala, alternatively, on behalf of the Punjab Government. In terms of aforesaid notification of the Government, the Post-Graduate Entrance Test was conducted on 27th February, 1991, by Guru Nanak Dev University Amritsar. However, prior to the holding of the examination as has been mentioned above, the Punjab Government Health Department issued a corrigendum on 29th January, 1991. vide which some amendments were made in the instructions/notification dated 23rd November, 1990. The eligibility for appearing in the examination as spelt out from the notification (Annexure P1) dated 23rd November, 1990. Would go to show that all in service PCMS Class II doctors and fresh graduates were eligible to take the said test irrespective of their extra attempts in under-Graduate career. Further, reservation to post-Graduate courses for fresh graduate candidates was to the extent of 40% and for in service candidates to the extent of 60%. Out of the 60% quota reserved for in service candidates, Registrars/Demonstrators were to be adjusted first and the rest were to be given to the PCMS doctors. Vide corrigendum (Annexure P3), reference of which has been given above the Government made some modifications in the notification dated 23rd Nov. 1990 (Annexure P1). The relevant part of the corrigendum with regard to eligibility runs as under:--

"Eligibility of candidates will be determined in accordance with orders issued vide Punjab Government No. 7(2)5120-III-89/ 27760 dated 10th November, 1989, whereby three years of rural service (including ad hoc service continuous with regular service) is essential."

The aforesaid criterion for eligibility of candidates seems to be in accordance with the earlier orders dated 10th November, 1989, copy whereof has been placed on record as Annexure P2. A perusal of Annexure P2 also shows that whereas 60% seats were to be filled up first from amongst the Registrars, the remaining seats

were to be offered to the erstwhile PCMS class II officers and 40% seats were to be filled up strictly on merit from amongst graduates.

3. The Punjab Government after having laid down quota for the inservice candidates to the extent of 60% and open merit quota to the extent of 40%, invited applications for admission to the three years post-graduate courses (academic session 1991-92) in the Government Medical Colleges Amritsar, Patiala, and admittedly, the petitioners applied for the same within time. In the examination conducted by Guru Nanak Dev University Amritsar, the petitioners appeared and their merit, both as in service candidates and as general category candidates, is depicted below: -

S.No.

Name of the Petitioner

Marks obtained

Merit in service

Merit General

1.

Dr. Bhushan Lal

46.8

3

32

2.

Dr. Lalit Kumar

45.9

4

37

3.

Dr. Sanjay Kapoor

41.6

11

103

4.

Dr. Anil Kumar

39.1

19

146

The interview, after the examination was over and the merit of various candidates was known, was scheduled to be held on 2nd May, 1991, and when the petitioners learnt that they are not being considered under the 60% quota meant for in service candidates and instead are being considered against the quota of 40% fixed for the general category, they filed the present writ petition and prayed that the interviews scheduled for 2nd May, 1991, be stayed.

4. The petition came up for motion hearing on May 1, 1991, and by an interim order, the court directed that the petitioners be allowed to appear in the interview for admission to the three years MD/MS postgraduate course as in service candidates. The records of the case reveal that the Government has not granted admission either to the petitioners or others who might have been selected if the petitioners are not to be treated as in service candidates and after the interview the result of the present petition is awaited.

5. It may be mentioned here that initially, the petitioners had staked their claim on the basis of Annexures P2 and P3 and had prayed for a direction to be issued to the respondents to consider their case for admission to the MD/MS postgraduate course as in service candidates on the basis of their continuous three years rural service but during the pendency of the writ petition they have chosen to challenge the said notification in so far as a distinction is created between in service candidates on the basis of nature of their appointment, i.e, ad hoc or regular.

6. Written Statement has been filed by Dr. S. K. Khetarpal, Principal, Medical College, Amritsar, on behalf of respondent No. 3. In so far as the facts are concerned, the same have been admitted. Relief claimed by the petitioners is sought to be denied on the only ground that inasmuch as three years rural service is essential for the PCMS Class II officers and continuous ad hoc service followed by regular service alone has to be counted, those who were holding the post on ad hoc basis and were not made regular cannot, thus, be treated as in service candidates. If that be so, the petitioners can stake their claim only under the quota of general merit. None of the respondents, however, has filed written statement to the petition that was amended during the pendency of this case. The petitioners also filed replication to the written statement filed by respondent No. 3 and also placed on record, by way of additional affidavit, orders Annexure P5 dated 25th July, 1987, vide which 153 PCMS doctors working on ad hoc basis who had completed one year ad hoc service as on 31st March, 1985, were ordered to be regularised with effect from 1st of April, 1985, as also letter Annexure P6 issued by the Director, Health & Family Welfare, Punjab, No. EIV (4)-Pb-91 / 3441 -6 dated 24-4-1991, vide which the case of ad hoc doctors who had completed four years" service as on 30th June, 1991, was to be processed

