
(2000) 11 P&H CK 0073
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 7594 of 2000,

Dr. Rohit Aggarwal and others	Vs	APPELLANT
State of Punjab		
 Dr. Shailja Gupta Vs State of Punjab		RESPONDENT

Date of Decision : 03-11-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Indian Medical Council Act, 1956 — Section 20, 20(1)

Citation : AIR 2001 P&H 184 : (2001) 1 RCR(Civil) 1011

Hon'ble Judges : R.C. Kathuria, J;N.K. Sidhi, J

Bench : Division Bench

Advocate : Mr. B.S. Walia, for the Appellant; Mr. P.S. Patwalia, for the Respondent

Judgement

R.C- Kathuria, J.—This order will dispose of Civil Writ Petition No. 7594 of 2000 (Dr. Rohit Aggarwal and others v. State of Punjab and others) and Civil Writ Petition No. 7609 of 2000 (Dr. Shailja Gupta v. State of Punjab and others) in which common question of law and fact have arisen. The petitioners in both the writ petitions have prayed for issuance of a writ of mandamus directing the respondents to issue roll numbers to the petitioners so as to allow them to appear in MD/MS examination commencing on 6.6.2000 and declare the action of the respondents in withholding their roll numbers for the said examination as unconstitutional.

2. The State Government of Punjab has issued a notification dated 19.2.1997 for selection of students for admission to the three years Post-Graduate Degree Course for the session 1997-2000 in Government College, Patiala, Dental Colleges, Patiala and Amritsar by holding the Post-Graduate entrance test. The last date of admission fixed was September 30, 1997. At that time, the Government Medical College, Patiala was affiliated with Punjabi University, Patiala. On the establishment of Baba Farid University of Health Sciences, Faridkot, it came to be affiliated with the said University. Admission to the Post-

Graduate Degree Course in Medical Sciences for the session 1997-2000 was challenged by various candidates in the Apex Court. During the course of hearing, which took place on 8.5.1997, counsel representing the Union of India stated that direction not to fill-up the vacancies in the Post-Graduate Degree Courses in various Medical Colleges had caused hardships to the candidates who had challenged the admissions and for that reason it had been decided to hold a second counselling so as to give opportunity to the said candidates for their adjustment against the existing vacancies in Medical Colleges other than Gauhati Medical College. It was also submitted on behalf of Union of India that the said candidates may approach the Director General, Health Services for follow up action. Accepting the stand of Union of India, the petition was disposed of vide order dated 8.5.1997 (Annexure P.1). Dr. Ajay Kumar, Assistant Director General (MB), Directorate General of Health Services, Medical Examination Cell, Nirman Bhawan, New Delhi vide telegram dated 30.6.1997 had issued direction to the Principal, Government Medical College, Patiala not to fill up the vacancies of Post-Graduate Degree Courses under All India Quota. In response to the said letter, the Principal, Government Medical College informed him that admission in the Post-Graduate Degree Courses had been made in June, 1997 and classes have been started with effect from 1.7.1997. He was also informed that some seats under All India quota were lying vacant and the same may either be filled up amongst All India quota candidates or be surrendered to the State quota immediately so that the work of hospital attached to the college may not suffer. It was also intimated that seats can be filled up upto 31.8.1997. The Assistant Director General (ME) vide letter dated 14.8.1997 (Annexure-P) informed the Principal, Government Medical College, Patiala that the vacancies under All India P.G. Quota 1997 stand surrendered to the college so as to enable it to take necessary action in this regard. On receipt of the said letter admissions were granted to petitioner-Dr. Rohit Aggarwal. Dr. Ramandeep Singh, Dr. Akash Juneta. Dr. Ravneet Small Dhaliwal and Dr. Sushma (in C.W.P. No. 7594 of 2000) in the disciplines of MD (Medicine). MD (Anaesthesia). MS (BNT). MD (Skin and VD) and MD (Radio Diagnosis) courses respectively. Petitioner Nos. 1 and 2 were admitted on 28.8.1997, petitioner No. 3 was admitted on 29.8.1997, petitioner No.4 was admitted on 30.9.1997 and petitioner No. 5 was admitted on 15.9.1997. Dr. Shailja Gupta-petitioner (in C.W.P. No. 7609 of 2000) was admitted in MD (Bio-Chemistry) on 29.9.1997. The petitioners completed 2-1/2 years of course study out of three years course in Government Medical College, Patiala. When the examinations were to commence, roll numbers were issued to the candidates for taking the examination on 2.6.2000 but the same were not issued to the petitioners. They learnt that roll numbers were not being issued to them on account of shortage of study period. As per the stand of the petitioners the period for training has been adopted by the Medical Council of India in January, 1992 which was revised upto April, 1993 as envisaged under the Indian Medical Council Act, 1956 (hereinafter referred to as Act of 1956). It was further stated by them that as per the directions contained in the letter dated 29.3.2000 (Annexure-P.7) of the Registrar of respondent No. 2, State Government and the

