
(2013) 04 SHI CK 0057
In the High Court Of Himachal Pradesh
Case No : CWP No.10377 of 012-H

Mukesh Sharma

APPELLANT

Vs

State of Himachal Pradesh and others

RESPONDENT

Date of Decision : 04-04-2013

Acts Referred:

Citation : (2013) 04 SHI CK 0057

Hon'ble Judges : Rajiv Sharma, J;R.B. Misra, J

Bench : Division Bench

Advocate : Jyotsna Rewal Dua, for the Appellant; Shrawan Dogra, Advocate General, with Mr. M.A. Khan, Addl. A.G. and Mr. Vikram Thakur, Dy. A.G., for the Respondent

Judgement

Rajiv Sharma, J.—Respondent (State) framed a policy for Resident Doctors in the Medical Colleges of the State vide notification, dated 4th January, 2012. There are two categories of Resident Doctors in the Government Medical Colleges of the State, i.e., Senior Residents and Junior Residents. The following essential qualification/eligibility has been prescribed for filling up the posts of Senior Residents/Junior Residents as per notification, dated 4th January, 2012:

5.1 Essential Qualification(s)/Eligibility:

Post Graduate Degree (MD/MS) or DNB recognized by the MCI in the concerned speciality.

The method of recruitment is stipulated under Clause 5.2. According to Clause 5.2.2, the GDO category shall include the doctors appointed on regular or contract basis by the Government of Himachal Pradesh. The addition has been made to Clause 5.2.2 vide notification, dated 4th February, 2012:

Provided that only those GDO"s, whether appointed on regular or on contract basis, shall be eligible for selection as Sr. Residents who have served in the peripheral health institutions of the State of Himachal Pradesh for a period of at

least two years after completion of their Post Graduation.

2. The qualification for selection of Resident Doctors in Government Medical Colleges has also been altered vide notification, dated 20.06.2012 as under:

Recognized Post Graduate (MD/MS & MDS) or DNB in the concerned specialty from a University recognized by the MCI/DCI falling which the PG Diploma in the concerned speciality recognized by the MCI/DCI. For Non-Clinical Subjects recognized Diploma in the concerned subject, Ph. d. and M.Sc. from the recognized University.

3. The addendum, dated 4th February, 2012 was challenged by Dr. Babu Ram Thakur and others by filing CWP No. 4665 and analogous CWPs. No. 4671 and 4704 of 2012. The validity of this addendum was up-held by this Court. A further addendum was issued by the respondent-State on 26.09.2012, whereby Clause 5.2.2 has been substituted as under:

5.2.2 The GDO category shall include the doctors appointed on regular or contract basis by the Government of Himachal Pradesh.

Provided that the only those GDO's whether appointed on regular or on contract basis, shall be eligible for selection as Senior Resident who have served in the peripheral health institutions of the State of Himachal Pradesh for a period of at least two years after completion of their Post Graduation.

Provided further that this provision shall not apply to the specialties of 1. Anatomy 2. Physiology 3. Pharmacology 4. Pathology 5. Microbiology and 6 Biochemistry.

4. It is evident from the addendum that the specialties of Anatomy, Physiology, Pharmacology, Pathology, Microbiology and Biochemistry have been exempted. The respondent (State) has issued an advertisement for appointment of Senior Resident through walk-in-interview vide Annexure P-10. The last date of receipt of the application was 14th December, 2012. The walk-in-interview was scheduled for 15.12.2012. Two seats were distributed for the specialty of Radiotherapy. Petitioner submitted his application for considering his candidature for the same.

5. The approval was granted by the State Government for granting exemption in Clause 5.2.2 of the policy for selection of Sr. Residents in favour of Dr. Amit Bhoil vide letter, dated 03.10.2012. The reason assigned in Annexure P-12, dated 03.10.2012, is that the services of Dr. Amit Bhoil could not be used in peripheral institutions being his specialization in Nuclear Medicine. Since the petitioner was not called for interview, he approached this Court by filing the present petition. This Court passed the interim order on 11.12.2012, permitting the petitioner to be interviewed on 15.12.2012. The result, as directed by this Court, was produced by the learned Deputy Advocate General on 08.01.2013.

