
(1991) 06 P&H CK 0014
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 5488 of 1991

Dr. Sameer Kaushal

APPELLANT

Vs

The State of Punjab and others

RESPONDENT

Date of Decision : 07-06-1991

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : AIR 1992 P&H 209 : (1991) 3 RCR(Civil) 627

Hon'ble Judges : Jawahar Lal Gupta, J

Bench : Single Bench

Advocate : S.D. Sharma, for the Appellant; T.S. Dhindsa, AAG, for the Respondent

Judgement

1. The petitioner a member of PCMS-II is aggrieved by the order of the respondents by which it has been held that "his regular rural service up to January 31, 1991 is less than three years" and that he could not be considered as an in-service candidate. A copy of this letter has been appended as Annexure P-4 with the writ petition. The petitioner's grievance is two-fold. He submits that while determining the petitioner's eligibility, the period of rural service rendered by him from February 7, 1987 to October 5, 1988 (one year seven months and twenty-nine days) at Rural Hospital, Daulatpur Chowk, district Una in the State of Himachal Pradesh has been wrongly excluded. He further submits that the eligibility had to be determined as on March 31, 1991 and not as on January 31, 1991.

2. A brief reference to the facts would suffice. The petitioner passed his M.B.B.S. examination in the year 1984 from Government Medical College, Patiala. After doing one year Internship and one year house-job at Rajindra Hospital, Patiala, the petitioner joined as Medical Officer in Rural Hospital Daulatpur Chowk, district Una in the State of Himachal Pradesh. He served there from February 7, 1987 to October 5, 1988. It is claimed that this was "rural service". The petitioner was selected by the Punjab Public Service Commission for appointment as a Medical

Officer in PCMS-II. He was posted as a Medical Officer in School Health Clinic at Ropar, where he joined on October 6, 1988 after having been relieved on October 5, 1988 (A.N.) from Himachal Pradesh. He was then transferred to Subsidiary Health Centre Mianpur in district Ropar, which post he joined on November 7, 1989. He continues to hold the said post.

3. The respondents issued an advertisement inviting applications from Medical Graduates for admission to various Post-Graduate Degree and Diploma Courses. 24 per cent of the total seats in each speciality were to be filled up on All India basis through competitive entrance examination, which was to be conducted by the All India Institute of Medical Sciences, New Delhi. 60 per cent of the remaining seats had to be filled up from amongst Registrars, Demonstrators and PCMS-II Officers with a minimum of three years rural service. 40 per cent seats had to be filled up strictly on merit from amongst the fresh graduates, PCMS-II Officers and Registrars/Demonstrators. In paragraph 3 of this advertisement it was specifically postulated that "all the PCMS-II Doctors, who have served the State Government for a minimum period of three years rural regular service (ad hoc service continuous with regular service will be counted) will be eligible for admission to Post-Graduate Medical Degree/Diploma Course under 60% quota." It was further provided in the advertisement that "the eligibility of the candidates will be decided as on March 31, 1991."

4. The petitioner submitted an application for being considered against the 60 per cent quota as an in-service candidate. He also submitted two representations claiming inter alia that the period of rural service rendered by him in the State of Himachal Pradesh should be taken into consideration while determining his eligibility for admission to the Course. Copies of the two representations have been appended as Annexures P-2 and P-3 with the writ petition. Vide letter dated March 9, 1991 (Annexure P-4), the petitioner was informed that he had not completed three years regular rural service up to January 31, 1991 and as such he could not be considered as an in-service candidate. He was further informed that "he has been shifted to general category." As mentioned above, a copy of this letter is at Annexure P-4. He submitted a representation pointing out that in the past the rural service rendered by persons outside Punjab had been taken into consideration for determining the eligibility. He made a specific reference to the case of Dr. N.K. Goel, who was admitted to M.D.S. Course in the year 1988. In this representation he also pointed out that Dr. Goel had rendered rural service, like the petitioner, in the State of Himachal Pradesh, which was taken into consideration by the authorities and he was held to be eligible. His eligibility was challenged in a civil suit by two Doctors, but their claim was not accepted by the Civil Court at Amritsar. A copy of an interim order dated March 31, 1988 passed by the Civil Court in this behalf has been annexed with the writ petition as Annexure P-7. The representation having not elicited any favourable results, the petitioner has approached this Court through the present writ petition.

5. The Motion Bench had originally directed the issue of notice of motion for April

25, 1991. The learned counsel for the respondents had appeared and prayed for an adjournment. In spite of an opportunity having been granted, no written statement was filed. The writ petition was accordingly admitted and ordered to be listed for hearing on May 14, 1991. It was directed that one seat be kept reserved for the petitioner and written statement, if any, be filed three days in advance. Still no written statement has been filed. The averments made in the petition have consequently to be accepted as correct.