University had decided to hold the examination of the students admitted upto 30.9.2000 in the month of June, 2000 subject to the condition that they had undergone and completed 3 calendar years training and the students admitted late would complete the remaining portion of the (training after the completion of their examination. They further claimed that as prescribed by the Medical Council of India, they were required to attend minimum 80% of the attendance of the composite course spanning over three calendar years before they could be allowed to appear in the examination. The entire duration of the course, as per assertion made in both the petitions, works out to be 727 days and the petitioners have more than 80% attendance during the training period and thereby fulfilled the requirement laid down by the Medical Council of India. Terming the action of the respondents in not issuing the roll numbers to them as unconstitutional and arbitrary, they invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

3. When the petition came up for hearing on 3.6.2000 before another Bench of this Court, petitioners were allowed to appear in the Post Graduate Examinations commencing from 6.6.2000 on provisional basis.

4. In response to the notice of this Court, respondent Nos. 1 and 3 have filed their joint written statements while respondent No. 2 has filed its separate written statement. It has been pleaded by respondent Nos. 1 and 3 that the petitioners, who were admitted during the session 1997 in various specialities under three years residency system on the dates specified in para 5 of the writ petitions, had not completed three years study period by 30.6.2000 and for that reason they are not eligible to appear in their respective MD/MS Degree examination. It was further averred by them that roll numbers of the candidates other than the petitioners were issued by respondent No. 2 which had been delivered to the candidates by the office of respondent No. 3. Respondent No. 2 in its reply maintained that after the admissions to the MD/MS Courses were finalised in June, 1997, classes had commenced on 1.7.1997, As regards the petitioners, it was pleaded that they were admitted to the different specialities on the dates specified in para 5 of the petitions and in terms of the ordinance and regulations governing the case of the petitioners, they were required to complete training period of three years in the disciplines in which they were admitted before they could take their examination as required by the provisions contained in Calendar Volume-IV, 1995 Edition (Extract as Annexure-R.2/1) of the Punjabi University (hereinafter referred to as "the university calendar"). It is further case of the respondents that confirmation was sought regarding the position circulated in the letter dated 29.3.2000 (Annexure-P.7) by the Registrar of the University from the Medical Council of India which had cautioned it against such a course. It was thus pleaded that aforesaid letter was erroneously written being against the provisions of university calendar and regulations of Medical Council of India.

5. We have heard learned counsel for the parties and gone through the record of the writ petition.

6. It is common case of the parties before us that the Assistant Director General of Health Services of the Examination Cell in its communication No. C-18018/3/97-MBC dated 14.8.1997 had intimated to the Principal. Government Medical College, Paliyala that the seats under the All India P.G. Quota for the year 1997 had been surrendered to the college and they were permitted to fill up those seats. Resultantly, the admission was granted to the petitioners on the respective dates despite the fact that classes to the MD/MS had commenced on 1.7.1997. The data furnished in the written statement has to be noticed hereinafter at the risk of repetition for proper appreciation of the stand of the respective parties. It reads as under -

In C.W. No.7594 of 2000.

Petitioner

Admitted on

Course commenced on

Shortage

Dr. Rohit Aggarwal (M.D. Medicine)

28.8.1997

1.7.1997

2 months

Dr. Ramandeep Singh(M.D Anaesthesiology)

28.8.1997

1.7.1997

2 months

Dr. Akai Juneja (M SENJ)

28.8.1997

1.7.1997

2 months

Dr. Ravneet Singh Dhaliwal (M.S. Skin and VD)

30.9.1997

1.7.1997

3 months

Dr. Sushma (M.D, Radio-diagnosis)

11. 9. 1997

1.7.1997

2 months 10 days

In C.W.P.No. 7609/2000:

Dr.Shailja Gupta

(M.D. Bio-Chemistry

29.9. 1997

1.7.1977

3 months"

