
(2014) 06 P&H CK 0004
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 7645 of 2014(O&M)

K. Raman

APPELLANT

Vs

Baba Farid University of Health Sciences

RESPONDENT

Date of Decision : 20-06-2014

Acts Referred:

Citation : (2014) 06 P&H CK 0004

Hon'ble Judges : Harinder Singh Sidhu, J

Bench : Single Bench

Advocate : Dinesh Kumar and Ms. Sangeeta Dhanda, Advocate for the Appellant; Sheetal Chandel, Advocate for Respondent No. 1 and Mr. Vishal Garg, AAG, Punjab for Respondents No. 2 and 3, Advocate for the Respondent

Final Decision : Allowed

Judgement

Harinder Singh Sidhu, J.—This petition has been filed praying for quashing of the Memo dated 15.5.2014 (Annexure P-17), vide which the 'No Objection Certificate' dated 27.3.2014 (Annexure P-8) issued to the petitioner under 60% quota has been withdrawn and the petitioner has been placed under 40% quota for admission in MD/MS/Post Graduate courses.

2. The petitioner applied for the post of Rural Medical Officer (RMO) and was selected as such in the year 2010. He worked as RMO in the Subsidiary Health Centre (SHC), Nangal Sohal under Block Ramdass from 9.4.2010 to 12.3.2011. In the year 2011, the petitioner was appointed on regular PCMS-I cadre as Medical Officer (General) and was posted at Primary Health Centre (PHC), Ramdass, District Amritsar vide letter dated 7.3.2011(Annexure P-4). He worked at PHC, Ramdass till 31.3.2014 and is still working at the same place.

3. The Government of Punjab, Department of Health conducted All India Post Graduate Medical Entrance Examination, 2014 and made it the eligibility criteria for admission under the Punjab State quota for MD/MS/Post Graduate diploma courses, 2014. The petitioner appeared in the said Examination and secured

678.5876 marks.

4. As per clause 14 of the prospectus, 60% seats out of 50% of the total seats to be filled from the State quota are offered to PCMS in service candidates and the remaining 40% seat were in the open category. The eligibility criteria for seats in service i.e. 60% quota is as under:-

a) The eligibility requirements are as under:-

(i) Regular PCMS employee;

(ii) Has completed 4 years" service in very difficult (Category D) area or 6 year service in difficult (Category-C) or on appropriate combination of both and in case of candidates who have completed 5 year of service as on 01.01.2012, they should have completed 2 years of service in most difficult areas or 3 years of service in difficult areas;

(iii) RMO once they are selected in PCMS, they will be given benefits of rural service rendered by them as RMO"s under Zila Parishads.

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5. Thus, as per this provision the eligibility criteria for admission under the 60% category is that the candidate should have completed 4 years" service in very difficult (Category D) area or 6 year service in difficult (Category-C) or on appropriate combination of both. In case of candidates who have completed 5 years of service as on 01.01.2012, they should have completed 2 years of service in most difficult areas or 3 years of service in difficult areas

6. The petitioner was granted NOC under 60% quota on 27.3.2014 evening. As the counselling had also been fixed for 27.3.2014, the petitioner could not appear in the said counselling on account of the late receipt of the NOC. As per the provisional merit list dated 27.3.2014 of the SC category candidates, who had applied for MD/MS and post graduate courses, the name of the petitioner figured above one Love Kumar Hans. Though, the petitioner had the service certificate depicting his service in the rural area, but he was not allowed to participate in the counselling, whereas, Love Kumar Hans was allowed to participate in the counselling.

7. The petitioner filed CWP No. 7645 of 2014, which came up for hearing on 24.4.2014 praying for directions to permit him to participate in the counselling, which was scheduled for 28.4.2014. His contention was that he had been issued the requisite NOC only on 27.3.2014 and he should be permitted to appear for aforesaid counselling scheduled for 28.4.2014. As per interim order dated 24.4.2014, the petitioner was allowed to participate in the counselling to be held on 28.4.2014.

