(2014) 04 P&H CK 0205

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 6901 of 2014 (O&M)

Dr. Kamalpreet Singh — APPELLANT

Vs

State of Punjab and Others — RESPONDENT

Date of Decision : 28-04-2014

Acts Referred:

Citation : (2014) 04 P&H CK 0205

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Advocate : R.K. Malik, Senior Advocate and Mr. Mandeep Singh, Advocate for the Appellant; Monica Chhibber Sharma, Deputy Advocate General, Punjab, Mr. Manish Dadwal, Advocate for Respondent Nos. 2 and 3 and Mr. A.P.S Rehan, Advocate for Respondent No. 4, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Rajesh Bindal, J.—After hearing learned counsel for the parties, considering the urgency of the matter and the fact that counselling is scheduled for today, the writ petition was allowed by passing the following short order:

For the detailed reasons to be recorded in writing during the course of day, considering the fact that counselling for admission to MD course against 60% quota of PCMS doctors, is scheduled for today, the present petition is allowed and the case of the petitioner for admission to MD course is directed to be considered in the quota meant for 60% PCMS candidates. However, it is made clear that the same shall be for MD Forensic Science and MD Pathology, the seats for which have not been filled up and not by disturbing the admission already granted to a candidate in any other subject. It is for the reason that the petitioner has impleaded only one candidate as respondent who, according to him, shall be affected considering his merit position, but the fact remains that if the petitioner gets the subject in which respondent No. 4 has already got admission on the basis of his merit position, he may choose a subject against which another candidate has already been admitted, which may have a chain reaction, if the

admissions are to be considered on merits. The other candidates, who may be affected, are not party before this court.

2. The petitioner, who is a PCMS Officer and serving as a Medical Officer in Primary Health Centre, Dorangla, District Gurdaspur presently, has filed the present writ petition aggrieved against the action of the official respondents, whereby he has not been granted no objection for admission to MD Course against the 60% quota meant for PCMS doctors.

3. Learned counsel for the petitioner submitted that the petitioner was selected as Rural Medical Officer and served as such from 1.6.2006 to 31.8.2009 in Subsidiary Health Centre, Nawan Sala, District Gurdaspur. Thereafter, he joined PCMS and appointed as Medical Officer on regular basis. He joined his service as such on 26.4.2010 in Primary Health Centre, Dorangla, District Gurdaspur and is continuing since then. He applied for admission to the course of MD against 60% quota meant for in service PCMS doctors. The conditions are that the candidate should be a regular PCMS doctor and further that he has completed either 4 years service in very difficult (Category-D) area or 6 years service in difficult (Category-C) area or an appropriate combination of both. The submission is that the total service rendered by the petitioner as on the cut off date i.e. 31.3.2014 was 7 years 2 months and 6 days. Both the Health Centres, where the petitioner either served as Rural Medical Officer or Medical Officer fall in the category of difficult area.

4. He further submitted that when the petitioner had served as Rural Medical officer in Subsidiary Health Centre, Nawan Sala, District Gurdaspur, there was no categorisation of the Subsidiary Health Centres.

5. They were under the control of Primary Health Centre. In terms of the Division Bench judgment of this Court in LPA No. 2084 of 2013 Dr. Jasvir Kaur vs. State of Punjab and others decided on 22.1.2014 (Annexure P-7), once a Subsidiary Health Centre is not categorised, it will fall in the category of Community Health Centre controlling the same. It is not in dispute that the Community Health Centre, Kahnuwan under the control of which the Subsidiary Health Centre, Nawan Sala, District Gurdaspur, where the petitioner was working, falls in difficult area. For the purpose reference was made to the enclosures from an order dated 31.1.2011 issued by the Government.

6. Learned counsel for the petitioner further argued that as per the guidelines laid down for defining the difficult and more difficult areas vide memo dated 2.2.2011 (Annexure P-4), if the distance is more than 10 kilometres from the District headquarters, the area will fall under the difficult area. A certificate from XEN, PWD Department (B & R), Gurdaspur, has been produced showing the distance of Civil Hospital, Gurdaspur to Dispensary Village Nawan Sala as 11 kilometres.

