

(2011) 03 SHI CK 0327
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 8408 of 2008

Dr. Ravinder Singh Minhas

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 16-03-2011

Acts Referred:

Indian Medical Council Act, 1956 — Section 10A

Citation : (2011) 03 SHI CK 0327

Hon'ble Judges : V.K. Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

V.K. Sharma, J.—The petition has been filed on the following prayers vide paras 7 (i) and (ii):

(i). That the record of the case may be called for after perusal of the same the appointment of Respondent No. 4 and 5 as Registrar ENT on ad hoc basis may be quashed and set-aside and declared the Respondent No. 4 and 5 not eligible for promotion to the post of Assistant Professor ENT. And no teaching experience should be granted to them on the basis of above appointment.

(ii). Any other relief which this Hon"ble Court deems fit and proper in the facts and circumstances of the case may kindly be passed in favour of the Applicant.

2. In reply Respondents No. 1 to 3 have taken the following stand vide para 3:

In reply to this para it is submitted that the State Govt. Decided in March, 1996 to open a new Medical College in the State of HP namely Dr. RPGMC, Tanda, District Kangra with a view to produce more medical manpower in the State for which a letter of Intent was issued by the Govt. of India on 14.2.1997 with certain conditions to be fulfilled in terms of creating/filling up of teaching and non teaching posts, Hospital facilities, Machinery and Equipments etc. for establishment as per Medical Council of India norms. Accordingly, the State Govt.

took immediate steps to fulfil the required norms of Medical Council of India in terms of creation of certain posts of teaching and non-teaching staff, providing of hospital facilities and purchase of Machinery and Equipments during the year 1997 and after providing all the facilities required at the time of inception the State Govt. carried out two inspections of Medical Council of India during the year 1997 for obtaining formal permission of Govt. of India u/s 10A of IMC Act, 1956 for admission of 1st batch of MBBS students in this College from the academic session, 1997-98. But the Medical Council of India did not agree to recommend to the Govt. of India for grant of formal permission u/s 10A of MCI Act, 1956 for admission of 1st batch of MBBS on the basis of some minor deficiencies in terms of filling up of teaching and other posts and some infrastructure facilities required at the time of inception. Feeling aggrieved by the action of Medical Council of India, the State Govt. approached the Hon'ble High Court in Dec., 1997 by way of filing a Civil Writ Petition with the prayer that the State Govt. may be allowed to admit first batch of MBBS and direct the MCI/ Govt. Of India for grant formal permission u/s 10A immediately in which the Hon'ble High Court delivered its judgment on 9.1.1998 by allowing the prayer of the State Govt. and accordingly the first batch of MBBS students was admitted in Dr. RPGMC, Tanda in Jan.,k 1998 in anticipation of formal permission of Govt. of India as per directions of Hon'ble High Court. The judgment of Hon'ble High Court was subsequently challenged by the Medical Council of India in the Hon'ble Supreme Court of India and the matter of granting formal permission u/s 10A of MCI Act, 1956 by Govt. of India remained sub-judice for one year. In the mean time the State Govt. continued its efforts to fulfil the requirement of Medical Council of India norms and an another Inspection of Medical Council of India was carried out in Dec., 1998 on the basis of which the Medical Council of India ultimately decided to recommend to the Govt. of India to grant formal permission for establishment of this new college with annual intake of 50 MBBS admissions from the session 1999-2000. Since the fate of this college was not certain at the initial stages due to prevailing controversies and circumstances as mentioned above and it was not possible for the State Govt. to provide all the requisite teaching and non teaching staff on regular basis immediately by following the prescribed procedure of recruitment according to the provisions of R and P rules. Hence the Govt. adopted the policy of appointing teaching staff required as per Medical Council of India norms on temporary basis i.e. ad hoc/ tenure/contract /deputation etc at the time of inception of the College at Tanda. To achieve this objection, the Government invited options from in service doctors of Health and Family Welfare Deptt. through Director Health Services, HP during the year 1996-97 for filling up the posts of teaching staff i.e. Registrar/Asstt. Professors etc. as per their eligibility in terms of academic qualifications and teaching experience required for each post according to the provisions of existing R and P rules and Medical Council of India regulations. Accordingly a Selection Committee under the Chairmanship of Director Medical Education was also constituted for scrutinizing/recommending suitable candidates for appointment to the Government vide Notification dated 26.4.1997 and 2.11.1997 annexed as

