
(2000) 10 P&H CK 0133
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 7628 of 2000

Dr. Shelly Jetly

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 10-10-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 10 P&H CK 0133

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

Bench : Division Bench

Advocate : Mr. Ashwani Bakshi, for the Appellant; Mr. Gurminder Singh, DAG and Mr. P.S. Patwalia, for the Respondent

Judgement

R.C. Kathuria, J.—Dr. Shelly Jetly-petitioner has prayed for a direction to respondent Nos. 2 and 3 to allow her to appear in the remaining papers of M.D. examination which had commenced from 6.6.2000 and to hold a special examination for the paper of "Applied Pathology including Pathophysiology" which they had prevented her to parttake illegally and arbitrarily.

2. The petitioner, who was working as P.C.M.S. Doctor with Punjab Government was granted admission in the discipline of speciality of Pathology to the three years Post-Graduate Degree Course for the academic session 1997-2000 in Government Medical College, Patiala on 1.7.1997. It was a residency course at State expense. She was eligible to appear in the examination after complying training period of three years under the Regulations of Punjabi University, Patiala as per resolution under Hem No. 6 of the Academic Council of Baba Farid University of Health Sciences. Earlier, Government Medical College, Patiala was affiliated with Punjabi University and with effect from 1.7.1999, it came to be affiliated with Baba Farid University of Health Sciences under the provisions of Baba Farid University of Health Sciences Act, 1998. The petitioner had submitted thesis on 4.12.1999. She was eligible to appear in the examination which was scheduled to be held on 6.6.2000. She was informed by respondent No. 3 to

collect her roll number card from the college on 6.6.2000 before the start of the examination of the first paper, but when she went to the college to take the examination, she was not permitted to do so.

3. Aggrieved by the action of respondent Nos. 2 and 3, she invoked extraordinary jurisdiction of the High Court under Article 226 of the Constitution of India. It was averred by her that she had been prevented from taking the examination on account of shortage of study period for having proceeded on maternity leave which was duly sanctioned by the competent authority. She claimed that she had attended more than 80% of training period and the act" a of the respondents was against the recommendation of the Medical Council of India which provided that the candidates are required to have minimum of 80% attendance in the training for the composite course spread over three calendar years before they were allowed to appear in the examination. It was further stated by her that during the last year two students, namely, Dr. Simran and Dr. Satinder, who had taken discipline of specialities of Anaesthesia and Gynaecology respectively in the same college, were permitted to take examination despite the fact that they had gone on maternity leave during their respective period of training whereas she has been treated differently and discriminated by the respondents. It was also asserted by her that if she was not allowed to take her examination, she would have to wait for further period of six months to appear in the examination, which would cause irreparable loss to her. When the petition was taken up for hearing, vide order dated 7.6.2000 of this Court, she was allowed to appear provisionally in the examination of M.D. (Pathology) on 8.6.2000 and in the remaining papers of examination which were to be held thereafter.

4. In response to the notice of this Court, respondent Nos. 2 and 2 have filed their separate written statements. It was pleaded by respondent No. 2 that petitioner who had joined three years course in M.D. (Pathology) on 1.7.1997 under three years residency system had proceeded on maternity leave from 31.8.1998 to 26.2.1999 for a total period of 180 days and for that reason she was short of study period as prescribed by the Medical Council of India. The action of the university in not allowing the petitioner to sit in the examination on 6.6.2000 was justified. Respondent No. 3 also supported the stand of respondent No. 2. At the same time, it was averred that as she has failed to complete the course within the prescribed period, she had to be reverted to P.C.M.S. cadre and will have to complete the course by taking leave for examination purpose at her own expense in terms of notification dated 7.9.1999 issued by the Director, Health and Family Welfare, Punjab, copy of which is Annexure-R.2/3. It was further stated that the recommendations of the Medical Council of India do not permit any exemption from this period of training of three years. Explaining the position with regard to the permission granted to other students stated in the writ petition, it was stated that in their case there had been shortage of study of two or three months during the entire period of their training in comparison to the case of the petitioner.

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

6. In order to get a clear picture of the controversy raised, we had called upon the Principal, Medical College, Patiala to furnish the details of the lectures, seminars and practicals attended by the petitioner during the course of three years. Dr. Ravinder Singh, Principal, Medical College, Patiala in his affidavit dated 10.8.2000 has clarified the position. According to his affidavit lectures, seminars and practicals held during the course were 886 in number. The petitioner had availed maternity leave of 180 days and in addition 26 days of other leave. In this manner (manner ?), she had not attended the course for a period of 206 days. Learned counsel for the petitioner has not disputed that under the training programme schedule, recommended by the Medical Council of India for the Post-Graduate education, it has been specifically provided that all candidates joining the Post- Graduate Training Programme have to work as full time residents during the whole period of their Post-Graduate training and they are further required to attend a minimum of 80% of training period. At the same time, it was maintained by him that for calculating minimum of 80% of training period, notice is required to be taken of the fact that during the period of 180 days, the petitioner had remained on maternity leave, which included Sundays and holidays and for that reason respondent Nos. 2 and 3 were duty bound to exclude the period of Sundays and holidays for counting the percentage of attendance of the course. Further according to him, respondent Nos. 2 and 3 have not worked out the attendance of the petitioner on this principle and for that reason have wrongly concluded that there was a shortage of 206 days out of 886 lectures held during the period of course. To support the stand taken strength was sought from the observation made in Dr. Leena Jain v. Punjabi University, Patiala 1995(4) S.C.T. 347. The stand of the petitioner has been contested by the counsel representing the respondents mainly on the ground that even after taking into account the total period of maternity leave and other leave availed by the petitioner, she had not attended 80% of the training period so stipulated under the recommendations of the Medical Council of India because the total period works out to be is 708 days and if 206 days are deducted from the total period of training of 886, the balance comes to 680 days.

