
(2015) 05 P&H CK 0115

In the Punjab And Haryana At Chandigarh

Case No : CWP Nos. 7262, 7474, 7469 and 7867 of 2015

Nagi Anita Raj and Others

APPELLANT

Vs

Baba Farid University and Others

RESPONDENT

Date of Decision : 05-05-2015

Acts Referred:

Maternity Benefits Act, 1961 — Section 10(2)

Citation : (2015) 05 P&H CK 0115

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Advocate : Rahul Rampal, for the Appellant; K.S. Sandhu, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Kumar Jain, J.—This order shall dispose of four petitions bearing, CWP No. 7262 of 2015 titled as "Dr. Nagi Anita Raj Vs. Baba Farid University and others" [for short "1st petition"], CWP No. 7474 of 2015 titled as "Mayank Gupta Vs. Baba Farid University and others" [for short "2nd petition"], CWP No. 7469 of 2015 titled as "Dr. Jyoti Jindal Vs. Baba Farid University and others" [for short "3rd petition"] and CWP No. 7867 of 2015 titled as "Vipin Goyal Vs. Baba Farid University and others" [for short "4th petition"]. Since, in all the four petitions, the common prayer made by the petitioners is for the issuance of a writ in the nature of mandamus directing the respondents to issue them roll numbers to sit in the examination of MD/MS scheduled from 6.5.2015, therefore, all the four petitions are being disposed of by this common order.

2. In the 1st petition, the petitioner was admitted on 1.5.2012 in MD (Microbiology). In the second counselling held on 23.9.2012, the petitioner got seat in MD (Pathology) and joined the college on 25.9.2012. She was on maternity leave from 20.1.2014 to 30.1.2014. She submitted her thesis on 25.12.2014, examination form and fee on 18.2.2015.

3. In the 2nd petition, the petitioner is the student of M.S. (Surgery). He was treated for his back pain at AIIMS from 15.6.2012 to 13.8.2012. He was also diagnosed Pulmonary Tuberculosis and was on leave from 28.12.2014 to 14.1.2015. He submitted his thesis on 16.12.2014 and examination fee on 19.2.2015. He was admitted on 28.2.2015 and joined the college on 30.5.2012.

4. In the 3rd petition, the petitioner is the student of M.D. (Medicine). She was admitted on 20.9.2012 and joined the college on 25.9.2012. She has also submitted her thesis and examination fee.

5. In the 4th petition, the petitioner did not opt for any stream in the first counselling held on 1.5.2012. However, in the second counselling held on 23.9.2012, he got seat in M.D. (Medicine) and joined respondent/college on 25.9.2012. He was on leave from 26.2.2015 to 4.3.2015 due to swine flue. He has also submitted his thesis and fee.

6. The petitioners, without there being any order passed by the University, apprehended that their roll numbers might have been retained because they have not completed required number of attendance in all the three academic years.

7. After notice of motion, respondents No. 1 to 3 and 4 filed their separate replies.

8. In the 1st petition, the petitioner has filed CM No. 5769 of 2015 to place on record the rejoinder. The said application is allowed and the rejoinder was taken on record.

9. In the 2nd petition, the petitioner has filed CM No. 5769 of 2015 to place on record the rejoinder. The said application is allowed and the rejoinder is taken on record.

10. In the 3rd petition, the petitioner has filed CM No. 5828 of 2015 to place on record the rejoinder. The said application is allowed and the rejoinder is taken on record.

11. However, in the 4th petition, no reply has been filed.

12. In reply, the respondents have averred that the student appearing in the Postgraduate MD/MS course can avail 20 leave in one academic year but the petitioner in 1st petition has availed 66 days leave, in 2nd petition 130 days leave, in 3rd petition 42 days leave and in 4th petition 72 days leave more than the prescribed leaves. It is also averred in the reply that the period of training of 3 years is mandatory as mentioned in Clause 10 of the Medical Council of India Postgraduate Medical Education Regulations, 2000 [for short "the Regulations"] and as per Clause 13.2 of the Regulations, all the candidates joining the Post Graduate training programme shall work as "Full Time Residents" during the period of training and shall attend not less than 80% of the imparted training during each academic year including assignments, assessed full time

responsibilities and participation in all facets of the educational process.

