

(2021) 09 DEL CK 0127

In the Delhi High Court

Case No : Civil Writ Petition No. 7351 Of 2021

Dr. Manjunath M.

APPELLANT

Vs

Guru Gobind Singh Indraprastha University & Anr.

RESPONDENT

Date of Decision : 27-09-2021

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2021) 09 DEL CK 0127

Hon'ble Judges : Prateek Jalan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prateek Jalan, J

The proceedings in the matter have been conducted through hybrid mode [physical and virtual hearing].

1. By way of this writ petition, the petitioner seeks a direction upon the respondent no.1-Guru Gobind Singh Indraprastha University ["the University"] to permit him to sit for the end term examinations for the M.Ch. course, and a direction amending the eligibility criteria for the said examinations to exclude the period of leave due to COVID-19 or due to attending upon COVID-19 patients.

2. The petitioner is a doctor, working as a Senior Resident in the Department of Burns and Plastic Surgery at Atal Bihari Vajpayee Institute of Medical Sciences ["the Institute"] [respondent no.2 herein]. The Institute is affiliated to the University. He joined the Institute on 29.08.2018, and is a candidate for the three-year M.Ch. degree.

3. The petitioner's claim in this petition arises out of the fact that he has been rendered ineligible to take his end term examinations on account of excessive leaves and not having completed the requisite training period. The petitioner's case is that this situation has arisen as a direct result of his having contracted

COVID-19 while treating patients as part of his duties at the Institute.

4. The requirements of the M.Ch. degree, and the leave entitlement of a candidate, are governed by the Postgraduate Medical Education Regulations, 2000 ["the Regulations"] notified by the Medical Council of India ["MCI"], and the University's Ordinances.

5. The relevant provisions of the Regulations are as follows:-

"13.1 The training given with due care to the Post Graduate students in the recognized institutions for the award of various Post Graduate medical degrees/diplomas shall determine the expertise of the specialist and/or medical teachers produced as a result of the educational programme during the period of stay in the institution.

[Provided that in respect of MD/MS students admitted with effect from academic session 2020-21, the training imparted as part of District Residency Programme in District Health System, as provided for in sub-clause 13(11) of these Regulations shall be considered as training imparted in a medical institution.]

13.2 All the candidates joining the Post Graduate training programme shall work as 'Full Time Residents' during the period of training and shall attend not less than 80% (Eighty percent) of the imparted training during academic terms of 6 months including assignments, assessed full time responsibilities and participation in all facets of the educational process."

(Emphasis supplied.)

6. The University has also enacted Ordinance 16 dealing inter alia with conduct and evaluation of candidates for the M.Ch. degree. The relevant clauses of the Ordinance are as follows:-

"3.0 Examinations of the University shall be open to regular students i.e. candidates who have undergone a course of study in an institution/college affiliated to the University, for a period specified for that programme of study in the Scheme of Teaching and Examination and Syllabi.

Provided further that a student may be debarred from appearing in the examination of the course as provided in Clause 8 & 9 of this Ordinance or as provided in any other Ordinance of the University.

xxxx xxxx xxxx

8.0 ATTENDENCE

All the candidates joining the Post Graduate training programme shall work as full time residents during the period of training. They must attend not less than 80% of the training during a given year. They should be given full time responsibility, assignments and participation in all aspects of the education programme.

9.0 LEAVE

- a. No vacations are permitted to any Post graduate degree/diploma, Post doctoral course student.
- b. A student may avail a maximum of 30 days leave in the 1st academic year and 36 days each in the 2nd and 3rd academic year. Leaves not availed in one year are not carried over to the next year. This includes leave availed on all grounds except maternity leave.
- c. A female student will be permitted 90 days of maternity leave during a course and not 135 days. This may be availed only once in the course. No paternity leave is permitted.
- d. In case of shortage of attendance, due to excess leave or absence due to any other reason without proper permission he/she will not be allowed to appear in the university examination until the shortage is made up by further training in the said duties during the scheduled course period.
- e. Unauthorised absence from training would result in cancellation of the name of the student from the university rolls for the said post graduate/post doctoral course."