7. The stand taken from the side of the respondents cannot be faulted. Extract of the recommendations of the Medical Council of India on Post-Graduate education has been stated in para 4 of the writ petition. It reads as under :-

"Extract from the recommendations of the Medical Council of India on Post Graduate Education.

(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 Councils).

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.

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."

The above recommendations leave no manner of doubt that no exemption is provided to the candidate during the period of three years either for doing housemanship or for any other experience or diploma. Necessarily it has to be taken that the candidates should not have any continuous break from the period of training. It has not been disputed by the petitioner that the recommendation and directions of the Medical Council of India are binding on respondent Nos. 2 and 3 and these cannot be by-passed by the petitioner. It cannot be overlooked that the entire study course is training based. It has to be kept in mind that candidate during the course of training has not only to share greater responsibility in the management, but has also to acquire expertise knowledge during his clinical performance and, therefore, necessarily the training period would also include Sundays and public holidays. The rationale behind such a course of specialisation appears to be that utmost benefit can be derived by the student by following the scheduled course of training. It is for that reason that it is a residency system course. It cannot be ignored that continuous break of six months of the training whether on account of maternity leave or for any other reason like ailment etc. does have a direct impact on the schedule of training. When the experts have decided to provide the Post-Graduate Degree Course training based and the Medical Council of India has chosen to limit the absence from the training up to 20%, it does not fall within the domain of any other authority to by-pass that requirement. Once this limit is allowed to be tinkered with for one reason or the other, it would lead to defeat the very purpose for which training course has been envisaged. The direct consequence would be that it would ultimately affect the prescribed standards of the Post-Graduate Degree Course. The recommendations

of the Medical Council of India noted above do not give any option to the university to deviate from them.

8. Adverting to the case of Dr. Leena Jain v. Punjabi University, Patiala (supra), upon which reliance has been placed by the side of the petitioner, it is apparent that in that case the petitioner was admitted to three years Post-Graduate Course leading to the degree of M.D. Psychiatry. During the period of training, she was shifted from M.D. Psychiatry to M.D. Ophthalmology at Medical College, Patiala session 1991. As she had not completed the training for a period of three years, the university authorities did not issue examination form to her. This action of the university was challenged by her. In her case also in terms of the recommendations of the Post-Graduate Medical Education as adopted by the Medical Council of India in January 1992 she had to undergo minimum period of training for the award of Post-Graduate degree in three calendar years and further to attend minimum of 80% of the training period. So to say, the candidate was required to attend training for a period of 2.48 years. It was found as a fact that she had completed training period of 2.50 years and for that reason it was held that she fulfils the prescribed norms and was eligible to appear in the examination. The stand of the respondent-university that she had not completed the course in conformity with the recommendations of the Medical Council of India was under the circumstances of the case was not accepted. Thus, this case on facts renders no assistance to the case of the petitioner.

9. In other case Director, Medical Education, Lucknow and others v. Dr. Swapnil Chauhan 2000(2) S.L.R. 644 : 2000(4) SCT 392 (SC), the facts were that Dr. Swapnil Chauhan had made a prayer that she should be permitted to appear in the examination for M.S. (G&O) as she was admitted to the said course in pursuance of the direction of the High Court with effect from. 29.3.1996 and had also pursued the diploma course. This submission was not accepted and notice was taken of the fact that she had continued to study in M.S. Course only till 4.1.1997 and thereafter, on account of the stay order granted by the Apex Court, she was not permitted to pursue the course. She had not even put in one year course of study in M.S. Under these circumstances, it was observed :-"

According to the Medical Council of India the minimum period of training for the award of M.D./M.S. courses from the year 1993 onwards is three calendar years. The relevant provision reads:

"Period of Training

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

1. MD/MS, from the year 1993 onwards the minimum period of training for obtaining these degrees, shall be three calendar years and the candidates can be admitted to this training after their registration with the Medical Council of India.
2. No exemption shall be given from this period of training of three years either

for doing houseman-ship or for any other experience or diploma."

The above provision makes it abundantly clear that no credit can be given to the respondent for the period of study for Diploma for obtaining M.D./M.S. Three calendar years minimum training is an essential requisite for the award of postgraduate degree of M.D./M.S. which the respondent does not possess that being the position the request of the respondent is wholly untenable."

The ratio of the above mentioned case would fully apply to the facts of the present case.

10. In the present case, as noted above, the absence of the petitioner from the training period comes to more than 20%. In fact, it comes to 23%. In order words, she has not fulfilled the requirement of attending a minimum of 80% of the training period. Under the circumstances of the case, respondent Nos. 2 and 3 were fully justified in not permitting the petitioner to take her examination on 6.6.2000. Therefore, no credit can be given to the petitioner for the papers in which she appeared in the examination under the orders of the Court.

For the aforesaid reasons, there is no merit in the writ petition and the same is hereby dismissed. Under the circumstances of the case, no order as to costs.

10. Petition dismissed