
(2014) 01 P&H CK 0081
In the Punjab And Haryana At Chandigarh
Case No : LPA-2084-2013 (O and M)

Dr. Jasvir Kaur

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 22-01-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 01 P&H CK 0081

Hon'ble Judges : Sanjay Kishan Kaul, C.J.;Arun Palli, J

Bench : Division Bench

Advocate : Sangita Dhanda, for the Appellant; Alok Jain, Additional Advocate General, Punjab for Respondents No. 1, 2 and 4 and Mr. Manish Dadwal, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Sanjay Kishan Kaul, C.J.—The appellant after obtaining MBBS Degree from the Government Medical College, Amritsar in the year 2002 proceeded to work with a private Charitable Hospital at Shahkot, Jalandhar from May 2005 to October 2005 till she was appointed as a Rural Medical Officer (RMO) in Zila Parishad and joined the Subsidiary Health Centre (SHC), Daggan under Community Health Centre (CHC), Budhwar, Block Hazipur, District Hoshiarpur. She worked from 01.06.2006 to 04.02.2009 and was transferred to Subsidiary Health Centre, Kang, Block Khadoor Sahib under Community Health Centre, Mianwind, District Tarn Taran where she worked from 05.02.2009 to 12.03.2011. The appellant had subsequent tenures and completed her probation. It is the case of the appellant that she has completed 4 years and 9 months service as RMO and 2 years and 2 months service as PCMS. The appellant was desirous of carrying on a Post-Graduate Course. The Medical Council of India issued a notification on 15.02.2012 making a provision for weightage to be given by the government/competent authority as an incentive at the rate of 10% of 1 mark obtained for each year of service in the remote and/or difficult areas up to the maximum of

30% marks obtained in the National Eligibility-cum-Entrance Test. The remote and difficult areas were as defined by the State Government/competent authority.

2. The State Government vide its notification dated 05.04.2013 sought to fill up the PG seats in which the appellant participated and secured 601.93 marks as per result declared on 16.05.2013. The prospectus of respondent No. 3 for admission to the PG Course-2013 had a provision for 60% seats out of 50% State quota seats to be provided to PCMS-in-service doctors. It is not necessary to extract all the relevant portions of the brochure which already stand extracted in the impugned judgement. Suffice to say that in service employees were required to complete four years of service in very difficult (Category "D") area or six years of service in difficult area (Category "C") or on an appropriate combination of both and in case of candidates who had completed five years of service as on 01.01.2012, they should have completed two years" service in "most difficult area" or three years" service in "difficult area".

3. The appellant laid a claim to NOC for admission in 60% quota meant for in service PCMS doctors on the criteria of having cleared the probation and served for four years in very difficult area (Category "D") as notified on 31.01.2011. This in turn was predicated on the plea of having rendered more than four years and nine months" service in Subsidiary Health Centres, Daggan and Kang respectively which were entitled to be considered as "more difficult areas". The appellant was, however, not given this benefit, but the period was treated as having served in "rural area" being Category "C" which resulted in the appellant filing a writ petition under Article 226 of the Constitution of India which has been dismissed by the impugned order dated 30.08.2013.

4. The only controversy arose out of the issue qua categorization of the areas where the appellant served. At the time when the appellant served in the two areas, there was no such categorization of A, B, C and D. A different methodology was adopted by making categories as "normal, difficult and more difficult". The two areas where the appellant served were categorized as "more difficult" areas and, thus, she claimed the benefit. The learned Single Judge, however, rejected her plea that the said areas earlier categorized as "more difficult" areas on re-categorization were put under Category "C" and not Category "D". The reasoning of the impugned judgement is based on the fact that the categorization is not static and, thus, it is open to change the categorization of the area.

5. On hearing learned counsels for the parties, we find no difficulty in accepting the proposition laid down in the impugned judgement that there cannot be a static definition of an area. However, what is relevant is not how the area is categorized on the date of admission, but as to how the area was categorized when the person rendered the service. It is an undisputed position that when the appellant served in the areas, they were categorized as "more difficult" and she has had more than four years of service making her qualified.

6. Learned State counsel for respondents No. 1, 2 and 4 sought to canvass before us that the appellant had served in the Subsidiary Health Centres and not in the Community Health Centres and the Subsidiary Health Centres have been put under categories "C and "D" respectively as one of them has been treated as "rural" and, thus, the appellant does not meet the bench-mark of four years of service in "more difficult" areas (Category "D"). He cannot seriously dispute that the nature of the areas where the appellant has served would be dependent on when the appellant rendered service. He, however, sought to submit that one of the Subsidiary Health Centres was defined as "rural".

7. We, thus, call upon learned State counsel to show us from the categorization list of the relevant time, which is annexed as Annexure P2, what he sought to contend. He is, however, unable to show us so and the reason is quite apparent from the impugned judgement. The Subsidiary Health Centres at the time when the appellant served were not separately categorized, but fell under the Community Health Centres. The categorization has been given only to Community Health Centres and it is undisputed that Community Health Centre, Budhwar and Community Health Centre, Mianwind have both been categorized as "more difficult". The Subsidiary Health Centres would, thus, take their categorization from the Community Health Centres when there is no separate categorization of the Subsidiary Health Centres.

8. The aforesaid being the position, the appellant meets the requisite criteria and, thus, is entitled to admission with respondent No. 3/College.

9. At this stage, learned counsel for respondent No. 3 states that the course consists of four semesters of two years and most of the course has been completed qua the first year and, thus, it would be advisable for the appellant to take admission in the next academic session of 2014-2015, a course of action acceptable to the appellant.

10. The appeal is accordingly allowed in the aforesaid terms; impugned judgement of the learned Single Judge dated 30.08.2013 is set aside and relief is granted in terms aforesaid. The parties are left to bear their own costs.