13. The respondents have not issued the roll numbers to the petitioners only on the ground that as on 6.5.2015, including the period of examination, the petitioners have not completed 3 years of training period, which according to them in the case of petitioner, in the 1st petition, would complete on 29.11.2015, in 2nd petition on 27.11.2015, in 3rd petition on 5.11.2015 and in 4th petition on 6.10.2015.

14. The petitioners filed their rejoinders in which it is averred that the Regulations have been amended in the year 2013 as per which the student should have 80% of attendance in each calendar year and also has referred to clause 13.3 of the Regulations to the effect that in the case of grant of leave to the Post Graduate student, it would be regulated as per the respective State Government Rules. The petitioner in the 1st petition has also tried to take benefit of Maternity Benefit Act, 1961 [for short "the Act"], to contend that as per Clause 4 of the Act, the employment of, or work by, women is prohibited during certain periods including the period of six weeks immediately following the day of her delivery or her miscarriage.

15. On the other hand, learned counsel for the respondents has submitted that the whole case is based upon the interpretation of the word "academic year". The question is as to whether the year has to be counted from 15th May to 14th May of the next year or from the date when the petitioner got admission till the date his one year would complete?

16. In support of his submission, learned counsel for the respondents has relied upon the following decisions: -

(i) Maharshi Dayanand University Vs. Dr. Anto Joseph and Others, (1998) 5 JT 240 : (1998) 4 SCALE 351 : (1998) 6 SCC 215

(ii) Director, Medical Education, Lucknow and Others Vs. Dr. Swapnil Chauhan, (2000) 4 JT 329 : (2000) 10 SCC 585 ,

(iii) Dr. Rohit Aggarwal and others Vs. State of Punjab, AIR 2001 P&H 184

(iv) Dr. Ravi Sher Singh Toor and another Vs. The Baba Farid University of Health Sciences, Faridkot and others passed by Single Bench of this Court in CWP No. 4165 of 2010 decided on 13.5.2010.

17. In all the aforesaid judgments, it has been held that the period of three years training is mandatory in nature which cannot be deviated from and 80% of the imparted training has to be calculated from the entire academic year and not midway.

18. Learned counsel for the petitioner has relied upon the last judgment passed by Single Bench of this Court in the case of Dr. Ravi Sher Singh Toor and another (Supra).

19. During the course of hearing, learned counsel for the petitioner has tried to argue that as per Annexure R-4, appended with the reply filed by respondents No. 1 to 3, 187 students were admitted between July to September, who have been issued roll numbers but in the case of the petitioners in all the four petitions, their roll numbers have not been issued. Though it is only an argument because the writ petitions are totally silent about this pleading as even those students, who have been given roll numbers are not party to the case.

20. I have heard learned counsel for the parties and perused the record.

21. To begin, it would be relevant to refer to certain mandatory provisions of the Regulations: -

10. PERIOD OF TRAINING

The period of training for the award of various postgraduate degrees or diplomas shall be as follows:

(1) Doctor of Medicine (M.D.)/Master of Surgery (M.S.)

The period of training for obtaining these degrees shall be three completed years including the period of examination.

Provided that in the case of students having a recognised two year postgraduate diploma course in the same subject, the period of training, including the period of examination, shall be two year.

In the above clause 10(1) the word "having" is substituted by the word "possessing" in terms of Notification published in the Gazette of India on 20.10.2008.

(2) Doctor of Medicine (D.M.)/Master Chirurgiae (M.Ch.)

The period of training for obtaining these degrees shall be three completed year (including the examination period) after obtaining M.D./M.S. degrees, or equivalent recognised qualification in the required subject;

The above clause has been substituted in terms of Notification published in the Gazette of India on 20.10.2008.

