
(1995) 03 P&H CK 0094
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petn No. 12973 of 1994

Dr. Harbir Singh

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 01-03-1995

Acts Referred:

Constitution of India, 1950 — Article 12, 226, 47
Punjab Agricultural University Act, 1961 — Section 4

Citation : AIR 1995 P&H 282 : (1995) 110 PLR 359 : (1995) 3 RCR(Civil) 269

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

Bench : Single Bench

Advocate : D.V. Sharma, for the Appellant; Ms. Charu Tuli, AAG, for the Respondent

Judgement

1. This petition involves a challenge, to the policy of the Government to reserve 60% seats only for the in-service Punjab Civil Medical Service Doctor/ Punjab Civil Medical Service (Dental)/P.D.E.S. candidates. The petitioner has prayed for the quashing of this reservation and also for issue of a direction to the respondents to treat him at par with the Punjab Civil Medical Service (for short "P.C.M.S.") in-service Doctors for admission to the Post Graduate Degree Course in Medical Education.

2. A look at the averments made in the petition shows that the petitioner joined service of the Government of Punjab on 29-1-1987 on his appointment as Medical Officer at the Primary Health Centre Sihar Block, Maloud, District Ludhiana. At the time of entry into service the petitioner possessed the academic qualification of M.B.B.S. pass. He served up to 12-12-1989. Thereafter, he joined as Medical Officer in the service of the Punjab Agricultural University, Ludhiana (for short "P.A.U."). In response to the Notification dated 8-6-1994 issued by the Government of Punjab for admission to Three Years Post Graduate Degree Course in the Government Medical/Dental Colleges at Patiala and Amritsar, the petitioner applied for admission to the Post Graduate Entrance Test which was to

be conducted by the Guru Nanak Dev University, Amritsar (for short "the G. N. D. University"). The petitioner appeared in the Entrance Test held by the G.N.D, University and his name came to be included at Sr. No. 193 in the combined merit list prepared by the University. Claiming himself to be eligible for admission against the 60% seats reserved for the in-service P.C.M.S. doctors, the petitioner represented to the respondents for being admitted to the Post Graduate Medical Course. The respondents did not yield to the request of the petitioner and due to this reason the petitioner has filed this writ petition and has made the prayers as aforementioned. Petitioner's contention is that P.A.U. is an institution established in terms of Section 4 of the Punjab Agricultural University Act, 1961 and since the University is under the direct control and management of the State Government, the service rendered by him as Medical Officer under the P.A.U. shall be deemed as service under the State Government and he cannot be denied admission to the Post Graduate Medical Course on the ground that he is not a member of the P.C.M.S. Another contention of the petitioner is that the provision contained in the notification issued by the Government for reserving 60% seats only for the in-service P.C.M.S. officers or P.C.M.S. (Dental)/ P.D.E.S. officers is arbitrary, unreasonable and capricious. Yet another contention of the petitioner is that when the Government has granted relaxation in the requirement of three years rural service in favour of the Demonstrators working in the Government Dental Colleges at Patiala and Amritsar, there is no justification for not to grant similar relaxation in the cases to other in-service Doctors.

3. Reply to the writ petition has been filed by respondent No. 3 and therein it has been pleaded that the petitioner had served as Doctor in the P.C.M.S. for a short period of 2 years 10 months and 14 days on the basis of ad hoc appointment given to him. Thereafter he resigned from the Government service and joined the service of the P.A.U. Respondent No. 3 has pleaded that the petitioner does not have a right to be admitted against the 60% seats because he does not belong to the P.C.M.S.

4. Argument of Shri Sharma is that while serving as Medical Officer under the P.A.U. the petitioner will be deemed to be serving the State Government because the P.A.U. is a State under Article 12 of the Constitution of India and there is no justification to ignore the candidature of the petitioner for admission to Post Graduate Medical Course against the 60% seats reserved for the members of the P.C.M.S. and P.C.M.S. (Dental)/P.D.E.S. candidates. In the alternative, Shri Sharma argued that if persons, like the petitioner, are not treated as eligible for admission to the Post Graduate Medical Courses on the basis of the conditions enumerated in para 1.2(i) of the notification issued by the Government, that clause is liable to be declared as unconstitutional on the ground that there is no justification to classify the Doctors into two classes or categories for the purposes of admission to the Post Graduate Medical Courses. Shri Sharma elaborated his contention by pointing out that the object of reservation of seats in favour of the in-service Doctors can very well be achieved by giving option/opportunity to all such Doctors to compete for the Post Graduate