6. Petitioner has also filed an application bearing CMP No. 16462 of 2012, placing

on record copy of notification, whereby Dr. Kunjan Sharma has been granted exemption in Clause 5.2.2 vide letter, dated 12th December, 2012. Petitioner has also placed on record copy of appointment order of Dr. Kunjan Sharma, dated 12th December, 2012. The Court has directed the respondents to appoint the petitioner as Senior Resident, since he was otherwise a successful candidate in the interview held on 08.01.2013. This Court has also noticed that Dr. Kunjan Sharma has worked only in the Directorate in Shimla and not in peripheral areas and there was shortage of 18 days. Petitioner submitted a copy of the order passed by this Court on 08.01.2013 to the Principal Secretary (Health), Government of Himachal Pradesh on 11th January, 2013. The same was also sent to the Principal, Indira Gandhi Medical College & Hospital, Shimla on 11th January, 2013. The Principal, I.G.M.C., Shimla instead of permitting the petitioner to join his duties, informed the Prof. & Head, Deptt. of Radiotherapy, I.G.M.C., Shimla on 30th January, 2013 that the petitioner may not be allowed to attend/perform his duties of Senior Resident in the Department. The petitioner was also transferred to Chamba vide order, dated 7th February, 2013.

7. The respondent (State) has filed the reply to the petition. According to the reply filed by the respondent (State), the doctors who are Post Graduate in Radiotherapy can also deliver their services in District as well as Civil Hospitals as Medical Oncologist. It is also averred in the reply that as far as exemption of certain specialties is concerned, the main reason for exemption was that these specialties are basically for teaching and research oriented work and their services could not have been used to its best in the peripheral institutions.

8. Now, as far as the case of Dr. Amit Bhoil is concerned, what has been stated in the reply, is that Dr. Amit Kumar Bhoil is a Super-specialist and his services could not be utilized in peripheral institutions. It is also stated that according to Government of India programme, cancer care facilities are to be provided at District Hospital, Chamba.

9. The petitioner has filed a detailed rejoinder to the reply filed by the respondent (State). The petitioner has placed on record the guidelines/regulations with latest amendment vide Annexures P-17 and P-19, issued by the Medical Council of India, to establish that MD in Nuclear Medicine is not a super specialty and the Radiotherapy is one of the specialty.

10. We have heard the learned counsel for the parties and gone through the pleadings carefully.

11. According to notification, dated 04.01.2012, the minimum essential qualification for filling up the post of Senior Resident was Post Graduate Degree (MD/MS) or DNB recognized by the MCI in the concerned specialty. 75% posts were to be filled up by GDOs and the remaining by direct recruitment. The GDO category, as per Clause 5.2.2, included the doctors appointed on regular or contract basis by the Government of Himachal Pradesh. An addendum was issued by the State Government on 4th February, 2012, whereby only those GDO's

were made eligible for selection as Sr. Residents, who had served in the peripheral health institutions of the State of Himachal Pradesh for a period of at least two years after completion of their Post Graduation. The validity of addendum, dated 4th February, 2012, has been upheld by this Court in CWP No. 4665 of 2012 and analogous writ petitions bearing CWP Nos. 4671 and 4704 of 2012 in the month of August, 2012. The respondent-State in its wisdom has exempted the categories of Anatomy, Physiology, Pharmacology, Pathology, Microbiology and Biochemistry. In other words, the GDOs need not to serve in the peripheral health institutions of the State of Himachal Pradesh for a period of at least two years after completion of their Post Graduation in case they apply in the categories of Anatomy, Physiology, Pharmacology, Pathology, Microbiology and Biochemistry.

12. This Court has permitted the petitioner to appear in the interview. He has appeared in the interview. His result was perused by the Court. It is not in dispute that the petitioner has been declared successful in the interview. He has secured more marks than Dr. Kunjan Sharma. Doctor Kunjan Sharma also belongs to the stream of Radiotherapy. In her case, the exemption has been accorded by the State Government vide letter, dated 12.12.2012. The text of letter, dated 12.12.2012, reads as under:

I am directed to invite your attention to the representation of Dr. (Mrs) Kunjan Sharma, MO Radiotherapy, Deptt. IGMCH, Shimla, dated 3rd December, 2012 addressed to the Pr. Secretary (Health) to the Govt. of Himachal Pradesh and copy therefore endorsed to you among others and to convey the approval of the Government for granting the exemption in Clause 5.2.2 of the policy for selection of Sr. Residents in favour of Dr. (Mrs.) Kunjan Sharma, MO subject to the condition of selection in walk-in-interview as her services cannot be used in peripheral institutions being her specialization in Radiotherapy.

13. It is evident from the phraseology employed in the text of the letter reproduced hereinabove that Dr. Kunjan Sharma has been granted exemption in Clause 5.2.2 on the ground that her services could not be used in peripheral institutions being her specialization in Radiotherapy. She has been offered appointment letter on 20.12.2012, pursuant to which, she has joined her duties as Senior Resident. This Court while passing interim order on 08.01.2013, has specifically held that Dr. Kunjan Sharma has only served for the relevant period in Directorate in Shimla and not in peripheral areas.

14. Mr. Shrawan Dogra, learned Advocate General has vehemently argued that the peripheral institutions would mean all other institutions except Indira Gandhi Medical College or Dr. Rajendra Prasad Government Medical College, Tanda.

