

(2019) 10 DEL CK 0011

In the Delhi High Court

Case No : Civil Writ Petition No. 12477 Of 2018

Dr. Rajani Sinha

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 01-10-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 10 DEL CK 0011

Hon'ble Judges : Rajiv Shakdher, J

Bench : Single Bench

Advocate : Ghanshyam Thakur, Anju Gupta, Roshan Lal Goel, T. Singhdev, Arunima Pal, Puja Sarkar, Sumangla, Michelle B. Das, Tarun Verma, Abijit Chakravarty, Kirtiman Singh, Waize Ali Noor, Prateek Dhanda, Rohan Anand, Jaiwant Patankar, Sanbha Rumnong, Loreign Ovung

Final Decision : Allowed

Judgement

Rajiv Shakdher, J

1. This writ petition is directed against the order/communication dated 05.10.2018 issued by respondent No. 3 i.e. National Board of Examination (hereafter referred to as "NBE"). Via the impugned communication, NBE has indicated to the petitioner that her candidature for December 2017 DNB final examination cannot be considered as she had been declared ineligible, having failed to meet the prescribed eligibility criteria. Thus, in effect, even though the petitioner qualified the DNB theory examination held in December 2017 and the practical examination held on 18.05.2018, the results of these examinations have been declared null and void.

1.1 The reason articulated in the impugned communication is that the petitioner had not been able to complete her DNB training prior to the date prescribed i.e. 30.06.2018 published in the Information Bulletin issued by the NBE. In reaching this conclusion, NBE in the impugned communication notices the fact that the DNB Training Completion Certificate (Final) dated 06.08.2019 issued by Christian

Institute of Health Sciences and Research (in short "institute") had indicated that the petitioner had completed her training on 05.08.2018 (with extension of 43 days of training); which was a date beyond the prescribed date for completion of training i.e. 30.06.2018.

2. Thus, in sum, the issue which arises for consideration is : whether in the facts and circumstances of the instant case the petitioner ought to have been issued a DNB Degree even though she completed her training with the institute affiliated with the NBE beyond the prescribed cut-off date i.e. 30.06.2018 as published in the Information Bulletin?

Background Facts:

3. In order to appreciate the controversy which has been brought to fore in the instant petition, the following facts are required to be noticed.

3.1 The petitioner sat in the 2015 Centralized Entrance Test (in short 'CET'), in which, she was declared successful. Consequent thereto, on 05.06.2015, the petitioner participated in the counselling conducted by the NBE whereupon she was registered for training with the institute in the speciality pertaining to "Family Medicine".

3.2 The petitioner was resultantly issued an appointment letter which evidenced the fact that her training with the institute commenced on 24.06.2015.

3.3 On 17.06.2017 the petitioner submitted her thesis to the NBE. On 19.06.2017 the petitioner was issued a provisional DNB Training Completion Certificate by the institute to enable her to take the DNB Final theory exam. Crucially, this communication was addressed by the institute to the NBE wherein the following important aspects pertaining to the petitioner were brought to fore.

(i) First, the petitioner had registered with the NBE on 24.06.2018.

(ii) Second, the petitioner was to receive training at the institute for three

(3) years in the Family Medicine speciality of DNB.

(iii) Third, the petitioner had joined the institute for training on 24.06.2015 and therefore would complete the mandatory three (3) years of training on 23.06.2018.

(iv) Fourth, for determination of the petitioner's eligibility to obtain a DNB Degree, the cut-off date fixed was 23.08.2018 and that if she was not able to complete her training before this date, her candidature would stand cancelled.

(v) Fifth, upto the date of issuance of the aforesaid communication, the petitioner had obtained a total leave of 42 days.

(vi) Lastly, the petitioner had worked during the stated period as a resident doctor with the institute strictly in accordance with the leave guidelines of NBE.

3.4 The record shows that between 01.11.2017 and 09.03.2017, petitioner took extra leave on medical ground, albeit, with due permission of the institute.

3.5 On 28.03.2018 the results of DNB Final theory exam were declared. The petitioner was amongst those who had passed the theory exam. On the same date i.e. 28.03.2018, the petitioner, admittedly received a communication from the NBE concerning acceptance of her thesis.

3.6 Thereafter on 02.05.2018, the petitioner received her admit card for final practical(s) exam to be held in Kolkata, West Bengal. Having received the admit card the petitioner appeared in the practical exam on 18.05.2018. However, to the surprise of the petitioner, when results of the exam were declared generally in June 2018, her result was withheld.

3.7 On 06.08.2018, the institute issued a final completion certificate to the petitioner which adverted to the fact, as indicated above, that she had completed her DNB training on 05.08.2018.

3.8 The final completion certificate was submitted to NBE on 08.08.2018. Via email dated 29.08.2018 the petitioner submitted its explanation to the NBE with regard to the extra leave taken by her. The NBE, however, was not convinced and via the impugned communication dated 05.10.2018, as noted above, declared the petitioner ineligible and went on to hold that the results of her DNB theory exam and practical exam would be treated as null and void.

3.9 It is this which propelled the petitioner to move the court under Article 226 of the Constitution for grant of necessary relief.

Submissions of the counsel

4. Upon notice being issued, the two contesting respondents i.e. the NBE and the institute filed their respective counter affidavits. While the institute has taken a stand in line with its communication dated 19.09.2017 and the final completion certificate dated 06.08.2018 that the petitioner has completed her DNB training within the scheduled cut-off date i.e. 23.08.2018, the NBE has contested the position.