8. The respondent-State filed written statement on 26.5.2014, wherein it was stated that the NOC issued in favour of the petitioner under 60% quota, vide memo dated 27.3.2014 had been converted from 60% to 40% quota vide memo

dated 15.5.2014. It was stated that the NOC under 60% quota had been granted inadvertently. The service rendered by the petitioner for the period from 9.4.2010 to 12.3.2011 at SHC, Nangal Sohal falling under PHC Ramdass had been treated under 'C' category instead of 'D' category.

9. Thereafter, the petitioner amended the writ petition and has laid challenge to the memo dated 15.5.2014.

10. It is submitted that the NOC had been rightly granted to the petitioner under 60% quota, which was wrongly withdrawn vide Memo 15.5.2014 (Annexure P-17) by wrongly treating the service of the petitioner rendered at SHC Nangal Sohal under category 'C', whereas, the same should have been treated under category 'D', because at the relevant time when he rendered service at Nangal Sohal, there was no categorization of SHC Nangal Sohal, but it was falling under PHC, Ramdass, which was under category 'D' and thus had to partake of the same category. It is submitted that thus, there was no just and valid reason to consider the service rendered by the petitioner at Nangal Sohal under 'C' category. Reliance has been placed upon a Division Bench judgment of this Court in Dr. Jasvir Kaur vs. State of Punjab and others, LPA No. 2084 of 2013, decided on 22.1.2014 (Annexure P-13) to contend that what is relevant is not the categorization of the area on the date of admission, but as to how the area was categorized when the candidate rendered the service. It was further held by the LPA Bench that if the SHC was not separately categorised at the time when the service was rendered, but fell under any Community Health Centre (CHC), the SHC shall take its categorization from the CHC. It is contended that during the period when the petitioner served at SHC Nangal Sohal, there was no separate categorization of the said SHC, whereas, PHC, Ramdass was categorised as 'more difficult' area vide notification dated 31.1.2011 (Annexure P-3).

11. Learned counsel for the petitioner has further contended that even as per notification dated 18.4.2013 (Annexure P-9), the PHC, Ramdass has been categorised as 'D' category and hence, also the service rendered by the petitioner in SHC, Nangal Sohal (9.4.2010 to 12.3.2011), has to be reckoned as being in the more difficult area. It is also urged that the notification dated 18.4.2013, vide which, SHC, Nangal Sohal has been categorised as 'C' category cannot be applied retrospectively, because at the time when the petitioner served at SHC, Nangal Sohal, it had no category of its own, and as per the decision of the LPA Bench, its categorization had to follow the categorization of PHC, Ramdass, which had been categorised as more difficult ('D' category)

12. On behalf of respondents No. 1 to 3, the action in issuing the Memo dated 15.5.2014 (Annexure P-17) is sought to be justified by stating that NOC (Annexure P-8) under 60% quota was given due to an inadvertent mistake. It is stated that the observations of the LPA Bench had not laid down any law and were specific to the facts and circumstances of that particular case and do not apply to the facts and circumstances of the present case. Another distinction sought to be pointed out is that for admission to MD/MS courses for the session

2013-2016, there might have been some justification for not applying the categorization made vide notification dated 18.4.2013 (Annexure P-9), because the notification for the session 2013-2016 was issued in September, 2012 and the prospectus was issued on 5.4.2013 and the categorization of the SHC was issued on 19.6.2013 pursuant to notification dated 18.4.2013, but in case of the petitioner, who is seeking admission for the session 2014-2017, the categorization of the SHC vide notification dated 18.4.2013 has been in the public domain, long before the issuance of the notification for MD/MS courses, which came on 24.10.2013 and also long before the prospectus was issued by Baba Farid University of Health Sciences for admission for the session 2014-2017 on 23.12.2013.