"The period of training for obtaining these degrees shall be three completed years including the examination period."

Provided that where an institution on the date of commencement for these Regulation, is imparting five year training in Neurology and Neurosurgery, such institution shall continue to have five year training course.

The above proviso to Section 10(2) is substituted in terms of Notification published in the Gazette of India on 21.07.2009.

"Provided that where an institution, on the date of commencement of these Regulations, is imparting five years training in Neurology and Neurosurgery, such

institution shall alter it to six years training course."

(3) Diplomas

The period of training for obtaining a postgraduate Diploma shall be two completed years including the examination period.

Migration/transfer of postgraduate student from one medical college or institution to another.

Migration/transfer of students undergoing any postgraduate course-degree/diploma shall not be permitted by any university or any authority.

The above para is substituted in terms of Notification published in the Gazette of India on 20.10.2008.

"Migration

Under no circumstance, Migration/transfer of student undergoing any Post Graduate Degree/Diploma/Super Specialty course shall be permitted by any University/Authority".

"13.2 All candidates joining the Post Graduate training programme shall work as full time residents during the period of training, attending not less than 80% (Eighty percent) of the training during each calendar year, and given full time responsibility, assignments and participation in all facets of the educational process."

"13.3 The Post Graduate students of the institutions which are located in various States/Union Territories shall be paid remuneration at par with the remuneration being paid to the Post Graduate students of State Government medical institutions/Central Government Medical Institutions, in the State/Union Territory in which the institution is located. Similar Procedure shall be followed in the matter of grant of leave to Post Graduate students.

22. There is no dispute between the parties that the period of training is mandatory. Clause 10(1) of the Regulations provides that the period of training for obtaining these degrees shall be three completed years including the period of examination.

23. In the case of Dr. Rohit Aggarwal and others (Supra), the Division Bench of this Court has held in para No. 8 while referring to the decision of Supreme Court in the case of Council of Homoeopathic System of Medicine, Punjab and others Vs. Suchintan and others, AIR 1994 SC 1761 : (1993) 3 JT 727 : (1993) 2 SCALE 632 : (1993) 3 SCC 99 Supp : (1993) 3 SCR 306 and decisions of this Court in "Miss Sajila Sultana v. Punjabi University Patiala and another", 1991(2) R.S.J. 317; "Jagdeep Singh v. Punjabi University, Patiala, through its Registrar and another", SCT 451 (P&H)(DB) and Civil Writ Petition No. 10222 of 1996 titled as "Ajay Kumar Singh and others v. State of Punjab and others", decided on 16.1.1997 that the provisions framed by the Guru Nanak Dev University laying

down the conditions of eligibility for appearance in the MD examination are mandatory and a candidate must fulfill the condition of completing 3 years course before he becomes entitled to appear at the examination.

24. Once, it is established that period of training of three completed years is mandatory, I would now refer to clause 13.2 of the Regulations, which provides that all the candidates, who joined the Post Graduate training programme would work as "Full Time Residents" during the period of training and would attend not less than 80% of the imparted training during each academic year. The academic year as per the Regulations commences from 2nd May as per Medical Council of India. The Classes for Post Graduate students will commence from 15th May of every year and the University examination will commence from 1st May of the next year.

25. However, the position in all the four petitions is altogether different because admittedly, the petitioners in all the four petitions have taken admission in the month of September, 2012, therefore, their academic sessions would have to finish somewhere in the Month of September, 2015 when they would complete the period of three years.