Medical Courses. He further argued that the bifurcation of Doctors into two classes does not have any nexus with the object of admission to the Post Graduate Medical Courses on the basis of merit determined as a result of the Entrance Test. Shri Sharma then argued that the requirement of three years rural service cannot be enforced against those in-service Doctors who do not get an opportunity to serve in the rural areas and that in any case when the Government has thought it proper to grant relaxation in the requirement of three years rural service in favour of various categories of the in-service Doctors, such a condition must be considered as directory and the Government should be directed to take a decision for relaxation of this requirement in the cases of other in-service Doctors. Another contention of Shri Sharma is that the service rendered by the petitioner as Medical Officer in the P.A.U. should be treated as rural service because the petitioner had been treating the rural population while serving as Medical Officer under the P.A.U. Mrs. Tuli argued that the conditions laid down by the Government, for admission to the Post Graduate Medical Courses against 60% reserved seats do not suffer from any element of arbitrariness. She argued that the earmarking of 60% seats in the Post Graduate Medical Courses, after excluding 25% seats required to be filled on all-India basis, only for those serving in the P.C.M.S. and P.C.M.S. (Dental)/P.D.E.S. does not suffer from the vice of discrimination because the Government has in its wisdom thought it proper to give an opportunity of having higher education to those who are already in the service of the Government. Mrs. Tuli further argued that even though the P.A.U. may be a State for the purposes of Article 12 of the Constitution of India, it cannot be treated as a part of a Government department and the service rendered under the P.A.U. cannot be treated as service under the State Government. Mrs. Tuli argued that the requirement of three years rural service is mandatory and this provision has been incorporated to encourage only those who serve the rural masses of the State.

5. Admissions to the Post Graduate Courses in Medical Education are governed by the notification issued by the State Government in the light of the directions given by the Supreme Court in *Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others*, , and other cases. In accordance with the guidelines given by the Supreme Court the Government of Punjab has been issuing notifications for admission to the Post Graduate Medical Courses. For the year 1994-95 such notification was issued on 8-6-1994. Para 1.2 of this notification reads as under:--

"1.2: Distribution of Seats.

25% of the total seats will be filled on AH India basis through competitive Entrance Test. Of the remaining seats 60% will be filled from amongst the eligible P.C.M.S./P.C.M.S. (DENTAL)/P.D.E.S. Medical/Dental graduates through Post-Graduate Entrance Test.

(i) For 60% Seats: The test shall be open to the candidates who have completed three years rural service in Punjab Civil Medical Service and P.C.M.S. (DENTAL)/P.D.E.S. Candidates with three years service out of which two years in difficult

border areas will also be eligible. (The period of three years will be computed up to 30-6-1994. A certificate regarding length of P.C.M.S./P.C.M.S. (DENTAL)/P. D.E.S. services from the competent authority i.e. Civil Surgeon, Principal Medical/ Dental Colleges/Medical Superintendents E.S.I. Hospital should be attached by each candidate with the application while applying for the test. Only regular service will be counted and in-service candidates be considered as on deputation for studies with Medical Education and Research Department without any deputation allowance.

(ii) For 40% Non P.C.M.S./P.C.M.S, (DENTAL)/P.D.E.S. Seats: Medical/Dental Graduates who are in Punjab Domicile and are not in P.C.M.S./P.C.M.S. (DENTAL)/ P.D.E.S. will be eligible irrespective of the college from where he/she has graduated. Those P.C.&S./P.C.M.S. (DENTAL)/P. D.E.S. doctors who have not completed the requisite service and resign to join such courses will also be eligible under this category. Detail of subjects in which the courses are available along with the number of seats in each speciality in each college is given at Appendix-II."

The admitted case of the parties is that for the purposes of admission to the Post Graduate Medical Courses an Entrance Test was held by the G.N.D. University, Amritsar, and on the basis of the merit position of the candidates determined on the basis of the said test admissions have been given to the candidates against the 60% seats earmarked for the in-service Doctors as also for 40% seats earmarked for non-P.C.M.S./P.C.M.S. (DENTAL) P.D.E.S. candidates. There is no denying that the petitioner had a right to be considered for admission against the 40% seats earmarked for non-P.C.M.S./P.C.M.S. (DENTAL)/P.D.E.S. candidates. It is also not in dispute that the petitioner has not secured merit high enough to be admitted against the 40% seats. However, his claim is that on the basis of the service rendered by him as Doctor in the P.C.M.S. for 2 years 10 months and 14 days coupled with his service as Medical Officer under the P.A.U. the respondents should have considered his candidature for admission against 60% seats earmarked for the in-service Doctors.