7. The foundation of the cases of the petitioners laid in the writ petition is that the recommendations of the Medical Council of India on Post-Graduate Education laying down the period of training for obtaining MD/MS degree is directory and not mandatory and for that reason they had a right to take the examination held on 6.6.2000. Their further case is that they could not be debarred from taking the examination mainly on the ground that they had undergone 2-1/2 years of the course study in Government Medical College, Patiala during the said period. They had sought to supplement this stand on the plea that the candidate, who has minimum 80% of attendance during the three years period of the course, is eligible to take the examination. This stand of the petitioners has been strenuously opposed from the side of the respondents on the ground that the case *Ajay Kumar Singh and Others Vs. State of Bihar and Others*, on the basis of which they were allowed to take examination as per order dated 3.6.2000 of this Court already stood overruled by the Constitution Bench in *Dr. Preeti Srivastava and another v. The State of Madhya Pradesh and others* 1999(4) SLR 687 : 1999(4) SCT 133 (S.C.), and that the Regulations of Medical Council of India and university calendar requiring the petitioners to take their examination after completion of three years study course being mandatory and binding on the university, the petitioners have no right to appear in the said examination held in June 2000.

8. At this juncture relevant observations of the Apex Court made in *Dr. Preeti Srivastava and another v. The State of Madhya Pradesh and others* (supra) have to be noticed. It was stated in para 57 of the judgment as under :-

"We do not agree with this interpretation put on Section 20 of the Indian Medical Council Act, 1956. Section 20(1) (set out earlier) is in three parts. The first part provides that "the Council may prescribe standards of Post- Graduate medical education for the guidance of universities. The second part of sub-section (1) says that the Council may advise universities in the matter of securing uniform standards for post-graduate medical education throughout. The last part of sub-section (1) enables the Central Government to constitute from amongst the members of the council, a post-graduate medical education committee. The first part of sub-section (1) empowers the Council to prescribe standards of post-

graduate medical education for the guidance of universities. Therefore, the universities have to be guided by the standards prescribed by the Medical Council and must shape their programmes accordingly. The scheme of the Indian Medical Council Act, 1956 does not give an option to the universities to follow or not to follow the standards laid down by the Indian Medical Council."

It was also observed in this very para as under :-

"We, therefore, disagree with and over-rule the finding given in Ajay Kumar Singh and others v. State of Bihar and others (supra) to the effect that the standards of Post-Graduate Medical Education prescribed by the Medical Council of India are merely directory and the universities are not bound to comply with standards so prescribed."

9. This very question had come up for consideration in Council of Homoeopathic System of Medicine, Punjab and others Vs. Suchintan and others, and decisions of this Court in Miss Sa-jila Sultana v. Punjabi University, Patiala and another 1991(2) R.S.J. 317; Jagdeep Singh v. Punjabi University, Patiala, through its Registrar and another 1994(2) R.S.J. 67 : 1994(2) SCT 451 (P&H) and Civil Writ Petition No. 10222 of 1996, Ajay Kumar Singh and others v. State of Punjab and others, decided on 16.1.1997. In the last case while relying upon the above mentioned three cases, it was held that provisions framed by the Guru Nanak Dev University laying down the conditions of eligibility for appearance at the MD examination are mandatory and a candidate must fulfil the condition of completing 3 years course before he becomes entitled to appear at the examination. Even the Medical Council of India has laid down the condition of minimum training of three calendar years.

10. Coming to the other question raised from the side of the petitioner, at this stage, the recommendations of the Medical Council of India regarding post-graduate education have to be noticed and the same read as under -

"(B) Period of Training :

The prescribed minimum period of training for the award of various post-graduate degree/diploma shall be as follows :

1. M.D./M.S.

From the year 1993 onwards, the period of training for obtaining these degrees shall be three calendar years and the candidates can be admitted to this training after full registration with the Medical Council(s).

No exemption shall be given from this period of training of 3 years either for doing Housemanship or for any other experience or diploma.

2. D.M./M.Ch.

The minimum period of training for obtaining these degrees, shall be two calendar years after obtaining MD/MS degree or equivalent recognised

qualification in the required subjects.

OR

5 years continuous course provided there is an evaluation by the University at the end of the 3rd year for general medicine/general surgery. The candidates will have to pass in this for onward continuation.

V. Training Programme.

The training given to the post-graduate students in the recognised institutions for the award of various post-graduate medical degree/diploma will determine the expertise of the Specialities and/or medical teacher produced as a result of the educational programme. Due care has, therefore, to be given to the training imparted during the period of stay in the institution.

All candidates joining the post-graduate training programme must work as full time Residents during the whole period of their post-graduate training. They will be required to attend a minimum of 80% of training period. All the candidates must be given full time responsibility and assignments, and their participation in all facets of the educational process assured. The post-graduate students should be paid stipends which are commensurate with the remuneration of equivalent members of the departmental staff.