15. This plea cannot be accepted. Peripheral has to be understood the manner in which it has been used in notification, dated 04.02.2012. Peripheral would mean the rural/semi urban institutions in interiors of State of Himachal Pradesh. According to Mr. Shrawan Dogra, learned Advocate General, Dr. Kunjan Sharma

has worked for almost two years in the Directorate, but the record to substantiate the same has not been produced before this Court. Petitioner was similarly situated vis-?-vis Dr. Kunjan Sharma. If the exemption has been granted to her, why the same treatment has not been meted out to the petitioner by granting exemption in Clause 5.2.2. The equals cannot be treated unequally. Petitioner has secured more marks than Dr. Kunjan Sharma. While filling up the posts/seats in Medical Colleges, the merit should be given preference. Though the stand of the respondent-State in the reply is that the services of the petitioner could be utilized in District Hospital, Chamba in the specialty of Radiotherapy, but the same is belied as per the contents of letter, dated 12th December, 2012, whereby it is stated that the services of Dr. Kunjan Sharma could not be used in the peripheral institutions being her specialization in Radiotherapy. The services rendered by Dr. Kunjan Sharma in Directorate cannot be treated as services rendered in peripheral institution. Even expression "peripheral" has been explained by this Court while deciding CWP No. 4665 of 2012 as "rural areas". The Directorate of Health cannot be treated as peripheral institution.

16. The Court would now advert to the case of Dr. Amit Kumar Bhoil. Dr. Amit Kumar Bhoil has also been granted exemption on 03.10.2012. It is stated in the reply that Dr. Amit Kumar Bhoil is a super specialist and his services could not be utilized in peripheral institutions. It is clear from Annexures P-17 and P-19 that Dr. Amit Kumar Bhoil has obtained MD in Nuclear Medicine and it cannot be treated as super specialty. The criteria which has been applied qua Dr. Amit Kumar Bhoil should have been applied uniformly to the petitioner as well. The subject of Nuclear Medicine has not been exempted as per Annexure P-9, dated 26.09.2012. There should be uniformity and consistency in the action of the respondent-State. There has to be due application of mind while taking decisions, more particularly, in the field of Medicine.

17. It is evident from the facts enumerated hereinabove that the petitioner has been discriminated against by the respondent-State by not treating him at par with Dr. Kunjan Sharma and Dr. Amit Kumar Bhoil. This Court on 08.01.2013 has directed the respondent (State) to appoint the petitioner as Senior Resident, since he was successful in the interview. But, till date the order has not been implemented. Petitioner has brought the order dated, 08.01.2013, to the notice of Secretary (Health), Government of Himachal Pradesh and the Principal, Indira Gandhi Medical College Shimla. Despite that, the petitioner has not been offered appointment letter. It amounts to gross contempt of the orders passed by this Court. The orders passed by the Courts are required to be implemented faithfully and punctually. The respondent (State), instead of complying with the directions of this Court, has the audacity to transfer the petitioner to District Chamba. This exercise has been undertaken by the respondent No. 4 to overreach the orders of this Court. The Court deprecates this practice.

18. The petitioner is specialist in Radiotherapy. His services can only be utilized

where the infrastructure and necessary facilities are available. The Department of Radiotherapy in I.G.M.C., Shimla is well equipped and the services of the petitioner can be better utilized in I.G.M.C., Shimla and not in peripheral institution of District Hospital Chamba. An endeavour should be made by the State that the specialists are posted in an institution where necessary facilities are available, otherwise their talent would be wasted. The action of the respondent-State treating the case of the petitioner differently from Dr. Kunjan Sharma and Dr. Amit Bhoil is arbitrary.

19. What is arbitrary has been succinctly explained by their Lordships of the Hon"ble Supreme Court in Sanchit Bansal and Another Vs. The Joint Admission Board (JAB) and Others, as under:

28. An action is said to be arbitrary and capricious, where a person, in particular, a person in authority does any action based on individual discretion by ignoring prescribed rules, procedure or law and the action or decision is founded on prejudice or preference rather than reason or fact. To be termed as arbitrary and capricious, the action must be illogical and whimsical, something without any reasonable explanation. When an action or procedure seeks to achieve a specific objective in furtherance of education in a bona fide manner, by adopting a process which is uniform and non-discriminatory, it cannot be described as arbitrary or capricious or mala fide.

Accordingly, in view of the discussions and analysis made hereinabove, the writ petition is allowed. The petitioner shall be deemed to have joined his duties as Senior Resident w.e.f. 11th January, 2013, on the basis of Annexure P-13 with all consequential benefits. The pending application(s), if any, also stands disposed of. No costs.