
(2015) 04 DEL CK 0102
In the Delhi High Court
Case No : Writ Petition (C) 4111 of 2015

N. Siva Krishna

APPELLANT

Vs

National Board of Examination and Others

RESPONDENT

Date of Decision : 24-04-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 15(3)
Maternity Benefits Act, 1961 — Section 10

Citation : (2015) 04 DEL CK 0102

Hon'ble Judges : Vibhu Bakhru, J

Bench : Single Bench

Advocate : Lalit Kumar and Aditya Kumar, for the Appellant; Rakesh Gosain, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Vibhu Bakhru, J.

1. The petitioner has filed the present petition, inter alia, impugning National Board of Examinations Leave Rules (hereafter "NBE Leave Rules") as applicable to Diplomate of National Board (hereafter "DNB") trainees. The petitioner, inter alia, prays as under:

"a) issue directions, orders or writ including the writ in the nature of Certiorari quashing the entire NBE Leave Rules applicable to DNB (Diplomate of National Board) trainees contained under Annexure P 1 herein.

b) issue directions, orders or writ including the writ in the nature of Mandamus commanding the respondent no. 1 to 4 to declare on merit the result of petitioner (Roll No. -1421011087) for DNB Final (Theory) December, 2014 examination."

2. The petitioner has exceeded the maximum number of days of permissible leave, during his training as a DNB trainee with Bhopal Memorial Hospital and Research Centre, Bhopal. The petitioner's grievance is that the excess leave -

which he claims to be on account of medical reasons - has resulted in extension of his period of training. Consequently, the petitioner is also ineligible for sitting for the final examination as he has not completed his training as on the cut off date. The petitioner contends that the NBE Leave Rules are discriminatory and violate Article 14 of the Constitution of India. The petitioner's case is that whilst a onetime maternity leave is granted to certain female candidates during the duration of the entire course without any extension in the period of training, candidates suffering from genuine medical ailments are not accorded any such special leave. Thus, he submits that NBE Leave Rules suffer from the vice of discrimination and fall foul of Article 14 of the Constitution of India.

3. Briefly, stated the relevant facts necessary to consider the controversy are as under:-

3.1. The petitioner completed his degree course of MBBS on 28.06.2011 and was granted Medical Registration Certificate by Andhra Pradesh Medical Council. Thereafter, in December, 2011, the petitioner appeared for the Combined Entrance Test (DNB-CET) conducted by NBE for training course of DNB. The petitioner was successful in the aforesaid test and was posted to Bhopal Memorial Hospital and Research Centre, Bhopal for undergoing a course of DNB-Anaesthesia commencing from January, 2012.

3.2. During the course spanning over three years the petitioner was absent for a period of 110 days, the details of which are as follows:-

3.3. The petitioner claims that he was absent for 24 days i.e. from 21.03.2013 to 14.04.2013 i.e. as he had fractured his collar bone and was under medical treatment. In addition, the petitioner claims that he was absent for 14 days i.e. from 31.03.2014 to 11.04.2014 as the petitioner had sprained his right ankle.

4. As per NBE Leave Rules, DNB trainees are entitled to avail a maximum of 20 days of leave in a year excluding regular duty off/Gazetted holidays as per hospital/institute calendar policy. In addition, a candidate undergoing DNB 3 years Course is also entitled to 14 days of academic leave during the entire duration of the training programme to attend conferences/examinations, academic programme etc.

5. The petitioner states that a female DNB candidate is entitled to 90 days maternity leave during the span of the training programme. In addition, a male DNB candidate is also entitled to paternity leave of a maximum of 7 days during the training period. However, any other leave including leave on account of medical reasons is not included in the training period. In other words, such leave, if allowed, would extend the period of training. This, according to the petitioner, violates Article 14 of the Constitution of India.

6. The learned counsel appearing for the respondents submits that a provision for providing maternity leave has been made in conformity with Section 10 of the Maternity Benefits Act, 1961. He submits that the DNB trainees are placed in

various hospitals and, therefore, in one sense are quasi-employees of that institution. They also draw their stipend from the respective institutions. Thus, it has been considered appropriate that the provisions for medical leave for regular employees may also be extended to the DNB trainees who are posted with the said institution. The learned counsel for the respondents further submits that this is in conformity with Article 15(3) of the Constitution of India.