(Emphasis supplied.)

7. The petitioner unfortunately contracted COVID-19 infection while serving in the Institute, and also suffered various complications arising therefrom. He was admitted to hospital in his hometown, including in intensive care. He remained on medical leave from 01.07.2020 to 10.01.2021 [194 days], which when coupled with the casual leaves, amounts to 226 days. The leave position of the petitioner, as compared to the leave permitted under clause 9 of the Ordinance is as follows:-

Academic Session

Leave Availed

Leave Permissible

First Year (28.08.2018- 27.08.2019)

15 days

30 days

Second Year (28.08.2019- 27.08.2020)

78 days

36 days

Third Year (28.08.2020- 13.07.2021)

133 days

36 days

Total

226 days

102 days

8. In view of this position, the petitioner was rendered ineligible to take the end term examinations of the University which, I am informed, are now scheduled to be held in October, 2021. It appears from the documents filed alongwith the writ petition that the Institute forwarded the petitioner's case to the University by a communication dated 14.07.2021, seeking condonation of the excessive leaves taken by him. The University took the position that the Regulations do not provide for condonation of excess leaves and therefore required the petitioner to perform an extra 124 days of residency before taking the examinations. The Institute requested reconsideration of the petitioner's case and the petitioner also made a representation to this effect. By a communication dated 23.07.2021, the University informed the petitioner that no relaxation was possible at the end of the University, but suggested that the petitioner may request the National Medical Commission ["NMC"] [the successor to the MCI] to consider his case. Although the petitioner stated that he would try to approach the NMC in this regard, there is no indication in the writ petition that he did so prior to the filing of the petition. It appears that, after the filing of the writ petition, the petitioner approached the NMC, to which the Office of the President, Post Graduate Medical Education Board of the NMC stated that it has no role in attendance. This decision is not assailed in the petition. In fact, the NMC has not been joined as a respondent, despite the specific objection to this effect having been taken by the University in its counter affidavit.

9. In support of this petition, Dr. Manish Singhvi, learned Senior Counsel, emphasises that the petitioner finds himself in this situation due to the fact that he was infected with COVID-19 in the course of duty. To the extent that the petitioner was performing his duties as a resident in the Institute, Dr. Singhvi submits that it is wholly unjust and unequitable for the leave taken as a consequence thereof, to be used against him in rendering him ineligible for the examinations.

10. Although a case was made out in the petition that the petitioner had 79% attendance taking the three years of training cumulatively, as compared to the required minimum attendance of 80%, Dr. Singhvi does not press this contention in view of the stipulation in Regulation 13.2 that the attendance of 80% is to be reckoned in each academic session of six months. Instead, he submits that the considerations of justice, equity and good conscience should lead the Court to a conclusion that the leave taken by the petitioner was justified and the excessive leaves are liable to be condoned. In the course of arguments, Dr. Singhvi sought

to draw a distinction between the requirement of attendance and the maximum leaves permissible. He submits that, if the petitioner is allowed to take the examinations by waiving his excessive leaves, he would complete the balance of his training period prior to issuance of the degree in his favour.

11. Dr. Singhvi also relies upon an order passed by the Supreme Court dated 16.02.2021 in W.P.(C) 1394/2020 [Shashank Shekhar vs. Union of India & Ors.], wherein the Supreme Court permitted students to take the first year professional MBBS examination and the supplementary examination despite shortage of attendance.

12. Dr. Singhvi refers to the correspondence exchanged between the Institute and the University, to submit that the Institute had certified that the petitioner had completed all his assignments and practical assessments, and had also submitted his thesis on time. Great emphasis has been laid on a communication addressed by the Head of Department of Burns and Plastic Surgery ["HoD"] of the Institute to the Director, stating that the petitioner is a sincere student and has attended to his academic work and his duties very diligently. The HoD has also certified that the petitioner has attended 90 out of 104 online classes conducted.

