

(2001) 01 P&H CK 0155
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 14616 of 1998

Dr. Sanjeev Sharma

APPELLANT

Vs

The Central Council of Indian Medicine

RESPONDENT

Date of Decision : 25-01-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 01 P&H CK 0155

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

Advocate : Mr. Rajiv Atma Ram, for the Appellant; Mr. Rameshwar Thakur, Mr. B.L. Gupta and Mr. Rajan Gupta, for the Respondent

Judgement

R.L. Anand, J.—Dr. Sanjeev Sharma and two others (petitioners) have filed the present writ petition under Article 226 of the Constitution of India praying that a writ in the nature of mandamus be issued against the respondents directing them to continue the course of study to which they were admitted on 21.11.1996 and also writ in the nature of certiorari maybe issued for the quashment of the order dated 19.5.1998 vide which respondent No. 2, Shri Dhanwantari Ayurved College and Pandit Kedamath Memorial Hospital, had ordered the discontinuance of M.D. Course and had directed the petitioners to report to their parent department. The petitioners also prayed that suitable directions be given to respondent No. 1. The Central Council of Indian Medicine, to make appropriate arrangement to conduct the first examination after the admission of the petitioners to their respective courses, which is liable to be conducted on the expiry of one academic session.

2. The case set up by the petitioners is that petitioner No. I was admitted to BAMS Course as a consequence of process of selection held by the Punjabi University, Patiala in 1978. He qualified the aforesaid Course in 1984 and after acquiring the qualification of BAMS, applied for appointment as Ayurvedic Medical Officer. He was selected and appointed as Ayurvedic Medical Officer on 31.5.1989

and since then he is discharging his duties. Respondent No. 3, Shri Dhanwantari Education Society (Regd.) issued on advertisement dated 18.10.1996 and invited applications for admission to certain Postgraduate Course in Ayurveda. The petitioner No. 1 fulfilled the qualifications. He was selected and started attending classes of M.D. in the Speciality of Medicine (Kaya Chikitsa).

3. Petitioner No. 2 Dr. Rajinder Singh qualified BAMS from Punjabi University, Patiala in 1987. He also applied for admission to the post of Ayurvedic _ Medical Officer. On his selection, he was issued an offer of appointment on 18.4.1990. He assumed his duties on the said date and is discharging the same since then. He, in response to the advertisement, applied for admission to Postgraduate Course of M.D. in the Specialisation of Basic Principles of Ayurveda. He was selected and admitted to the Course in the same fashion as petitioner No. 1. He commenced the course of studies at the institute of respondent No. 2.

4. Petitioner No. 3 Dr. Shakuntla Singh, undertook the BAMS Course at Mahila Ayurvedic College, Khanpur Kalan. She was issued certificate in the year 1981 by Maharishi Dayanand University, Rothak. She qualified BAMS Course and applied for appointment as Ayurvedic Medical Officer. She was selected and issued offer of appointment dated 16.9.1983. She is also discharging her duties as Ayurvedic Medical Officer since then. She applied for admission to the Postgraduate Course of M.D. in Ayurveda in the Speciality of Paediatrics. She was selected and is undertaking the course since November, 1996.

5. Petitioners No. 1 and 2 are the confirmed employees of the Government of Punjab, while petitioner No. 3 is a regular employee of the State of Haryana. They got no objection certificates from their respective Governments in order to attend Postgraduate Courses. They also applied for study leave. The admission of the petitioners was challenged by certain persons but their writs were dismissed and the admission of the petitioners to the said Courses was approved. In the judgment it is indicated that the admissions have been granted to the petitioners specifically as a consequence of permission granted by the Central Council of Indian Medicine. It was also observed that the approval of the Panjab University, Chandigarh was not required before the start of the Courses because the Panjab University did not have its own faculty and that the Central Council of Indian Medicine is the apex body in the field of education for the purposes of Ayurvedic Medicine and it was competent to grant the admission. The Chandigarh Administration also conceded to the request of Shri Dhanwantari Ayurved College to commence Postgraduate Courses. A letter was also issued on 31.7.1996 to this effect.

6. The Postgraduate M.D. Course in various specialities is a regular course of three years. The first examination was to be conducted on the conclusion of one academic year and the second and final examinations were to be conducted at the end of two academic years after the first examination. The petitioners have completed the first year academic course in their respective specialities and they were required to be examined through written test. But no such written

examination has been conducted till date. As a matter of fact, petitioner No. 1 has received a letter dated 19.5.1998 to the effect that the Courses have been disbanded and, therefore, he should have reported to his parent department and join his duty. Similar communications have been received by petitioners No. 2 and 3. The petitioners made representations to respondents No. 2 and 3 challenging their action but they have not heard from the authorities in response to their said representations. When nothing was heard from the opposite party, the petitioners reported to their respective departments for duty. Study leave is permissible to a government employee only once in a span of five years and if the study leave is cancelled or revoked, the petitioners will not be in a position to undertake the examination. In short, the stand of the petitioners is that suitable directions be given to respondent-authority to undertake their examination in the Post-graduation of BAMS Courses and they should not be deprived to undertake their courses on the ground that the institution has not the prior approval of the Panjab University before the start of Courses. Rather, directions should be given to the Panjab University to take the examinations.