7. After having thoughtfully considered I the submission of Shri Sharma that the I service rendered by the petitioner as Medical Officer under the P.A.U. should be treated as service rendered under the Government, I find no merit in it. No doubt, the P.A.U. is a body corporate established by an Act of Legislature and the Government does have some administrative control over the working of the University inasmuch as a number of officers are on the Board of Management of the University, but the autonomous and independent status of the University cannot altogether be ignored and it cannot be held that the P.A.U. is a part of a Government department. The very fact that the University has been established under the P.A.U. Act, 1961, and it is an independent autonomous body negates the theory of the University being a part of the Government. The exercise of some administrative or financial control by the Government, in order to oversee that the funds provided by the Government are properly utilized cannot

obliterate the character of the University as an independent institution and a person serving the University cannot be treated as a civil servant. An employee of the University cannot be transferred to a Government department except by way of deputation. Similarly, a Government servant cannot be transferred to the service of the University except by way of deputation. The services under the University are totally independent of the Government services. The University has got separate rules regulating recruitment and conditions of service of its employees and they have nothing to do with the Government services. The Government does not have any control in the matter of recruitment etc. of the employees of the University. Therefore, the service rendered by the petitioner as Medical Officer under the P.A.U. cannot be equated with and cannot be treated as a part of the service rendered by him under the Government. As a logical corollary, the petitioner cannot claim that he should be treated as a member of the P.C.M.S. or at least a Government servant for the purpose of admission to the Post Graduate Medical Course against the 60% seats.

8. Argument of the learned counsel that the reservation of 60% seats only for the members of the P.C.M.S. and P.C.M.S. (Dental)/P.D.E.S. candidates is discriminatory and violates the fundamental rights guaranteed to the petitioner under Articles 14 and 15 of the Constitution of India does not require adjudication in this case because in my opinion the petitioner is not entitled to claim admission against the 60% seats earmarked for the in-service candidates because he does not fulfil the requirement of three years rural service. A plain reading of para 1.2(i) clearly shows that the Entrance Test is open only to those candidates who have completed three years rural service in P.C.M.S. The P.C.M.S. (Dental)/P.D.E.S. candidates with three years service are also treated as eligible in case such candidates have rendered two years service in difficult border areas. In my opinion, this provision is mandatory in character. The very use of the word "shall" in the opening line of this paragraph, in the light of the object of reservation of seats for the in-service candidates shows that the provision is mandatory. The Government is undoubtedly possessed with the power to lay down conditions for admission to the Post Graduate Medical Courses and if in its wisdom the Government has thought it proper to lay down three years rural service as a condition precedent for admission of the members of the P.C.M.S., the provision cannot be treated as directory nor can it be said to be arbitrary. The object underlying the incorporation of such a condition is to encourage the Doctors to serve in the rural areas. A large segment of the population of this country, including the State of Punjab, lives in rural areas and the medical facilities available to this section of the population of the country are meagre. In spite of the herculean efforts made by the Government during the last four decades, the rural population has not been provided with proper medical facilities. One factor which has largely contributed to the meagre medical facilities to the rural population is the nonavailability of the competent Doctors who are inclined to serve the rural masses. The efforts made by the State to fulfil one of the goals enumerated in the Preamble to the Constitution read with Art.

47 has remained unfulfilled on account of the paucity of Doctors to man the hospitals and dispensaries in the rural areas and with a view to provide proper medical services to the rural population and at the same time to encourage the Doctors to serve in the rural areas, the Government has thought it proper to incorporate the condition of three years rural service as a condition precedent to admission to the Post Graduate Medical Courses in so far as the in-service Doctors are concerned. This policy of the Government fulfils two objectives. In the first place, it encourages those Doctors to serve in the rural areas who intend to go in for higher medical education. Secondly, it provides sufficient number of Doctors for services in the rural areas of the State. An ancillary objective served by this policy is that the in-service Doctors get an opportunity to equip themselves with higher knowledge and learning in various specialities. This knowledge and learning ultimately benefit the Doctors and the society at large. Therefore, I am of the considered opinion that the requirement of three years rural service is not only mandatory but it must be enforced rigorously by the Government, before giving admission to the in-service P.C.M.S. Doctors. Dilution of this requirement in favour of an individual or a group of individuals is wholly unwarranted and in any case relaxation in the requirement of three years rural service in one or more than one cases cannot entitle others to claim similar relaxation as a matter of right.

9. In so far as the petitioner is concerned, he has served as a P.C.M.S. Doctor only for a period of 2 years 10 months and 14 days. Clearly, he does not fulfil the requirement of three years rural service as envisaged in the notification dated 8-6-1994. Therefore, he is not entitled to admission to the Post Graduate Medical Course against the 60% seats.

10. Argument of Shri Sharma that the service rendered by the petitioner as Medical Officer under the P. A.U. should be treated as rural service does not merit acceptance for the simple reason that the petitioner cannot be treated to have served in the rural areas merely because he is employed in the service of the P.A.U. No material has been produced by the petitioner to show that he had in fact been serving in the rural areas. Above all, his service as Medical Officer in the P.A.U. cannot be treated as a part of service envisaged by para 1.2 of the notification dated 8-6-1994.

11. For the reasons above mentioned, the writ petition is held to be without merit and is, therefore, dismissed. Parties are left to bear their own costs.

12. Petition dismissed.