13. I have considered the submissions of learned counsel for the parties.

14. The details of the period of service of the petitioner are not disputed. The petitioner has served at SHC, Nangal Sohal from 9.4.2010 to 12.3.2011 and at PHC, Ramdass from 18.3.2011 to 31.3.2014. The total service at the SHC, thus, comes about one year and service at PHC, Ramdass comes to about 3 years 13 days. It is admitted case that categorization of health institutions into Normal, Difficult and More Difficult was first done by notification dated 31.1.2011. In this notification, PHC, Ramdass was categorised as More Difficult. Apart from PHCs, this notification categorised District Hospitals, Sub-divisional Hospitals, Community Health Centres, State Special Hospitals, ESI Dispensaries. There was no categorization done for Subsidiary Health Centres (SHC)

15. This Hon''ble Court in LPA No. 2084 of 2013 has specifically dealt with the situation of categorization of SHCs, which were not categorised at the time when service was rendered by the candidate. The Hon''ble Court held that in such a situation the SHC shall take its categorization from the CHC/PHC. Vide notification dated 18.4.2013, categorization as A, B, C and D was done for District Hospitals, Sub-divisional Hospitals, Community Health Centres, Primary Health Centres, State Public Dispensaries, ESI Dispensaries, State Special Hospitals, wherein, categorization 'A' pertained to major cities; 'B' pertained to semi-urban/urban areas; 'C' to other difficult areas and 'D' for difficult rural areas. As per the prospectus, the period of service shall be computed as on 31.3.2014. The LPA Bench has specifically held that for the purposes of grant of certificate what is relevant is not how the area is categorised on the date of admission, but as to how the area was categorised when the candidate rendered service. Hence the notification dated 18.4.2013 categorising various types of hospitals as A, B, C and D would not be relevant for determining the category of the SHC, Nangal Sohal from 9.4.2010 to 12.3.2011, the period when the petitioner served there and even if SHC, Nangal Sohal is categorised as 'C' after the aforesaid notification, it would not be determinative or relevant to determine the categorization of the service of the petitioner at SHC Nangal Sohal, which was rendered much before the issuance of the notification. The service rendered by the petitioner at Nangal Sohal has necessarily to follow the categorization of

PHC, Ramdas during the relevant period, which was categorised as more difficult vide notification dated 31.1.2011 (Annexure P-3).

16. The argument on behalf of the respondents that the observations of the LPA Bench do not lay down law, are also devoid of merit. The specific question answered in the LPA that when there is no specific categorization of SHC, then the categorization of Community Health Centre with whom the SHC is working, shall be taken into account, cannot but be taken to be a legal determination of this proposition and not a mere observation confined to the facts of that case. The further observation of the LPA Bench that what is relevant, is the categorization of the area when the service was rendered and not the categorization of the area at the time of admission in the Course, is also a legal determination of the said issue. Thus, the contention of the respondents that the observations of the LPA Bench cannot be construed as a binding legal precedent is liable to be rejected. Moreover in *Dr. Kamalpreet Singh V. State of Punjab and ors.* CWP No. 6901 of 2014 decided on 28.4.2014, the observations in the aforementioned judgment have been understood to be an enunciation of law on the issue.

17. The further contention raised on behalf of the respondents that the notification dated 18.4.2013 was in place much before the admission schedule commenced for MD/MS courses, in an attempt to distinguish the present case from the decision in the LPA is also not tenable, because the decision in the LPA is not based on the ground that the notification dated 18.4.2013 had been issued after the issue of prospectus for admission. The basis of the decision is the aforesaid two premises, namely that what is relevant is how the area was categorised when the service was rendered and secondly that the Subsidiary Health Centres would take their categorization from the Community Health Centres when there is no separate categorization of the Subsidiary Health Centres.

18. In view of the above, the writ petition is allowed. The Memo dated 15.5.2014 (Annexure P-17) is hereby quashed and it is held that the service rendered by the petitioner at Subsidiary Health Centre, Nangal Sohal from 9.4.2010 to 12.3.2011 is liable to be considered as service rendered in more difficult area, and thus, he is entitled to NOC under 60% quota. His case for admission is liable to be considered under the 60% quota on the basis of the No Objection Certificate issued to him on 27.3.2014 (Annexure P-8).