7. I have heard the learned counsel for the parties.

8. It is trite law that Article 14 of the Constitution of India strikes at arbitrariness and the vice of discrimination but does not prohibit reasonable classification. NBE Leave Rules provide for a special dispensation by allowing a onetime 90 days maternity leave to a female candidate during the entire training programme. The relevant provisions of the NBE Leave Rules pertaining to maternity/paternity leave are quoted below:

"3. MATERNITY LEAVE:

3.1. A female candidate is permitted a maternity leave of 90 days once during the duration of entire DNB course.

3.2. The expected date of delivery (EDD) should fall within the duration of maternity leave.

3.3. Extension of maternity leave is permissible only for genuine medical reasons and after prior approval of NBE. The supporting medical documents have to be certified by the Head of the Institute/hospital where the candidate is undergoing DNB training. NBE reserves its rights to take a final decision in such matters.

3.4. The training of the candidate shall be extended accordingly in case of any extension of maternity leave being granted to the candidate.

3.5. Candidate shall be paid stipend during the period of maternity leave. No stipend shall be paid for the period of extension of leave.

4. Male DNB candidates are entitled for paternity leave of maximum of one week during the entire period of DNB training."

9. Apart from the regular leave of a maximum of 20 days a year, maternity leave of 90 days, paternity leave of 7 days and academic leave, NBE has, in its wisdom, not included any other leave within the span of the training programme.

10. Insofar as paternity leave is concerned, the petitioner cannot have any objection as the petitioner is also entitled to the same in a given situation.

11. Insofar as maternity leave is concerned, NBE in its wisdom, does not consider other medical ailments to be comparable to this condition and, therefore, a special dispensation in respect of other medical conditions has not been provided. However, NBE has expressly provided for medical leave. The relevant rules read as under:-

"10. Medical Leave

10.1. Leave on medical grounds is permissible only for genuine medical reasons and NBE should be informed by the concerned institute/hospital about the same immediately after the candidate proceeds on leave on medical grounds.

10.2. The supporting medical documents have to be certified by the Head of the Institute/hospital where the candidate is undergoing DNB training and have to be sent to NBE.

10.3. The medical treatment should be taken from the institute/hospital where the candidate is undergoing DNB training. Any deviation from this shall be supported with valid grounds and documentation.

10.4. In case of medical treatment being sought from some other institute/hospital, the medical documents have to be certified by the Head of the institute/hospital where the candidate is undergoing DNB training.

10.5. NBE reserves its rights to verify the authenticity of the documents furnished by the candidate and the institute/hospital regarding Medical illness of the candidate and to take a final decision in such matters."

12. In my view, the distinction between a female DNB candidate seeking maternity leave and other candidates seeking regular medical leave are not equitable. And, the special provision for granting maternity leave to a female candidate would not offend Article 14 of the Constitution of India. It is not necessary that if leave is granted on one ground within the training period, it should necessarily be granted on other grounds as well. It is not necessary for NBE to provide leave for all contingencies in order to provide for one.

13. It is also relevant to refer to Article 15(3) of the Constitution of India which specifically carves an exception in respect of any special provision for women and children. Thus, in view of Article 15(3) of the Constitution of India, it would not be open for any person to assail any provision of law on the ground that special dispensation has been made with respect to women and children. Maternity leave is, essentially, for the benefit of the mother and child. Paternity leave is also to enable a father to take care of mother and child. Thus, in one sense, even paternity leave can be stated to in aid of the woman and/or child involved.

14. It is also trite law that if a classification offends Article 14 of the Constitution of India, the concerned rule or policy is liable to be struck down. An affirmative order is granted in rare cases where the same is necessary to remove discrimination and grant relief to the class of persons, who have been deprived of their rightful due. I find it difficult to accept that the petitioner, as a matter of right is entitled to medical leave without extension of the training programme.

15. I am unable to accept that there is any irrationality in providing for extension of training period where a candidate is unable to complete his period of training due to medical reasons. The entire purpose of providing fixed tenure of training

would be to ensure that all candidates physically attend a minimum number of days of training. Thus, the rationale of limiting their leave to a restricted number of days cannot be faulted. The fact that special dispensation has been made in cases of maternity leave/paternity leave would not entitle all other candidates also to seek additional leave. In my view, such affirmative directions are not warranted.

16. It is also relevant to refer to rules 7, 8 and 11 of the NBE Leave Rules, which are quoted below:

"7. Any other leave which is beyond the above stated leave is not permissible and shall lead to extension/cancellation of DNB course.