7. Notice of the writ petition was given to the respondents. Respondent No. 1 in its written statement stated that respondent No. 2 applied to it for granting permission to conduct Postgraduate course in Maulik Siddhant, Kaya Chikitsa and Kaumarbhritya after getting no objection certificates from the, Chandigarh Administration and it was intimated by the College that an application had also been made to the Panjab University, Chandigarh for granting affiliation to the College. The Central Council of India Medicine visited the College on 23.9.1996 to assess the facilities available of teaching and practical training for conducting the Postgraduate Course in Maulik Siddhant, Kaya Chikitsa and Kaumarbhritya and after making the spot study and due satisfaction, the Council granted permission to run the above said course with an intake capacity of four students in each speciality. The University is an examining and awarding body of the degree. It is the concern of the College to get affiliation to respective University. The Panjab University at present is not having a faculty in Ayurveda and it is not in a position to conduct the examinations for postgraduate Course, The respondent No. 1 can only make a request to Punjabi University, Patiala to grant affiliation to conduct the examinations for post graduate courses till faculty is created by the Panjab University. In short, the stand of respondent No. 1 is that though it granted permission to respondents No. 2 and 3 to run the courses but these respondents were to get affiliation from the Panjab University at their own responsibility.

8. Written statement was also filed on behalf of respondents No. 2 and 3. So far as the running of courses is concerned, it is not being disputed, but their case is that Panjab University, Chandigarh has not till date constituted the Ayurveda faculty in terms of the provisions of Panjab University despite the fact that respondent No. 1 had repeatedly requested the Panjab University to do so for the creation of an independent Ayurveda facility. Therefore, the Courses were abandoned and the petitioners were asked to report back to their duty. Panjab University has not granted permission to respondents No. 2 and 3 to start

Postgraduate Courses, therefore, these Courses cannot go ahead.

9. Written statement was also filed by respondent No. 4. According to this respondent, respondents No. 2 and 3 had been approaching the University for the increase of seats in BAMS Course but the same was declined because of lack of infrastructure facilities. In the report dated 18.2.1998 the Inspection Committee headed by Prof. B.K. Sharma, Director, PGI, Chandigarh came to the following conclusion :-

"....the College does not fulfil the basic requirements even now especially regarding the faculty and the management should make every effort to fulfil the lacuna. No educational institution can make any headway without the competent faculty. In the interest of students, however, the Committee recommends that status quo should continue and the College continue to admit 50 students. But the College should give time frame during which the lacunas pointed out above will be taken care of." It was also pleaded by respondent No. 4 that respondent No. 2 has not been granted affiliation for running post graduate course in Ayurveda because of lack of infrastructure facilities. When respondent No. 2 advertised and invited applications for admission to post graduate courses in various disciplines, it was done in violation of rules and regulations of the respondent-University and also those of Central Council of Indian Medicine and respondent No. 2 was advised to withdraw the advertisement. The final stand taken by respondent No. 4 is that "Thus, as the matters stand today, the respondent-College has neither been granted affiliation for running post-graduate courses in Ayurveda by the answering respondent nor provisional affiliation even for under-graduate courses has been confirmed owing to non-fulfilment of conditions imposed by the University on the recommendations of various Inspection Committees which visited the College from time to time. Since admissions to postgraduate courses in Ayurveda were made by respondent No. 2 on its own in clear defiance of the instructions of the respondent- University and without obtaining its prior permission, answering-respondent is in no way responsible for the present impasse." The admissions were made in utter disregard to the instructions. Moreover, on the top of this, the respondent-University as yet does not have the independent faculty in Ayurvedic Medicine for formulating and designing courses of reading, syllabi and outlines of test in each subject of examination. Therefore, it is not in a position to conduct examinations for post graduate students unauthorisedly admitted by respondent No. 2 nor it is legally bound to do so.

10. Respondent No. 5 also filed written statement in which it is stated that respondent No. 2 is not within the jurisdiction of Punjabi University, Patiala. It is not affiliated to this University and the University has Ayurvedic Faculty and is running two M.D. Courses in Ras Shastra and Dravguna. For the conduct of M.D. examination, the Punjabi University shall face the following difficulties :-

"a) Cost of this examination being quite high, it shall be difficult to bear the same by the University.

- b) The question of issuance of degree in view of absence of territorial jurisdiction will arise.
- c) The examination cannot be conducted at Chandigarh.
- d) The ordinances of Punjabi University in the conduct of M.D. examination may be at variance with the rules/ordinances of Panjab University.
- e) The question of eligibility of candidates to sit for exam may also pose some problems."