for regularisation. One Dr, Satinder Pal Singh filed Civil Misc. No. 5315/1991 for being impleaded as a respondent on the ground that if the petition is allowed, the same would affect his admission to the post-graduate course. This application was ordered to be heard along with the main case. Yet another civil misc. No. 5435 of 1991 has been filed with the same prayer, and the same order as referred to in C.M. No. 5315/1991 was passed.

7. The main contention of learned counsel for the petitioners is that in view of the fact that the petitioners are holding the post of PCMS (Class II), even though on ad hoc basis, the stand of the respondents that they shall be treated to be from the quota of general category is against the reservation so provided under various notifications, reference of which has been given above. In the alternative, learned counsel contends that if the said notifications create a distinction between in service ad hoc doctors and in service regular doctors, in that case the said in equal treatment would be without any rational and without any object to be achieved. This would amount to in equal treatment meted out to equals and, therefore, would be violative of Art. 14 of the Constitution of India, contends the counsel. On the other hand, Mr. Raina appearing for the State of Punjab and the learned counsel appearing for the applicants, reference of whom has been given above, contend that by no circumstances, the petitioners who are holding the posts on temporary basis and are working in a purely stop-gap arrangement can stake their claim under the quota meant for in service candidates. Further, orders Annexure P2 and P3 would clearly make out that one of the conditions for in service candidates is that they have put in three years of service in the rural areas and the very fact that if such service is on ad hoc basis (it) cannot be counted unless followed by regular appointment would be enough to show the intention that it is only regular PCMS Class II doctors who can take advantage of the quota fixed for in service candidates. Still further, the contention of the respondents is that inasmuch as regular employees have necessarily to furnish a bond undertaking to serve the State for five years after their admission and successful completion of the post-graduate course, and which bond cannot be forced upon persons in ad hoc service, is in itself enough to create a difference between the in service ad hoc doctors and in service regular doctors.

8. After hearing learned counsel for the parties at great length and perusing the record of this case, I am of the considered view that the contention raised by the learned counsel for the petitioners has merit and, therefore, this petition must succeed. It shall be seen from narration of facts given in the petition, and on which there is absolutely no dispute, that all the petitioners have by now rendered more than three years of continuous service which happens to be exclusively in the rural areas. All the petitioners were appointed by a Departmental Selection Committee consisting of the Director, Health Services, and a Civil Surgeon. After their selection, all the petitioners were appointed in PCMS Class II service on various dates, as reflected in para 4 of the petition. All the petitioners are discharging exactly the same duties as were being carried out by regular PCMS Class II doctors in the State of Punjab. The petitioners

admittedly as well, are drawing the same pay-scales as are being given to the regular doctors in PCMS Class II. All the petitioners have rendered service in rural areas which is more than three years. The petitioners placed on record additional documents Annexure P5 and P6. On the application filed by them in that behalf, notice was given to the respondents but no reply in response to the said application has been filed. A perusal of the said additional documents would reveal that the Department of Health & family Welfare, vide orders dated 25th July, 1987 (Annexure P5) has already regularised the services of 153 PCMS Class II doctors who were working on ad hoc/short terms basis and who had completed one year service as on 31st March, 1985. It is also made out from letter dated 24th April, 1991, that the Director, Health & Family Welfare, Punjab, had demanded within seven days the relevant information, as is spelt out from Annexure P6 itself, for the purposes of regularising services of ad hoc doctors who have completed four years" service. This information is a sequel to the recommendations of Sandha walia Committee which was constituted by the Government with a view to find out as to whether ad hoc doctors in PCMS Class II should be regularised and, if so, under what circumstances. The contention of the petitioners that in view of the recommendations of Sandha walia Committee, all of them are likely to be regularised in service is well made out from perusal of the documents, reference simply of which has been given above. It is, thus, evident that even though the petitioners were not in regular employment by the time the applications were invited for admission to the post-graduate course, they were eligible for such regularization, as per the decision taken by the Government in view of the recommendations made by the committee constituted in that behalf. It is also obvious that those doctors whose services were regularised in the year 1987 and those who had been in service only for one year on ad hoc basis were eligible to apply against the quota of in service candidates but the petitioners who had put in more than three years" continuous service were not thought equal even to them. Surely, the Government was alive to the fact that the decision to regularise the services of the petitioners had since already been arrived at and in due course they would occupy permanent berths in PCMS Class II Service. Another fact which is patent and which requires to be highlighted is that even though the petitioners are working on ad hoc basis and are styled by the respondents to be inferior to those who are holding regular appointments they have far excelled their so-called superiors in the entrance test. In the background of the facts, as have been fully narrated above, the moot point that calls for determination is as to whether the petitioners have been discriminated vis-a-vis the regular PCMS Class II doctors in the matter of admission to a higher course. It is settled law by now that in considering the reasonableness of classification from the viewpoint of Art. 14 of the Constitution of India, the Court has necessarily to see the objective of such classification. One such objective although not pleaded, yet pressed into service at the time of arguments, is that regular employees are asked to fill in a bond to serve the Government for a period of five years and inasmuch as the said bond could not be got filled from the persons in ad hoc service, it would amount to reasonable