4.1 The NBE's stand is that the petitioner has failed to complete the training before the cut-off date and has thus failed the eligibility criteria for grant of the DNB Degree. In furtherance of its stand, the NBE also emphasizes the point that the petitioner took excess leave qua which it was required to take its prior approval as per the provisions of Clause 10(11) as contained in the Information Bulletin. This stand, which is articulated in the counter affidavit filed by the NBE, has been articulated with much vehemence by Mr. Kirtiman Singh on behalf of the NBE.

5. In so far as the petitioner is concerned, Mr. Ghanshyam Thakur, who appeared for her, stressed the fact that the training was conducted with the institute which stood affiliated to the NBE and therefore the provisional DNB Training Completion

Certificate issued on 19.09.2017 could not be given a short shrift after every requirement for issuance of a DNB Degree had been fulfilled. Mr. Thakur sought to highlight the difference between the prescribed cut-off date i.e. 30.06.2018 which stood incorporated in the Information Bulletin and the scheduled cut-off date for completion of training which found mention in the Provisional DNB Training Completion Certificate dated 19.09.2017.

5.1 Mr. Thakur laid stress on the fact that the two dates do not always align as often the training starts on a day which takes the requisite training period beyond the prescribed cut-off date as published in the Information Bulletin.

5.2 The fact that NBE did not contest or refute the freezing of the cut-off date qua the DNB Training by the institute in respect of the petitioner as 23.08.2018 for the purposes of her eligibility to obtain a DNB Degree was, according to the counsel, enough proof of the fact that the stand of the NBE was a mere afterthought and could not come in the way of grant of the relief sought for by the petitioner.

5.3 This argument was sought to be supported by Mr. Thakur by relying upon the subsequent conduct of the NBE whereby the petitioner's thesis was accepted and she was allowed to sit in the final practical exam even though later on her results qua the same were withheld.

5.4 In so far as the argument advanced by Mr. Kirtiman Singh that the petitioner had taken excess leave without prior approval of the NBE, Mr. Thakur argued that Clause 10(11) had to be read harmoniously with Clause 10(8) of the NBE Leave Rules ("Leave Rules") as contained in the Information Bulletin published by the NBE and that if the same was done, it would be clear that only if extension of DNB training is required to be given for a period of more than two (2) months beyond the scheduled completion date would prior approval of the NBE be required.

5.5 In sum the argument was that even according to the NBE extra leave that the petitioner had taken was not beyond two (2) months and therefore, prior approval of the NBE was not required, contrary to what was contended by Mr. Kirtiman Singh.

Analysis and Reasons

6. I have heard learned counsel for the parties and perused the record. In my view, what is crucial to the case are the following facts qua which there can be no dispute.

6.1 Admittedly the petitioner after passing the CET joined training with the institute affiliated with the NBE.

6.2 The DNB Training in the Family Medicine speciality had to be completely under the supervision of the institute. Thus, the institute was charged with the responsibility of not only granting leave and maintaining a record of the same

but also to issue the final certificate to the candidate, in this case, the petitioner, concerning completion of the DNB training.

6.3 Therefore, what is important to bear in mind is that since the training with the say so of the NBE is conducted by the institute affiliated with it, its understanding of the scheduled cut-off date as against the one prescribed in the Information Bulletin is of seminal importance from the point of view of the candidate i.e. the petitioner.

6.4 Undoubtedly, the institute while issuing the provisional DNB Training Competition Certificate (which was an essential precursor to the petitioner being allowed to sit in the theory exam) indicated that for determination of her eligibility the scheduled cut-off date would be 23.08.2018.

6.5 There is no dispute that the petitioner completed her DNB Training before the scheduled cut-off date i.e. 05.08.2018. There is also no dispute that this aspect was not refuted by the NBE either via a return communication or otherwise prior to filing a counter affidavit in the matter.

7. Thus, the argument advanced by Mr. Kirtiman Singh that since the Provisional DNB Training Certificate dated 19.09.2017 adverted to the fact that the mandatory three (3) years training (which the petitioner had to undertake) would get completed on 23.06.2018, the NBE was not required to refute what was written in the letter, misses the difference between the prescribed cut-off date and the scheduled cut-off date.

7.1 This is especially so as the entire training programme of the petitioner proceeded on the basis that she was required to complete her DNB Training before the scheduled cut-off date as indicated in the DNB Provisional Degree Certificate dated 19.09.2018.

8. The other objection concerning excess leave taken by the petitioner, albeit, without prior approval of the NBE, in my view, is also an objection which can have no impact in the facts of this case. This is so when on 06.08.2018, as noticed above, the institute indicated that the petitioner had availed of 105 days of leave during her entire 3 years training period and that she had qua this period worked as a resident doctor strictly in accordance with Leave Rules, one would have expected the NBE to respond if it was not so or if it needed to look at the petitioner's leave record before it said yes or no as there was no prior approval given by it, as contended on its behalf. The NBE did neither.

8.1 Therefore, in my view, since the burden of supervising the training is on the institute affiliated to the NBE, the candidate, with regard to availability of leave is rightly guided by the institute. The fact that the institute gave leave to the petitioner which according to it was in accordance with the provisions of the Leave Rules should hold the field. The interpretation of the Leave Rules by the institute from the point of view of the candidate (in this case the petitioner) would have to be given due weight.

9. I agree with the counsel for the petitioner as well as the institute that the petitioner did in point of fact complete her training within the scheduled cut-off date i.e. 23.08.2018 and therefore, the writ sought be issued in her favour.

10. Accordingly, the writ petition is allowed. The NBE will issue a DNB Degree in favour of the petitioner in the Family Medicine speciality qua the concerned year.