

(2011) 06 P&H CK 0026

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 983 of 2011 and other connected appeal being Letters Patent Appeal No. 995 of 2011.

Dr. Parmender Kumar and others

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 02-06-2011

Acts Referred:

Citation : (2011) 06 P&H CK 0026

Hon'ble Judges : A.K. Goel, Acting C.J.;Ajay Kumar Mittal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Adarsh Kumar Goel, ACJ.—This order will dispose of LPAs No. 983 and 995 of 2011 as both the appeals arise from the common order of learned Single Judge and involve common questions.

2. The appellants are serving the State of Haryana as members of Haryana Civil Medical Services. They were candidates for admissions to the PG courses conducted by respondent No. 2 University. Under a policy of the State of Haryana dated 5.12.2008 which was referred to in the prospectus of the University relating to higher studies for the Government doctors such doctors were to be treated on duty with full pay and allowances while undergoing PG studies subject to condition that they have rendered three years regular service out of which two years service is in rural area. The procedure laid down for availing the said benefit was to seek NOC from the employer apart from other conditions specified therein. As per prospectus issued for admissions to the PG courses in the respondent University for the entrance examination, 2011, out of total 145 seats, 29 seats are reserved for the HCMS. Vide memo dated 31.3.2011, the Government of Haryana revised its policy dated 5.12.2008 restricting the benefit of full pay and allowances and sponsorship against reserved seats in the said quota to doctors who had completed five years of regular satisfactory service out of which three years service should be in District/Sub Divisional hospitals and

two years in rural area institutions. However, doctors who had completed three years service were also eligible to apply for PG courses in open seats but they were not entitled to salary during the period of higher education nor to sponsorship against reserved seats.

3. Aggrieved by the revised policy, writ petition was filed in this Court mainly on the ground that the revised policy decision dated 31.3.2011 could not be made applicable to the session 2011 as the petitioners had already applied as per the old policy in January, 2011 for which entrance exam had been held on 2.3.2011 and result thereof declared on 3.3.2011. The revised policy was not a part of prospectus while unrevised policy was a part of prospectus and conditions of prospectus could not be changed for the current admissions.

4. The stand in the writ petition was opposed by filing reply on behalf of the Health Department of the State by submitting that there was no change in the prospectus conditions. Reservation for HCMS continued to be as mentioned in the prospectus. The prospectus itself mentioned that NOC conditions of the State of Haryana will be as per latest instructions issued from time to time. Accordingly, NOCs were issued as per instructions applicable at the time of issuance of NOCs. There was only change in the policy of sponsorship of Government doctors for PG courses and of allowing them to undergo PG studies while getting full pay. The State Government was at liberty to change its policy for sponsorship for permitting doctors in its employment and allowing them to undergo PG studies while getting full salary. The experience of the State was that doctors in employment who availed of the benefit of PG studies while getting full salary and availing sponsorship did not serve the Government, which defeated the object for which sponsorship and other benefits were allowed. Change of policy did not result in violation of any right of the petitioners. The benefit under the policy was now being given to doctors with more experience. However, those with lessor service could still get admission without sponsorship in open category without getting pay as per conditions of revised policy. NOC had not been issued before issuance of the revised policy and thus issue of sponsorship was still pending consideration before the State and change of policy was before issuance of NOC.

5. Learned Single Judge considered the question whether revision of policy was illegal on the ground that the same amounted to change of prospectus conditions and answered the same in the negative as follows:-

The controversy, therefore, has to be seen in the perspective of the right of the State to issue policy instructions which do not find an expression in the prospectus and to enforce them at a date subsequent to the initiation of the process of admission and the impact it has on the persons seeking admission. Once it is accepted that the State has a right to issue instructions, as has been observed in *Rajiv Kapoor v. State of Haryana* (supra), then it has to be considered as to whether the policy instructions of the State of Haryana were justified in the given set of circumstances.