13. In support of his contention that the petitioner be permitted to take the examinations and then complete the balance period of training, Dr. Singhvi relies upon a Prospectus issued by the Postgraduate Institute of Medical Education and Research, Chandigarh ["PGIMER"] which permits such a course in certain circumstances. Dr. Singhvi submits that the discretion of this Court under Article 226 of the Constitution can be exercised in the present case on equitable considerations, even if the Regulations, strictly speaking, do not permit the relief sought.

14. Ms. Anita Sahani, learned counsel for the University, on the other hand, submits that attendance in online classes cannot substitute for the bedside and clinical training required to be imparted to a super-specialty candidate, such as the petitioner. To the extent that the petitioner is already a qualified doctor, Ms. Sahani emphasises that the case of the petitioner that his medical training would go waste if he is not permitted to take the examinations at this time, is incorrect.

15. Mr. Vikrant N. Goyal, learned counsel for the Institute, refers to the counter affidavit filed on its behalf to support the case of the University.

16. Having heard learned counsel for the parties, I am of the view that the relief sought in this petition cannot be granted under Article 226 of the Constitution. The petitioner is a Senior Resident seeking a super-specialty qualification. During the course of the hearings in this petition, it was clarified by the petitioner himself (who was present in the video-conference hearings) that the qualification is principally earned by participating in clinical activity, although there is also an academic curriculum. The petitioner was compelled, by reason of his illness, to take approximately six months' leave from July, 2020 to January, 2021, which is

much higher than the permitted maximum. Where the training is largely achieved on the job, the training requirement cannot be divorced altogether from the question of excessive leave. To the extent that the petitioner availed of excessive leave, howsoever legitimate the cause, his super-specialty training remains yet incomplete in terms of the Regulations and the Ordinance.

17. Dr. Singhvi contends that the writ court can condone this deficit on consideration of the fact that the petitioner contracted the infection while performing his duties as a doctor. I am unable to accept this contention. The requirements of training and attendance, particularly in professional courses of this nature, are generally beyond the remit of the writ court. Academic institutions are generally best placed to adjudge these issues, and their assessment is vulnerable to interference only if vitiated by manifest unreasonableness or arbitrariness. The view taken by the University in the present case cannot be so characterised. The Regulations, which remain unchallenged, do not permit the petitioner to take the examinations at this stage. Clauses 3 and 9 of Ordinance 16 specifically require the completion of training before the candidate takes the examinations. The grant of relief to the petitioner would be contrary to these requirements

18. The petitioner's reliance upon certain documents issued by the HoD and the Institute is also of no avail, as the Institute has in the counter-affidavit taken the firm stand that the petitioner is ineligible under the Regulations and the Ordinance. The correspondence reflects a recommendation by the HoD and the Institute to the University that a sympathetic consideration be accorded to the petitioner's case, but does no more than that.

19. In my view, the judgment of the Supreme Court in *Shashank Shekhar* (supra) is also inapplicable to the present case, as the M.Ch. degree is admittedly awarded principally on the clinical training imparted and is not comparable to the first year professional MBBS examination. In any event, the aforesaid order of the Supreme Court itself makes it expressly clear that it is not to be treated as a precedent.

20. Similarly, the example of the PGIMER Prospectus cited by Dr. Singhvi is also inapposite, as PGIMER is not governed by the Regulations. Dr. Singhvi did not controvert Ms. Sahani's submission to this effect.

21. The wide jurisdiction of the writ court to act upon equitable considerations, which Dr. Singhvi rightly reminded me of, is one which must be exercised judiciously. In the present case, a balance has to be struck between the petitioner's predicament, and the assessment of the concerned academic institutions that he is not properly qualified under the applicable Regulations to be treated as a fully trained super specialist in his chosen field of medicine. Considered in this light, despite much sympathy with the situation in which the petitioner finds himself, I have come to the conclusion that he cannot prevail. This conclusion does not emanate from any lack of gratitude for the service

rendered by doctors and other health-care professionals in the course of this pandemic, but from the limitations of the writ court in the face of expert opinion regarding the conditions which the Regulations, and the University's Ordinances, impose.

22. For the reasons aforesaid, I am unable to grant relief to the petitioner. The petition is accordingly dismissed.