Annexure-R/I and R/II herewith. The options were also called for from the in service doctors during the year 1997. Initially only one faculty member was appointed as Asstt. Prof. (ENT) DURING THE YEAR, 1997 IN Dr. RPGMC, Tanda against total 4 sanctioned/created posts i.e. one each post of Prof., Assoc. Prof., Asstt. Prof. and Registrar. Subsequently 3 in service doctors (GDO'S) were also appointed on ad hoc basis as Lecturers/Registrar during Aug., 1998, Dec. 98 and April, 99 i.e. Respondents No. 4 and 5 and one other candidate in the deptt. of ENT keeping in view the work load and to satisfy the Medical Council of India inspection team. However, the Applicant did not represented against the ad hoc appointment of Respondents No. 4 and 5 earlier. Had he objected their appointment earlier the Govt. would have reconsidered their cases. Therefore the Applicant has no locus standi to challenge the appointment of Respondents No. 4 and 5 at this belated stage. The Government has made the appointment/deployment of some in service doctors for large interest of the State in the public interest and not give any undue benefit to some particular doctors as alleged. As regards judgment passed in the case of J and K, PSC v. Dr. Narinder Mohan, the Replying Respondents are not aware that in which context the same has been passed and whether the facts and circumstances were similar to the present case or otherwise.

3. Respondent No. 4 has averred as under vide para 3 of the reply on merits:

In reply to para-3 of the application, it is submitted that all the allegations made in this para of application are baseless, false, incorrect, and are denied. The Respondent No. 4 was not appointed against the higher post, but the Respondent No. 14 was appointed as regular Registrar by the duly constituted Selection Committee by the Govt. of HP, because Govt. of HP called the options vide copy of memo No. 3-273/96-Med.I dated 20.9.1997 received from the Director of Health Services, Shimla and copy of the said Memo was circulated to all the concerned department and called the options for appointments of Registrars in the Dr. R.P.G.M.C., Tanda Kangra. As per the said letter, Respondent No. 4 applied through proper channel for the appointment of Registrar in the ENT department and thereafter the Respondent No. 4 was duly selected by the duly constituted selection committee. The appointment letter was issued to the Respondent No. 4 by the Govt. of HP and as per this appointment letter, Respondent No. 4 joined as Registrar in ENT. The appoint of Respondent No. 4 is legal and valid and Applicant has no right to challenge the same. There is no such violation of rules.

As the option letter dated 20.9.1997, may of the doctors applied for various posts like Registrar, Demonstrators, Lecturers and Asstt. Professors and all were appointed by the duly constituted Selection Committee on behalf of Govt. of HP in the Dr. R.P.G.M.C . Tanda Kangra.

4. The following averments have been set up on behalf of Respondent No. 5 vide para 3 of the reply:

In reply to para No. 3 of the application, it is submitted that all the allegations made in this para of the petition are baseless, false, incorrect, and are denied. The Respondent No. 5 was not appointed against the higher post, but the Respondent No. 5 was appointed as regular registrar by the duly constituted Selection Committee by the Govt. of H.P., because Govt. of H.P. called the options vide copy of memo No. 3-273/96-Med.I Shimla and copy of the said memo was circulated to all the concerned department and called the options for appointments of Registrars in the Dr. R.P.G.M.C., Tanda Kangra. As per the said letter, the Respondent No. 5 applied through proper channel for the appointment of Registrar in the E.N.T. Department and thereafter the Respondent No. 5 was duly selected by the duly constituted selection committee. The appointment letter dated 18.12.1998 was issued to the Respondent No. 5 by the Govt. of H.P. and as per this appointment letter, Respondent No. 5 joined as Registrar in ENT department on 28th December, 1998. the appointment of Respondent No. 5 is legal and valid and applicant has no right to challenge the same. There is no such violation of rules.

As the option letter dated 20.9.1997 i.e. Annexure R-1, many of the doctors applied for various posts like Registrar, Demonstrators, Lecturers and Assistant Professors and all were appointed by the duly constituted Selection Committee on behalf of Govt. of H.P. in the Dr. R.P.G.M.C. Tanda-Kangra.

5. In the facts and circumstances of the case, the petition is disposed of with a direction that subject to the Petitioner making a representation along with copy of this judgment to Respondent No. 1 within one month from today, the same shall be considered and decided by the said Respondent within further two months in accordance with law after affording an opportunity of being heard to the Petitioner and Respondents No. 4 and 5, if so desired. Needless to say that consequential benefits, if any, shall follow the decision on the representation.

6. The petition stands disposed of, so also pending CMP(s), if any.