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Thus, it is evident that the State had every right to prescribe a policy for the grant of N.O.C. especially when it was dealing with the cases of sponsorship of in-service candidates for higher studies. The State was committed to bear the expenses for the selected HCMS candidates as such incumbents were entitled to full pay and the period spent by them in pursuing these courses was to be treated as being spent on duty.

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The underlying principle in accepting the prospectus as sacrosanct and having the force of law is that the State may not indulge in nepotism especially in effecting the change of criteria subsequent to the issuance of the prospectus to grant inclusion to a few to the detriment and exclusion of the others. This does not seem to be the case here. Neither have any allegations of mala fide been made, nor are they inferentially visible. The petitioners have not been excluded from the zone of consideration, but they have certainly been denied the consideration in HCMS Category. But if the decision of the respondent/State is construed in view of the observations that have been made above, for the reason that there is an apparent absence of an ulterior motive and for the reason that the reasoning is based on a rational foundation, and in view of the observations made by the Hon"ble Supreme Court in *Rajiv Kapoor v. State of Haryana* (supra), which clearly acknowledges the right of the State to formulate instructions and also in the light of the specific conditions laid down in Annexure-D, binding the petitioners to the latest government instructions, then the same cannot be faulted with.

6. Main argument on behalf of the appellants is the same as was put forth before the learned Single Judge that the revised policy amounts to change of the prospectus conditions which was not permissible as held in Full Bench of this Court in *Amardeep Singh Sahota V. State of Punjab* 1993(3) P.L.R. 212. On the same principle reliance has also been placed on the judgment of the Hon"ble Supreme Court in *State of Punjab and another Vs. Dr. Viney Kumar Khullar and others* 2011 (1) S.C.T. 659 and Kerala High Court in *Varghese Philip Vs. State of Kerala*,

7. Learned counsel for the State and the University support the view taken in the impugned order of the learned Single Judge and further submit that prospectus did not debar change of Government policy particularly when such policy did not relate to admission conditions but to sponsorship by the State and giving of benefits to doctors employed by it in terms of their getting full salary during the period of PG studies. Referring to the prospectus itself it was submitted that the conditions for NOC by the Government of Haryana were given in letter dated 5.12.2008 which could be revised from time to time. Thus, the conditions invoked by the appellants remained unchanged and the new policy was consistent with the said conditions. New policy only related to grant of NOC and

on the date NOC was issued, the new policy had already been issued. NOC thus could not be issued as per old policy. Reliance has been placed on judgment of the Hon"ble Supreme Court in Rajiv Kapoor V. State of Haryana AIR 2000 SC 1476.

8. We are of the view that learned Single Judge was justified in rejecting the challenge to the new policy. New policy was not alien to the prospectus and did not relate to admission qualifications as such but to grant of NOC by the State which was in the nature of service conditions for a concession to the employees of the State. Doctrine of promissory estoppel could have no application to a situation where there was no unequivocal promise acting on which a person may have changed his position to his prejudice and when it may not be unfair to allow a promise to be withdrawn. The prospectus made it clear that NOC was to be issued by the State as per its policy applicable from time to time and thus even if the petitioners passed test for admission to PG courses no vested right accrued to them to get the NOC from the State of Haryana or to get full salary during the period of PG studies. Relevant extract from the prospectus is as under:

The conditions for NOC's fixed by the Govt. of Haryana vide letter No. 2/123/05/1-HB-1 dated 5.12.2008 for HCMS doctors who want to join PG-courses are given at Annexure-D.

(However, latest Govt. instructions issued from time to time will be followed).

9. The Full Bench of this Court in Amardeep Singh Sahota was not concerned with such a situation and was, thus, clearly distinguishable. Similarly judgment of the Hon"ble Supreme Court in Dr. Viney Kumar Khullar is also distinguishable. In Dr. Viney Kumar Khullar provisional NOC had already been issued before the revision of policy which is a distinguishing feature of that judgment in its applicability to the present case. Judgment of Kerala High Court in Varghese Philip was not concerned with the grant of NOC.

In view of above, we do not find any error in the view taken by learned Single Judge. The appeals are dismissed.

A photocopy of this order be placed on the file of the connected case.