6. Mr. S.D. Sharma, learned counsel for the petitioner has contended that according to the advertisement, all PCMS-II Doctors with a minimum of three years rural service are eligible for consideration. He has also referred to the instructions of the Government, a copy of which is at Annexure P-10, to show that the only requirement is of three years rural service. The learned counsel submits that the petitioner fulfils the conditions of eligibility and he has been illegally denied the benefit of the rural service rendered by him in the State of Himachal Pradesh. He further submits that the eligibility had to be seen as on March 31, 1991 and not as on January 31, 1991. He further submits that the action of the respondents was discriminatory and violative of Article 14 of the Constitution in as much as others similarly situated had been considered as eligible.

7. Mr. T.S. Dhindsa, on the other hand, contends that only such PCMS-II Doctors, who have rendered three years rural service in the State of Punjab are eligible. Service in any other State is not service to the "State Government."

8. The first question that arises for consideration is as to whether or not rural service rendered by a Doctor outside the State of Punjab qualifies for consideration towards three years rural service prescribed in the instructions issued by the Government. For the consideration of this question it is apt to notice that the applications have been invited for selections of Doctors for admission to Post-Graduate Courses. Admittedly, the best Doctors have to be selected. Even under the notice inviting applications Medical Graduates from all over the country are eligible. In the instructions as originally issued by the Government, the graduates from Punjabi University, Patiala and Guru Nanak Dev University, Amritsar were to be allowed 50 marks preference, which appears to have been done away with for the present selection. In fact, such a course of action is indicative of the Government's intention to consider graduates from all Medical Institutions of the country without affording any preferential treatment to those, who have passed the qualifying examination from the Universities or Medical Colleges within the State. In fact, institutional preference even has been frowned upon by the Apex Court. If the object is to select the best person, can a qualification which is merely in the nature of experience, be interpreted in such a way that the service rendered by a Doctor outside the State of Punjab is excluded? I do not think so. Any such measure would militate against the concept of equality of opportunity enshrined in the Constitution, The rule of law in this behalf has been clearly enunciated in the case of Dr. Pradeep Jain and

Others Vs. Union of India (UOI) and Others, in the following words at page 1430:--

"It would run counter to the basic principle of equality before the law and equal protection of the law if a citizen by reason of his residence in State A, which ordinarily in the commonality of cases would be the result of his birth in a place situate within that State, should have opportunity for education or advancement which is denied to another citizen because he happens to be resident in State B. The philosophy and pragmatism of universal excellence through equality of opportunity for education and advancement across the nation is part of our founding faith and constitutional creed. The effort must, therefore, always be to select the best and most meritorious students for admission to technical institutions and medical colleges by providing equal opportunity to all citizens in the country and no citizen can legitimately, without serious detriment to the unity and integrity of the nation, be regarded as an outsider in our constitutional set up."

9. In view of the above principle of law, no discrimination can be made on the basis of residence or any other consideration. The guiding rule has to be professional excellence. By this measure, the service rendered by a Doctor in the State of Himachal Pradesh is in no way different from the service rendered in the State of Punjab. Even the advertisement does not use the expression "Punjab State Government". The only requirement is that the Doctor should be a member of PCMS-II and should have rendered three years rural service in a Government Hospital. That being so, I am of the considered view that the service rendered by the petitioner in the State of Himachal Pradesh cannot be excluded from consideration while determining his eligibility.

10. This view is further supported by the fact that even in the past service rendered by A Doctor in the State of Himachal Pradesh has been taken into consideration. The Principal Medical College, Amritsar in his letter dated June 18, 1988 has observed as under:--

"Though Dr. Goyal is working as Dental Surgeon in Himachal Pradesh the calendar does not mention the word "Punjab" before the word "State" and the Public Service Commission. This point has been discussed and admitted by the Hon"ble Court in the case of petition filed by Dr. Anuradha v. State of Punjab in the judgment delivered by it at page 5.... Since Dr. Goyal has got about six years experience after selection through Public Service Commission, he falls in the category of 60 per cent quota of in-service candidates."

11. I do not find any justification in the action of the authorities in taking a different view now. Consequently, the petitioner's suggestion that the action suffers from the vice of discrimination is not wholly without substance.

12. Mr. Sharma is also right in his submission that the eligibility has to be determined as on March 31, 1991. A perusal of the notice at Annexure P-I contains the following categorical stipulation:-

"The eligibility of the candidates will be decided as on 31-3-1991."

In view of this clear stipulation in the notice, the action of the authorities in declaring the petitioner ineligible on the ground that he had not completed three years rural service as on January 31, 1991, was wholly unjustifiable.

13. In view of above, the writ petition is allowed. It is held that the petitioner fulfils the condition of three years rural service. He is eligible for consideration as in-service candidate against 60 per cent seats. The respondents are directed to consider the petitioner in accordance with law and the preferences given by him. The petitioner is also held entitled to his costs, which are assessed at Rs. 3,000,-/-.

14. Petition allowed.