classification, and it is with this object in mind that the petitioners have not been considered in the quota of in service candidates. The second point on which differential treatment is sought to be supported by the respondents is that the petitioners came to be selected by a departmental selection committee and not through the Punjab Public Service Commission which alone is the competent body for making selections with a view to provide regular appointments. In so far as the first ground is concerned, besides the fact that counsel appearing for the petitioners has undertaken on behalf of his clients that if admitted to the post-graduate course, they would execute the requisite bond, I do not find any fetter in the way of the Government to ask for such a bond to be filled by the petitioners and on their failure to do so deny them the admission to the post-graduate course. On the second point that has been mentioned above, suffice it to say that the merit of the petitioners is duly reflected from the result of the entrance test. Once the entrance test was provided, no other factor can be taken to determine inter se merit of ad hoc and regular doctors. Even otherwise, I do not find any merit in the contention of the learned counsel for the respondent that simply because regular PCMS Class IT doctors were selected by the Public Service Commission, they would have an edge over their counterparts who are in ad hoc service on account of their appointment pursuant to their selection by a departmental selection committee. It is possible that regular selection through the Punjab Public Service Commission may not take place for years. It is not the case of the respondents that the petitioners appeared along with some others before the Public Service Commission and were not selected. Even otherwise, the interview by the Public Service Commission which lasts only a few minutes is not always the real test of merit. In fact, selections on the basis of interview alone, be it by the public Service Commission or any other competent body, have been adversely commented upon by the courts from time to time. We need not go into all these questions for the simple reason that the merit of the petitioners, as compared to those who are in regular service, cannot be better projected than by the result of an entrance test. If merit was to be a criterion, and the sole determining factor, then in that case the result of an entrance test alone should have provided the said basis. The stand of the respondents, based upon two grounds on which distinction is, thus, sought to be created between in service ad hoc doctors and in service regular doctors, has, thus, to be unhesitatingly rejected. The petitioners are admittedly in service, each one of them having put in more than three years of continuous service in the rural areas. They have been placed higher in merit in the entrance test. The matter pertained to admissions to a higher class, and not seniority or other benefits in the service. On the sole ground that the petitioners were in ad hoc service and on that ground alone they shall not be treated as in service candidates, in the facts and circumstances of this case would offend Art. 14 of the Constitution of India. By no logic whatsoever, the petitioners could be treated to be candidates falling under the general category, and not in the category of in service candidates. In a recent decision rendered by Hon''ble Supreme Court of India, reported as Deepak Sibal Vs. Punjab University and Another, , it has been held that if classification for

admission cannot be justified on any reasonable basis, the same must be held to be discriminatory and violative of Art. 14 of the Constitution. The facts of the aforesaid case would go to reveal that it was a case of admission to the evening classes in LL.B, three-years degree course. Only those who were in regular employment of Government/ semi-Government institutions were entitled to seek admission and those who are in service of private limited companies or other non-Government institutions were debarred. The apex court struck down the classification by holding that the same as made by the respondent-University could not be justified on any reasonable basis. The basis on which the admission is being denied to the petitioners in the present case in the 60% quota of in service candidates is not at all justified on any reasonable basis and the same, thus, must be held to be discriminatory and violative of Art. 14 of the Constitution.

