
(2020) 11 SHI CK 0212

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 2101, 3401, 3463, 3786 Of 2020

Dr. Pradeep Kumar Atri And Another

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 25-11-2020

Acts Referred:

Citation : (2020) 11 SHI CK 0212

Hon'ble Judges : Ajay Mohan Goel, J

Bench : Single Bench

Advocate : Dilip Sharma, Manish Sharma, Mukul Sood, Ajay Vaidya, Seema Guleria

Final Decision : Disposed Of

Judgement

Ajay Mohan Goel, J

CMP No. 12585 of 2020 in CWP No. 3401 of 2020

1. This application is allowed, as prayed for and the applicant is impleaded as respondent No. 4 in CWP No. 3401 of 2020. The application stands disposed of accordingly.

CWPs No. 2101, 3401, 3463 and 3786 of 2020 & C MP No. 12586 of 2020 in CWP No. 3401 of 2020

2. The petitioners before this Court are the Medical Officers, who have undergone Post Graduation in respective specialties. Their grievance is that

for the purpose of undergoing Senior Residency Course, the policy which has been formulated by the State Government contemplates one year's

mandatory field posting and a candidate, who has not served in an Institution, which is designated as field posting Institution by the

respondent-Department, is rendered ineligible to compete for the post of Senior

Resident, ignoring the fact that as the posting of a Medical Officer is not the prerogative of the Officer concerned, but that of the Department, in these circumstances, petitioners who have served after completing their Post Graduation at the places of posting/Institutions as directed by the Department, are now being made to suffer for no fault of theirs. In other words, the contention of the petitioners is that the condition of mandatory "field posting" can be imposed upon a Medical Officer, who expressly is directed by the Department to serve in an Institution which is situated in field but who has refused to do so and not upon officers who were never posted in such like institutions.

3. Mr. Dilip Sharma, learned Senior Counsel appearing for the petitioners has argued that the petitioners after completing their Post Graduation have served for one year in those places/stations, wherever they were posted by the employer to serve. It is not as if the petitioners were called upon by the Department to serve in rural areas or places construed as field postings and they refused to do so. Thus, Mr. Sharma submits that here is a case where though posting of the officer at a station is the prerogative of the employer, yet the condition of one year's mandatory service in an Institution which is designated as "field posting", is now becoming an impediment in the case of the petitioners for their eligibility to compete for the post of Senior Resident, for the reason that the petitioners were not posted in the Institutions, which can be termed as "field posting" Institutions after completing their Post Graduation by the Department. Mr. Sharma has also drawn the attention of this Court to an earlier judgment of this Court passed in CWP No. 2888/2019, titled as Dr. Ashish Sharma and others vs. State of Himachal Pradesh and others and other connected matters. By referring to the observations made by this Court in para 7 thereof, he submits that these petitions can be disposed of in terms of the observations which were so contained in para 7 of the judgment supra. Mr. Mukul Sood, learned Counsel for the petitioners in CWP No. 3786 of 2020 has adopted the arguments of learned Senior Counsel.

4. Mr. Ajay Vaidya, learned Senior Additional Advocate General, submits that there is no infirmity with the policy which has been so formulated by the State of imposing a condition of one year field posting, post completion of Post Graduation for the purpose of a Medical Officer being eligible for

Senior Residency as the intent of the Government is to ensure that after completion of Post Graduation, the Doctors do serve in rural areas before competing for the post of Senior Resident. However, he has further fairly submitted that as far as the judgment passed by this Court in CWP No.

2888 of 2019, titled as Dr. Ashish Shar and others vs. State of Himachal Pradesh and other connected matters, is concerned, the same has attained finality.

5. Ms. Seema Guleria, learned Counsel for respondent No. 4 in CWP No. 3401 of 2020, submits that it will be in the interest of justice in case these petitions are disposed of at the earliest by passing appropriate orders and interim order which has been passed in these petitions is vacated.

6. Having heard learned Counsel for the parties and having perused the pleadings as well as the judgment passed by this Court in CWP No. 2888 of 2019 (supra), in my considered view, in the interest of justice and to ensure that there is no further delay to the eligible candidates undergoing their

Senior Residency courses, these petitions are disposed of with the direction that the petitioners who have completed one year's service after

completing their Post Graduation, shall be considered to be eligible for competing for the post of Senior Resident, irrespective of the place where they

have served as such, until and unless the petitioner was offered appointment at a place which is termed as "field posting" and he/she refused to do

so.

7. At this stage, learned Senior Additional Advocate General submits that this Court may observe that this judgment may not be treated as a precedent

in future. On this request, all that this Court can observe is this that any future litigation on the issue of validity of the policy of the State Government

with regard to eligibility of a Medical Officer for competing to the post of Senior Resident shall be decided on the merit of that particular case.

8. As it is not in dispute that during the pendency of these petitions, the petitioners were directed, by interim orders passed by this Court, to participate

in the selection process being undertaken for the post of Senior Residents, therefore, now the Government is directed to declare the result and allow

the selected candidates to undergo their respective Senior Residency Courses.

All these writ petitions stand disposed of in above terms. Pending miscellaneous application(s), if any, also stand disposed of. Interim orders, if any,

stand vacated.