

(2020) 02 P&H CK 0211

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 9170 Of 2010 (O&M), Civil Writ Petition No. 10599 Of 2017

Dr. Tarun Sehgal

APPELLANT

Vs

Dr. B.R. Ambedkar National Institute Of Technology

RESPONDENT

Date of Decision : 26-02-2020

Acts Referred:

Citation : (2020) 02 P&H CK 0211

Hon'ble Judges : Sanjay Kumar, J

Bench : Single Bench

Advocate : Rajiv Atma Ram, Arjun Pratap Atma Ram, Sahil Khunger, Vivek Singla

Final Decision : Allowed

Judgement

Sanjay Kumar, J

Parties and issues being the same, these two writ petitions are amenable to final disposal by way of this common order.

The petitioner, a doctor with MBBS qualification, entered the service of Dr.B.R.Ambedkar National Institute of Technology, Jalandhar (hereinafter,

'the Institute'), as a Medical Officer in the pay scale of `8000-13500, vide Appointment Order dated 09.05.2008. He was placed on probation for a

period of two years. The Institute however reserved the right to terminate his services by giving a month's notice or upon payment of salary in lieu of

the notice period. His services were discontinued pursuant to the order dated 07.05.2010 passed by the Registrar of the Institute and he was relieved

from duty with effect from that day. Assailing the said order, the petitioner filed the first of these two cases, viz., CWP-9170-2010. Therein, he also

laid a challenge to Statute 27(1) of the Statutes of the National Institutes of

Technology, framed under the National Institutes of Technology Act, 2007, apart from Clause (1) of his Appointment Order dated 09.05.2008, which authorized the Institute to dispense with his services with a month's notice or notice pay in lieu thereof.

By order dated 27.05.2010 passed in CWP-9170-2010, this Court granted interim stay of the impugned order dated 07.05.2010. Thereafter, by order dated 14.07.2010, this Court directed the Institute to allow the petitioner to continue in service till further orders. It is an admitted fact that even as on date, the petitioner is continuing in the service of the Institute.

The cause for the petitioner to file the second case, CWP- 10599-2017, was the action of the Institute in issuing Advertisement No.05/2017 proposing to fill up the post of Senior Medical Officer, without considering his candidature for promotion to the said post as per the Government of India guidelines, viz., the 'Dynamic Assured Career Progression Scheme' dated 29.10.2008.

The written statement filed by the Institute in CWP-9170- 2010 reflects that the only reason for discontinuing with the services of the petitioner, by way of the order dated 07.05.2010, was the decision of its Board of Governors, in its 16th meeting held on 27.06.2009, that the existing posts of Medical Officers should be upgraded as Senior Medical Officers with MD/MS qualification in General Medicine/Cardiology/ Pediatrics/Gynecology.

According to the Institute, this decision of the Board of Governors was confirmed in its 17th meeting held on 01.05.2010. In effect, the basis for the impugned order dated 07.05.2010 was the proposal of the Institute to upgrade the existing posts of Medical Officers and to make recruitment thereto

by applying the higher qualification. However, it is an admitted fact that after dispensing with the services of the petitioner, the Institute came out with

Public Notice dated 12.05.2010, inviting doctors with MBBS or MD/MS in General Medicine/ Cardiology/ Pediatrics/ Gynecology/ ENT to walk in for

an interview for being appointed on contract basis upon a consolidated salary. It is therefore clear that the Institute did not insist upon the higher post

or the higher qualification, in terms of the Board's resolution. Even in July, 2016, one Dr. Gurpreet Singh seems to have been appointed as a Medical

Officer by the Institute on contract basis and he also possessed only MBBS qualification.

Mr. Rajiv Atma Ram, learned senior counsel, would draw the attention of this Court to the more recent Advertisement No.65/2017 issued by the

Institute notifying one post of Senior Medical Officer and one post of Medical Officer wherein, in relation to the post of Senior Medical Officer - the

essential qualification was shown as either MBBS degree or Post Graduate qualification, preferably a MD, while for the post of Medical Officer - the

essential qualification was shown as only MBBS degree or equivalent, and Post Graduation, preferably MD, was shown only as a desirable

qualification. Learned senior counsel would point out that in terms of the Recruitment Rules of 2019, the essential qualification for the post of Medical

Officer is still being shown as MBBS degree or equivalent, and Post Graduate qualification, preferably MD in General Medicine, is only shown as a

desirable qualification.

Another crucial aspect that may be noted is that the petitioner submitted letter dated 13.03.2014 to the Director of the Institute setting out the

particulars of his services in the Institute and requesting withdrawal of the order dated 07.05.2010. Thereupon, an endorsement was made on

18.03.2014 by the Faculty Incharge, Medical Amenities, to the effect that the petitioner was performing his duty with full sincerity, integrity and

dedication and recommending his case strongly for favourable consideration. In consequence, a Committee comprising six members was constituted to

look into his case. This Committee unanimously recommended that the order dated 07.05.2010 be revoked as there was nothing adverse on record

against the petitioner and as the Faculty Incharge, Medical Amenities, had also strongly recommended his case. The Committee further opined that

the Institute should provide service benefits to the petitioner. The Director of the Institute thereupon issued Office Order dated 13.05.2014 regularizing

the services of the petitioner subject to ratification by the Board of Governors of the Institute. However, the Board of Governors, at its 27th meeting

held on 26.11.2015, decided to extend the probation of the petitioner for another year and ordered that his personal file be put up at the next meeting.

As regards his promotion to the post of Senior Medical Officer, the Board of Governors did not take up the issue for discussion in the light of its

decision to extend his probation for another year.

In the light of the aforestated facts, it is clear that the reason for discontinuing

with the services of the petitioner in May, 2010, was rendered illusory in view of the developments thereafter. The decision to upgrade the existing posts of Medical Officers as Senior Medical Officers with the essential qualification of MD/MS did not materialise and even as on date, the essential qualification for the post of Senior Medical Officer is still either MBBS or MD/MS and it is only desirable that a Post Graduation degree should be possessed by such candidate. The post of Medical Officer still continues to exist with graduate qualification as an essential. Thus, the very basis for the order dated 07.05.2010 stands negated.

In the meanwhile, the petitioner seems to have rendered yeoman services in the Institute over the years, pursuant to the interim order passed in the first writ petition which allowed him to continue there, and the recommendation made thereafter was to the effect that his services should be regularised. However, the Board of Directors of the Institute seems to have put off the same and extended his probation, perhaps due to the pendency of this litigation. Significantly, there appears to be no adverse remark against the petitioner. Given the fact that he remained in the service of the Institute all through, i.e., for nearly a decade, no grounds are made out for the Institute to show him the door at this stage. All the more so, when the very proposal that warranted the dispensation of his services never actually crystallized.

Lastly, it is the case of the petitioner that he is entitled to promotion to the post of Senior Medical Officer in terms of the Dynamic Assured Career Progression Scheme, but consideration of his candidature for such promotion was also deferred by the Board of Directors. As the only hindrance thereto appears to be the order dated 07.05.2010 which, as already stated supra, has completely lost steam, this Court sees no further necessity to belabour this point further or to test the challenges laid by the petitioner to the statute and the appointment order.

The order dated 07.05.2010 is accordingly set aside. There shall be a direction to the Board of Directors of the Institute to consider the recommendations made in relation to the petitioner, both on the issue of regularization of his services/probation as well as his claim for promotion, at its next meeting and take an informed and reasoned decision thereon. Necessary action shall ensue thereafter, as warranted.

The writ petitions are allowed to the extent indicated above.

No order as to costs.