7. On the other hand, learned counsel for the State submitted that the petitioner had served as Rural Medical Officer from 1.6.2006 to 31.8.2009 in Subsidiary

Health Centre, Nawan Sala, under the Zila Parishad, which has not been impleaded as the respondent. He was not in PCMS service at that time. Vide memo dated 18.4.2013, the categorisation were defined, i.e., the areas to be considered in categories A, B, C and D. Thereafter, list of the different Community Health Centres/Health Centres was prepared and ultimately finalised on 18.6.2013. As per this notification, Subsidiary Health Centre, Nawan Sala, where the petitioner served from 1.6.2006 to 31.8.2009, falls in category B. It is a semi urban/urban area. Hence, there is no illegality in not counting the service rendered by the petitioner as Rural Medical Officer in Community Health Centre, Nawan Sala as a difficult area. If the aforesaid period is reduced, the petitioner does not have six years service in a difficult area to his credit to be eligible for seeking admission against 60% quota meant for PCMS doctors. The NOC for 40% quota has already been given to the petitioner. It is not disputed by learned counsel for the State that at the time when the petitioner served in Subsidiary Health Centre, Nawan Sala, the same was not categorised as normal or difficult or more difficult area.

8. Learned counsel for the University submitted that in terms of the clause in the prospectus, if there is any dispute of distribution of seats for all the institutions situated in the State of Punjab, Director Research & Medical Education, Punjab, will be the appellate authority. Hence, the petitioner should have availed of his that remedy. He further submitted that the University was to act strictly in terms of the conditions laid down in the prospectus. As the petitioner has failed to provide NOC for admission against the seats meant for 60% quota of PCMS doctors, his candidature was rightly rejected on that ground. He further submitted that admission with reference to choice of subject is on the basis of merit. Presently, two seats are vacant in 60% quota meant for PCMS doctors. The same are in the subjects of Forensic Medicine and Pathology.

9. Learned counsel for respondent No. 4 submitted that as per the guidelines issued vide memo dated 31.1.2011, the distance from district headquarter is not the only criteria for treating the Health Centre to be situated in a difficult area. There were many other factors namely the backwardness, connectivity etc. He further submitted that even as per the list notified on 31.1.2011, it is evident that in District Gurdaspur only, Community Health Centre, Qadian, which is located at about 30 kilometres from district headquarter was notified as normal and Community Health Centre, Dina Nagar (Singowal) which is at a distance of about 22 kilometres was also in the category of normal. He further submitted that all the candidates, who will be affected in case the relief is granted to the petitioner have not been impleaded as party, hence, no effective relief can be granted to the petitioner.

10. Heard learned counsel for the parties and perused the paper book.

11. The issue which requires consideration by this court in the present petition is as to whether the petitioner is to be treated eligible against 60% seats meant for PCMS doctors. The case set up by the petitioner is that he had rendered service

as Rural Medical Officer from 1.6.2006 to 31.8.2009 in Subsidiary Health Centre, Nawan Sala, District Gurdaspur. Thereafter, he was selected as Medical Officer in PCMS on regular basis and joined his service on 26.4.2010 and is continuing till date. The only dispute is that as per the conditions laid down in notification dated 23.12.2013, pertaining to the admission to Post Graduate Courses in the State of Punjab, the eligibility for 60% quota candidates (PCMS in-service doctors) is that he should be a regular PCMS doctor and further he has either completed 4 years service in very difficult (Category D) area or six years service in difficult (Category C) area or an appropriate combination of both. The cut-off date for consideration of the aforesaid service is 31.3.2014. There is no dispute in the present petition that the service rendered by the petitioner at Primary Health Centre, Dorangla, District Gurdaspur as Medical Officer after he joined PCMS is in a difficult area, however, the period is about 4 years only, whereas as per the condition, minimum of six years of service in difficult area is required. As per the condition in the prospectus, the service rendered by a doctor as Rural Medical Officer once selected in PCMS is also to be counted for the purpose.