11. I have heard Mr. Rajiv Atma Ram, Advocate on behalf of the petitioners, Mr. Rajeshwar Thakur, Advocate on behalf of respondent No. 1, Mr. B.L. Gupta, Advocate on behalf of respondents No. 4, Mr. Rajan Gupta, Advocate, on behalf of respondent NO. 5 and with their assistance have gone through the records of this case. 12. Mr. Rajiv Atma Ram, the learned counsel appearing on behalf of the petitioners submitted that the petitioners applied for the Course in pursuance of advertisement issued by respondents No. 2 and 3. The Central Council of Indian Medicine gave the permission to start postgraduate Courses to the institution as per Annexure P-7. So much so, the Chandigarh Administration also gave the approval for starting postgraduate Courses vide Annexure P-8. The petitioners, after obtaining study leave, started attending the classes. The Central Council of Indian Medicine is the apex body. Once the permission is granted by the Council, it is obligatory on the part of the Panjab University to undertake the examinations by creating a necessary faculty for the said examinations. The petitioners cannot be deprived of their legitimate right to appear in the examinations which are to be conducted by the Panjab University. It was also submitted by the learned counsel for the petitioners that earlier Dr. Asha Sharma filed Civil Writ Petition No. 19617 of 1996 against the Panjab University, Shri Dhanwantari Ayurved College, Central Council of Indian Medicine and the Chandigarh Administration in which the selection of the petitioners was challenged and in that writ petition the selection of the petitioners was approved. It was also observed by the Bench that respondent-College was given permission to start postgraduate Courses for a period of one year and the Bench was cognizant that the Panjab University did not have the teaching facility for study in Ayurveda and still the permission was granted to run the Courses. The learned counsel wanted to convey that this judgment is a clear dictum to the Panjab University to create a necessary faculty in order to undertake the examinations. If the University can undertake the examinations for BAMS course through the medical faculty, why it cannot undertake the examinations for postgraduate courses of Ayurvedic Medicines through the same faculty. It was also submitted by the learned counsel for the petitioners that the High Court as a special case may give direction even to Punjabi University to undertake the examinations subject to their conditions.

13. On the contrary, the learned counsel Mr. B.L. Gupta and Mr. Rajan Gupta jointly submitted that this writ petition is devoid of any merit. According to Mr.

B.L. Gupta, the Panjab University categorically informed the institution not to run the Courses because of lack of infrastructure facilities and also that University is not in a position to create a necessary facility to undertake these type of examinations and that any admissions made by respondents No. 2 and 3 were at their own risk and responsibility. The University is not in a position to take the examinations. For undergraduate Courses the University is taking the examinations through the faculty of Medical Sciences because in BAMS Course certain subjects are common and the faculty is in a position to take the examinations. But so far as the postgraduate Courses to which the petitioners applied are concerned, they are specialised courses and the faculty of medical science is not in a position to conduct the examinations. Since the institutions of respondents No. 2 and 3 were never given affiliation with the Panjab University, therefore, the direction cannot be given. Even the judgment given by the Hon'ble High Court in Dr. Asha Sharma's case is not helpful to the petitioners. Mr. Rajan Gupta, the learned counsel appearing on behalf of Punjabi University, submitted that this University has no jurisdiction over the colleges at Chandigarh. Moreover, the Punjabi University conducts postgraduates courses in two specialities i.e. Ras Shastra and Dravguna, whereas the specialities of the petitioners are totally different. Punjabi University is an institution created by law and it cannot usurp the territorial jurisdiction of other Universities nor such directions can be given in violations of the provisions of the Statute.

14. I have considered the rival contentions of the parties and am of the considered opinion that this writ is without any merit. It is a conceded aspect of the case that Panjab University never gave the assurance to respondents No. 2 and 3 to admit the candidates. The provisional permission was by Central Council of Indian Medicine and the Chandigarh Administration. Respondent No. 2 ought to have taken the prior approval of the University. If University is conducting the examinations of BAMS Course, it is under no obligation to conduct the postgraduate examinations which are specialised Courses. Even the Central Council of Indian Medicine and the Inspection Committee have stated that respondent No. 2 had no proper infrastructure facilities. The judgment of Dr. Asha Sharma's case has not given any direction to the Panjab University for the creation of faculty nor there was any stand of the Panjab University before the Hon'ble High Court that it will create the necessary faculty for postgraduate courses. In that writ petition short point for determination was whether the admission of the petitioners to the said course was illegal, unconstitutional and ultra-vires. So far as the admission was concerned, that aspect of the case was approved but Panjab University never undertook that it will affiliate respondents No. 2 and 3 in due course or it will create necessary faculty for the conduct of the examinations. The petitioners took the admission at their own risk and responsibility. Their cause of action, if any, is against respondents No. 2 and 3, which gave the admission. University is not bound to conduct the examinations. The University might have its own limitations.

In this view of the matter, I do not see any merit in this writ petition and the

same is hereby dismissed with no order as to costs.

15. Writ petition dismissed.