8. Any extension of DNB training for more than 2 months beyond the scheduled completion date of training is permissible only under extra-ordinary circumstances with prior approval of NBE. Such extension is neither automatic nor shall be granted as a matter of routine. NBE shall consider such requests on merit provided the seat is not carried over and compromise with training of existing trainees in the Department.

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11. The eligibility for DNB Final Examination shall be determined strictly in accordance with the criteria prescribed in the respective information bulletin."

17. The petitioner had appeared for the Combined Entrance Test (DNB- CET) and accepted to undergo DNB training on the basis of the "Handbook for DNB-CET Centralized Counselling for Admission to DNB Broad Speciality Courses", which specifically includes the NBE Leave Rules. Having accepted to undergo the Training programme on the basis of the Rules in vogue, the petitioner cannot be permitted to challenge the same.

18. At this stage, the learned counsel for the petitioner states that NBE has the discretion to permit the petitioner to appear for the practical examination pending completion of training. And, in the given facts, the respondent be directed to exercise its discretion in his favour. He submits that the same has not been pleaded as a copy of the relevant Rules were not available with him at the time when the petition was filed. He prays that notwithstanding the absence of the necessary pleading, the said submission may be considered.

19. The learned counsel has referred to Clause 4.1 C of the Information Bulletin and Application Form for Diplomate National Board Final Examination (Broad Specialities). The relevant extract of which reads as under:-

"Candidates not completing their DNB training at the time of submitting the application are required to submit provisional training completion certificate as per format in Annexure-III along with leave records and also required to submit Annexure-IV within 15 days of completion of their training. Such candidates shall be provisionally allowed to appear for DNB Examination at sole discretion of NBE

and subject to compliance of eligibility criteria prescribed."

20. He submits that in view of the above provision, the petitioner may be permitted to sit for his practical examination which is scheduled to be held on 27.04.2015.

21. In my view, the aforesaid provision would not assist the petitioner. On the contrary, it expressly provides that a candidate would be provisionally allowed to appear for DNB examination subject to compliance of the eligibility criteria. The relevant criterion is provided under sub-clause a of Clause 4.1 of the Information Bulletin and Application Form for Diplomate National Board Final Examination (Broad Specialities), which reads as under:-

"4.1. Eligibility (Board Specialty) :

The Last date for submission of application form is 30th September 2014.

a. DNB training: Candidates who have undergone training as a DNB trainee at any National Board of Examinations accredited institute or any medical college/ university recognized institute after having registered with NBE as a DNB trainee and are completing their prescribed (as per registration letter) training as DNB trainee as per the following schedule

can undertake the DNB Final Examination in the same specialty subjected to completion of training by the date mentioned and submission of certificate to this effect.

Submission of Training Completion Certificate along with leave records for DNB trainees is an essential pre- requisite. In case the candidate does not submit the training Completion certificate (as per applicable format given in Annexure III and IV) with the application form, his/her application may be rejected and fees forfeited.

Ex- candidates are required to submit copy of training completion certificate as per Annexure IV.

Request for extension in cut off date for completion of training for the purpose of eligibility determination for DNB final Examination shall not be considered."

22. It is apparent from the above that the last date for submission of the application is 30.09.2014. Thus, all candidates applying for the examination ought to have completed their training prior to submission of their application. However, in case the training is not complete at the time of submitting the application, that is, as on 30.09.2014, the candidates are permitted to apply by submitting a provisional training completion certificate in the prescribed format and such candidates would be allowed to appear for the DNB examination. The words "such candidates" as used in Clause 4.1 C extracted above, would mean those candidates who have not completed their training programme at the time of submitting the application but would, nonetheless, comply with the eligibility criteria. The eligibility criterion expressly provides that cut off date for completion

of the DNB training is 30.04.2015. Thus, obviously, those candidates who would be completing their training prior to cut off date but had not completed their training at the time of filing the application are permitted to submit their application by furnishing a provisional training completion certificate in the prescribed format. In my view, the said provision would not entitle a candidate who is not completing his training programme prior to 30.04.2015 to be considered as eligible for sitting in the final examination. The eligibility criteria also expressly states that a request for extension of cut off date for completion of training for the purpose of eligibility determination for DNB final examination shall not be considered. Concededly, the petitioner is not in a position to complete his training programme prior to the cut off date of 30.04.2015 on account of his excess leave; according to learned counsel for the petitioner, the petitioner would be able to complete his training programme only by 16.05.2015.

23. In view of the aforesaid, the petition is bereft of any merit and is accordingly, dismissed.