26. In the case of Maharishi Dayanand University (Supra), the petitioner joined the M.D. Course on 12.10.1993 and the examination were held on 27.9.1996. He was short of minimum training period required. He applied to the University for exemption which was declined. The roll number was issued to him on the order passed by this Court dated 21.8.1996 and ultimately this Court had found that since he had attended 80% of the attendance, therefore, his result was ordered to be declared but the University went in appeal before the Supreme Court and their appeal was allowed. The Supreme Court has held that "we might not have interfered has this been an isolated case but we find from reading the orders which have been placed on the record that though the impugned order stated that it was not to be treated as a precedent it has been followed repeatedly by the High Court and by courts below. It appears then that it is necessary to interfere to uphold the sanctity of the requirements of the Medical Council of India and the University. These requirements are laid down to ensure that the full period of training necessary for acquiring the qualification is completed and it is in the public interest that they are not lightly deviated from. The University was not obliged to give the first respondent exemption for 30 days absence because the leave it gave the first respondent contemplated a full training period by having to repeat it. The first respondent fell short of the required training period at least by 42 days. He must, therefore, appear and pass the next examination".

27. In the case of Director, Medical Education, Lucknow and others (Supra), the petitioners got admission in Diploma Course in (Gynaecology and Obstetrics) in May 1994. He did not complete the period of three years training and sought an exemption for the purpose of having a credit of the period he had spent in the Diploma Course before getting admission in degree course. The Supreme Court declined his prayer and it was ordered that "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".

28. In the case of Dr. Rohit Aggarwal and others (Supra), the prayer was made by the petitioners for issuance of roll number for MD/MS examination which commenced from 6.6.2000. Admittedly, they had completed 2 1/2 years study course at the time when the examinations were starting. They got admission against surrendered seats on 28.8.1997 and their classes were started on 1.7.1997. The Court ultimately concluded that they cannot be allowed to appear in the examination and the reason given by the Court is as under: -

The above recommendations provide no room for doubt because no option has been given to the students as well as the universities to forego any part of the training period during the said period of three years of the course. The schedule of the training prescribed and noticed above clearly indicates that the structure training programme is spread over the entire period of study course. In the present case, admittedly the petitioners had undergone only 2 1/2 years of study course and the shortage of the period of the training course as stated by the respondents in respect of each of the petitioners has to be construed that they have not undergone the required training so as to achieve the excellence in the respective disciplines which is the very basis of the schedule of training provided by the Medical Council of India as well as the University calendar. As the experts have chosen to provide the Post-Graduate Degree Course training based, it does not fall within the purview of any other authority to bye-pass the requirement laid down therein. Once this limit is allowed to be deviated for any reason, it is bound to affect the standard of Post-Graduate Degree Course. Therefore, this Court cannot accept the plea of the petitioners in order to ignore the regulations of the Medical Council of India and under the circumstances of the case.

29. In the case of Dr. Ravi Sher Singh Toor and another (Supra), the petition was also dismissed as it was held that "it is equally correct that the students who were admitted upto July, 2007 will not be completing 36 months of training in May, 2010. Definitely there will be deficiency of one or two months but then the period prescribed in the regulations is not to be construed mathematically. It has to be applied in the broader sense and subsequently. The University in its wisdom and keeping in view various related factors decided to hold examinations of those admitted upto July, 2007 in May, 2010. The examinations will continue upto 21.5.2010 and the Practicals and Clinical will be thereafter. Regulation 10 prescribes 36 months training including the examinations. By the time all examinations, theory and practicals are over, it would be almost 35 months and has a substantial compliance of the regulation. In case the petitioners who were admitted in the months of October and November, 2007, are allowed to appear in May/June, 2010, examination, they will be falling short of almost six months and

in that sense they will be completing the course of study in 30 months against prescribed 36 months which is impermissible in statute".

30. Since, all the judgments cited by learned counsel for the respondents are against the petitioner and no judgment to the contrary has been cited and also the fact that the petitioners in all the four petitions are asking for issuance of roll numbers on the basis of 80% attendance in the calendar year which otherwise has to be in an academic year as per the amended Regulations, therefore, the period of academic session of the petitioners in all the four petitions would definitely be from the date they got admission and cannot be from 24.9.2014 to 30.4.2015 because in that manner, the petitioners would not complete one year of training as a student of MD/MS.

31. In view of the above, I do not find any merit in all the four petitions and the same are hereby dismissed.