The detailed training programme to be instituted in any department has to be the responsibility of the University/Institution/Department concerned. However, it is recommended that a structured training programme must be prescribed for the training of the post-graduate candidate in each speciality. Every institution undertaking postgraduate training programme shall set up an Academic Cell, or a Curriculum Committee, under the Chairmanship of a responsible faculty member, which should work out the details of the training programme, in consultations with the department's faculty staff, and also co-ordinate and monitor the implementation of these training programmes. These training programmes should be further updated as and when required.

The structured training programme must be written up and strictly followed, so that the examiners can determine the training undergone by the candidates, and further the Medical Council of India Inspectors can assess it at the time of inspection. It is essential to have such a structured training programme in Basic Medical Sciences for clinical students, and in Applied aspects for Basic Medical Science candidates.

Post-graduate students must maintain a record book of the work carried out by them and the training programme undergone by them during the period of training, including details of surgical operations assisted or done independently by M.S./M.Ch. candidates. These record books should be checked and assessed by the Faculty members imparting the training.

The candidates should also be required to participate in the teaching and training

programme of undergraduate students and interns.

Some training in Medical Audit, Management. Health Economics and Health Information Systems etc. should also be imparted to the Postgraduate students."

The above recommendations provide no room for doubt because no option has been given to the students as well as the universities to forego any part of the training period during the said period of three years of the course. The schedule of the training prescribed and noticed above clearly indicates that the structure training programme is spread over the entire period of study course. In the present case, admittedly the petitioners had undergone only 2- 1/2 years of study course and the shortage of the period of the training course as stated by the respondents in respect of each of the petitioners has to be construed that they have not undergone the required training so as to achieve the excellence in the respective disciplines which is the very basis of the schedule of training provided by the Medical Council of India as well as the University calendar. As the experts have chosen to provide the Post- Graduate Degree Course training based, it does not fall within the purview of any other authority to bye-pass the requirement laid down therein. Once this limit is allowed to be deviated for any reason, it is bound to affect the standard of Post-Graduate Degree Course. Therefore, this Court cannot accept the plea of the petitioners in order to ignore the regulations of the Medical Council of India and under the circumstances of the case.

11. We find support to our above view from the judicial precedents as well. In Civil Writ Petition No. 10222 of 1996, decided on 16.1.1997, a Division Bench of this Court while noticing the judgments of the Apex Court and this Court had laid down that a candidate must fulfil the condition of completing 3 years course before he becomes entitled to appear at the examination. In Director, Medical Education, Lucknow and others v. Dr. Swapnil Chauhan 2000(2) S.L.R. : 2000(4) SCT 392 (S.C.), it was observed that three calendar years minimum training is essentially required for the award of the Post- Graduate degree of MD/MS. Following the ratio of the above mentioned case, same view was taken by us in Civil Writ Petition No. 7628 of 2000, Dr. Shelly Jelly v. State of Punjab and others, decided on 10.10.2000. Therefore, the stand of the petitioners in this regards merits rejection.

12. The other submission which was pressed by the counsel for the petitioners before us is that the petitioners have taken their examination in the month of June, 2000 under the directions of the Court dated 3.6.2000 and no useful purpose would be served to compel the petitioners to undergo remaining training period and then to take the examination which would result in loss of time and money of the petitioners. Strength was sought from the directions given in case C.W.P, No. 10222 of 1996, Ajay Kumar Singh and others v. State of Punjab and others (supra) which read as under :

"However, keeping in view the fact that the petitioner was allowed to appear in

the Post-Graduate examination on provisional basis and he appears to have passed the examination and if his result is not announced, one academic years of the petitioner would be lost without any gain to anybody, we deem it proper to direct that in case the petitioner makes a representation to the University for considering his case for declaration of his result then the same will be considered by the University authorities and the relevant provisions may be relaxed as an exceptional case. This approach is consistent with the observations made by the Supreme Court in their judgment in Council of Homoeopathic System of Medicine's case (supra) (Para 44) and the observations made by the Division Bench in Jagdeep Singh v. Punjabi University, Patiala and another (supra)."