12. The issue is as to whether Subsidiary Health Centre, Nawan Sala, District Gurdaspur, where the petitioner served as Rural Medical Officer from 1.6.2006 to 31.8.2009 is to be treated as a difficult area or not. The case set up by the petitioner is that Subsidiary Health Centre, Nawan Sala, District Gurdaspur was under the control of Community Health Centre, Kahnuwan, District Gurdaspur, and the same is categorised as a difficult area. Subsidiary Health Centre, Nawan Sala, District Gurdaspur, where the petitioner had been serving, has not been categorised. In terms of the judgment of this Court in Dr. Jasvir Kaur''s case (supra), once no separate categorisation has been given to a Subsidiary Health Centre and it fell under any other Community Health Centre, it will attain its character therefrom, whereas the stand of the State is that vide memo dated 18.4.2013, categories A, B, C and D were defined. Thereafter, on 18.6.2013, different Subsidiary Health Centres, Community Health Centres, Primary Health Centres/hospitals were defined to be falling in different categories. Subsidiary Health Centre, Nawan Sala falls in category B in terms thereof. Category B has been defined to be a centre in semi urban/urban area, hence, the experience gained by the petitioner in Subsidiary Health Centre, Nawan Sala cannot be counted as a service in difficult area. In the absence thereof, the petitioner does not qualify to be considered against 60% quota meant for PCMS doctors having less than six years service in a difficult area to his credit, whereas the stand of the private respondent was that distance from district headquarter, as is sought to be argued by learned counsel for the petitioner, is not the only criteria adopted for defining a Subsidiary Health Centre/Community Health Centre/Primary Health Centre to be in difficult area. There were other factors as well, namely, the backwardness of the area and its connectivity. Some centres, which were at a distance of 20 to 30 kilometers from district headquarter were not categorised in difficult area. Once now Subsidiary Health Centre, Nawan Sala, where the petitioner served from 1.6.2006 to 31.8.2009 has been categorised as not a

difficult area, the petitioner cannot be given the benefit thereof.

13. From the aforesaid contentions raised by learned counsel for the parties, it is clear that as on date, when the petitioner served in Subsidiary Health Centre, Nawan Sala, the same had not been categorised as normal or difficult or more difficult area. The first policy for categorisation of the area, referred to, was issued on 28.1.2011. Prior to that, the petitioner had already served in Subsidiary Health Centre, Nawan Sala from 1.6.2006 to 31.8.2009. Even in that policy, the aforesaid Subsidiary Health Centre, Nawan Sala had not been categorised. It is not in dispute that it was considered as part and parcel of Community Health Centre, Kahnuwan, District Gurdaspur. The same was categorised to be falling in difficult area in terms of the list circulated vide order dated 31.1.2011.

14. The issue as to how the category of Subsidiary Health Centre, Nawan Sala, which is considered part of another Community Health Centre, is to be considered, has been gone into by a Division Bench of this Court in Dr. Jasvir Kaur''s case (supra). It was held that at the time when the petitioner therein had served in Subsidiary Health Centre, it was not separately categorised but was part of another Community Health Centre. The categorisation was given to Community Health Centre. In these circumstances, a Subsidiary Health Centre would take its categorisation from Community Health Centre. The relevant part of the judgment is extracted below:

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 judgment. 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.

15. Considering the aforesaid enunciation of law laid down by this court, in my opinion, rejection of the candidature of the petitioner for admission in MD course against 60% quota meant for PCMS doctors is erroneous. The service rendered by the petitioner as Rural Medical Officer in Subsidiary Health Centre, Nawan Sala, District Gurdaspur is to be considered in a difficult area, it being part and parcel of Community Health Centre, Kahnuwan, District Gurdaspur, which had been categorised in difficult area.

16. Now the question arises as to the relief, to which the petitioner would be entitled to under these circumstances. The petitioner has only impleaded one of the candidates, who was recommended to be considered against 60% quota

meant for PCMS doctors. He has already got admission. The submission of learned counsel for the petitioner was that since he is higher in merit than respondent No. 4, in case the petition succeeds, respondent No. 4 would be affected as the petitioner may opt for the subject in which he has been granted admission. However, the fact remains that admissions are to be given as per choice of the candidates considering their merit position and in case the petitioner gets the subject in which respondent No. 4 has already taken admission, he may opt for a subject in which the person next in merit list may have got admission. No other candidate is before this court, who may be affected by this chain reaction. It was specifically informed by learned counsel for the University that in 60% quota meant for PCMS doctors, two seats in the subjects of Forensic Medicine and Pathology are lying vacant for which the counselling is scheduled for today.

17. In the aforesaid factual matrix, the only possible relief to which the petitioner is entitled to is that his candidature can be considered against the vacant seats in the aforesaid two subjects without disturbing the admissions already granted to any of the candidates in any of the subjects. Ordered accordingly.

18. The writ petition stands disposed of accordingly.