9. In all fairness to Mr. Rajive Atma Ram, it may be mentioned that he has relied on *Amar Singh v. State of Punjab* (1984) 1 SLJ 441, *Dr. Suresh Sharma v. State of Punjab* (1986) 2 Serv LR 205, *Kumari Chitra Ghosh and Another Vs. Union of India (UOI) and Others*, and *D.N. Chanchala Ors. Vs. The State of Mysore and Others*, and strenuously urged that in view of the very nature of the job carried out by the petitioners, the Government is justified to create a distinction between them and the in service regular PCMS Class II doctors. The authorities cited by Mr. Rajive Atma Rani, however, have no parity with the facts of the present case and are distinguishable. Repeated stress of the learned counsel on the nature of job that the petitioners are doing, i.e., ad hoc, and, therefore, they do not deserve to be treated as in service candidates does not commend to me at all. Even though ad hoc appointments are made in the administrative necessity, in the event of an emergency needing additional hands for performing administrative task of a given post lying either vacant or created to meet the given temporary necessity or emergency, yet the facts of the present case go to reveal that the petitioners have worked on their respective posts for a period of about four years by now. For the very fact that the petitioners have continued uninterruptedly for such a long time, they cannot be styled to be ad hoc of the kind who are called upon to do their duties in an emergency, when the administration stood in dire need of additional hands, as is sought to be projected by Mr. Rajive Atma Ram, learned counsel for the applicants.

10. Mr. Raina, representing the State, relies upon a Division Bench judgment of this Court in CWP 3961/1991 (*Dr.Amarjit Singh v. State of Punjab*) decided on 16th April, 1991. The short order that was passed while disposing of the said writ petition in limine runs as follows:--

"No occasion is provided here for granting to the petitioner the relief sought. The mere fact that the petitioners may have been appointed to the post on ad hoc basis for as long as four years, does not entitle them to be regularised without passing the requisite test.

Being Class I post, the rule in *Piara Singh v. State of Punjab* (CWP 72/88)

(reported in 1989 Lab IC 807) would clearly not be applicable.

The further prayer of the petitioners regarding admission to the post-graduate course examination from the 60% quota, is clearly untenable in view of the requirements that the candidates must have done 3 years rural service. In terms of the advertisement, Annexure P/1, such service for this purpose means service, at least for some period in a regular capacity. As the petitioners have never been made regular, they were clearly ineligible. Dismissed."

A perusal of the writ petition in which the aforesaid order was passed goes to show that the main relief of the petitioners of the said case was for regularisation. In one of the paras they had also mentioned that inasmuch as they were in service, although on ad hoc basis, they should be treated to be eligible in the 60% quota of in service candidates. However, the distinction created between them and the regular PCMS Class II doctors was not even remotely challenged. It is true that in the order aforesaid it has been said that in terms of advertisement Annexure P1, service rendered by the petitioners of the said case had to be regular for some period and inasmuch as they were not regular, they were clearly ineligible, but as said above, no challenge to the differential treatment meted out to the petitioners was ever projected in that case. The court was never invited to comment upon the validity of notifications/orders treating the petitioners outside the category of in service candidates on the basis of their having been appointed on ad hoc basis. It is plain that the issue was neither fully and exhaustively canvassed nor adjudicated upon. Besides the fact that the aforesaid case was decided in limine, the same did not involve the point canvassed in this case and it would be enough so as not to "provide a successful defence to the respondents on the basis of precedents by a larger bench.

11. For the reasons aforesaid, this petition is allowed and the notifications/orders Annexure P2 and P3, in so far as the same make a distinction between in service regular candidates and in service ad hoc candidates, are quashed. The respondents are directed to consider the petitioners for admission to the three-years M.D./M.S, course as in service candidates. The respondents are further directed to finalise the selection list by treating the petitioners as in service candidates and by considering their merit against the 60% quota fixed for in service candidates. Inasmuch as considerable and valuable time has already been lost, this exercise must be done within 15 days from today.

12. Civil Misc. Nos. 5351/91 and 5435/91 seeking the applicants to be impleaded as respondents deserve to be rejected for the reason that the petitioners have pleaded no cause of action against them. Their cause of action is against the State and the plea is only of discrimination which in the very nature of things has to be defended by the State alone. The said applications are, consequently, rejected. It may be mentioned here that even though the applications aforesaid have been rejected, counsel appearing for the said applicants have been given full chance to support the plea of the Government.

13. Civil Writ Petition No. 7696/91 (Jag-dish Singh v. Punjab State) is also disposed of in the same terms, as identical questions of law and facts are involved therein.

14. In the peculiar facts of these cases, however, there shall be no order as to costs.

15. Order accordingly.