13. The record of this case has been summoned by us. In the order dated 19.5.1997, it is recorded that the counsel representing the University had stated that in the SLP to Appeal filed by the University stay has been granted by the Supreme Court. Accepting this stand, the Civil Miscellaneous Application No. 5446 of 1997 filed by Dr. Ajay Kumar Gupta to declare his result had been adjourned sine die. Therefore, directions given in the aforesaid case cannot be availed of by the petitioners. Moreover, the plea so advanced by the counsel for the petitioners is based more on compassion and sympathy and the Courts cannot be guided to such a recourse which would undermine the very basis of the training of Post-Graduate Degree Course of the various disciplines to which petitioners had been admitted. Furthermore, this Court cannot ignore the legal position and issue a direction to the University to disobey the direction of the Medical Council of India. It is a case where even at the time when the petitioners sought admission on different dates in the months of August and September, 2000 respectively, as noticed earlier, they were made aware that they have to undergo three calendar years Post-Graduate Degree Course.

14. The Apex Court has also disapproved the approach of the Courts to pass sympathy orders in such like cases - in case Maharshi Dayanand University v. Dr. Anto Joseph and others 1998(5) SLR 708 (S.C.). The facts of the above mentioned case were that Dr. Anto Joseph, the first respondent had joined MD. course in Anaesthesia of the Maharshi Dayanand University on 12.10.1993. The examination for the said examination was to be held on 27.9.1996. The first respondent having fallen short of the minimum training period requirement and for that reason applied for exemption. His application in this regard was turned down. Thereafter, he filed a writ petition seeking direction against the University to allow him to take the examination provisionally subject to the final decision of this Court. When the said petition came up for final hearing, the High Court taking into account that he has undergone the course for nearly three years except for a few days and had also secured more than 80% of attendance in the course directed the University to declare the result of the examination taken by him. It was also directed that in case he was declared successful then the University shall confer on him the Master degree. This order was challenged in the Apex Court and the operation of the said order was stayed. While disposing of this petition the respective stand taken by the parties was taken into account

and it would be fruitful to notice in detail the contentions and observations recorded in paras 5 to 8 of the judgments which read as under :

"5. Learned counsel for the appellant submitted that the first respondent joined the course 15 days late and he had taken leave for 42 days so that he was short of the requirement of three years training by 57 days. Learned counsel submitted that, having regard to the Medical Council of India's requirements and the University's Prospectus, there was no justification for the interim order which had been passed by the High Court or for the final order, whose only basis was the interim order. Learned counsel pointed out that the leave that had been sanctioned to the first respondent had been sanctioned expressly on the basis that the first respondent would have to repeat the training before appearing in the final examination. Learned counsel submitted that although the order under challenge stated that it was not to be treated as a precedent, there were many matters of students in the same situation who had been granted the same relief based upon the judgment under challenge and that had been done not only by the High Court but also by Courts subordinate thereto.

6. Learned counsel for the first respondent submitted that the fact that the first respondent had joined the course 15 days short should not be taken into account. He submitted that the University had the power to grant an exemption for a period of 30 days and this should be taken into account. For the purposes of argument we will accept all this. The question still is in relation to the 12 days that the first respondent fell short of. Learned counsel submitted that first respondent had now completed the period of 3 years training though subsequent to the examination.

7. We might not have interfered had this been as isolated case but we find from reading the orders which have been placed on the record that though the impugned order stated that it was not to be treated as a precedent it has been followed repeatedly by the High Court and by Courts below. It appears then that it is necessary to interfere to uphold the sanctity of the requirements of the Medical Council of India and the University. These requirements are laid down to ensure that the full period of training necessary for acquiring the qualification is completed and it is in the public interest that they are not lightly deviated from.

8. The University was not obliged to give the first respondent exemption for 30 days" absence because the leave it gave the first respondent contemplated a full training period by having to repeat it. The first respondent fell short of the required training period at least by 42 days. He must, therefore, appear and pass the next examination."

The observations made in the above mentioned case totally negate the stand of the petitioner.

15. Lastly, in fairness to the counsel for the petitioners, it was pointed out that the petitioners have in the replication given an extract of the result of MD/MS examination held in May/June, 2000 showing that candidates named therein

were granted admission to MD/MS course later than 1.7.1997 and were short of many days ranging from 24 to 39 days, still their result has been declared by the University but petitioner's result has been withheld on account of non-completion of three years study period and for that reason they have been discriminated and treated arbitrarily by the University. The stand so taken from the side of the petitioners deserves to be rejected on the short ground that the persons mentioned in the replication and in the extract of the result placed on record have not been im-pleaded as parties to this petition. No other data has been placed on record so as to spell out as to on what basis admissions were granted to them. Under the circumstances, no adverse order, in their absence, can be passed against them.

For the aforesaid reasons, we find no merit in both the petitions and the same are accordingly dismissed. Under the circumstances of the case no orders as to costs.

16. Petitions dismissed.