
(2013) 07 P&H CK 0640
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 15015 of 2013 (O and M)

P.C.M.S. Association Punjab	Vs	APPELLANT
The State of Punjab and others		RESPONDENT

Date of Decision : 26-07-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, 11, 151
Constitution of India, 1950 — Article 14, 16, 226, 227

Citation : (2013) 07 P&H CK 0640

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Advocate : K.K. Goel, for the Appellant; Gurinder Pal Singh, Addl. A.G. Punjab, Mr. Gurminder Singh, Advocate, for the private respondents and Mr. Karan Singh, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Kumar Jain, J.—A writ petition bearing CWP No. 11192 of 2013 was filed by the following persons: -

1. Dr. Sirat d/o Shri Kanwarjit Singh
2. Dr. Sandeep Goyal s/o Sh. Birbhan Goyal
3. Dr. Dimpy Goyal d/o Sh. Bhagwan Dass
4. Dr. Nirbhaibir Singh s/o Sardar Basant Singh
5. Dr. Gagandeep Kaur d/o Sardar Hakam Singh
6. Dr. Amanjeet Kaur d/o Dr. Manjit Singh
7. Dr. Balpreet Kaur w/o Dr. Kanwerjit Singh
8. Dr. Jashandeep Kaur d/o Sardar Pal Singh
9. Dr. Arpandeep Singh s/o Sardar Baldev Singh

10. Dr. Dheeraj Singla s/o Rajinder Kumar Singla
11. Dr. Akhil Sarin s/o Shri Arun Sarin
12. Dr. Manoj Singh Mittal s/o Shri Kewal Singh Mittal
13. Dr. Sunil Mahajan s/o Jugal Kishor Mahajan
14. Dr. Sophia Garg d/o Sh. Ashok Kumar Garg
15. Dr. Pooja d/o Sukhdev Raj Dadwal

The aforesaid writ petition contained various prayers, which reads as under: -

Petition under Article 226 of the Constitution of India, praying for the following reliefs:-

Issue a writ in the nature of mandamus summoning the records of the case;

Issue a writ in the nature of certiorari quashing the offending portion of the Clause 14(1)A(a)(ii) of the Government Notification dated 5.4.2013 (Annexure P-4) which discriminates against the persons having less than 5 years of service as on 1.1.2012;

Issue a writ in the nature of Mandamus directing the respondents to treat the petitioners PCMS Medical Officers eligible for admission under 60% quota to the Post Graduate M.D., M.S. and Diploma Courses in furtherance of the Prospectus (including the Government Notification dated 5.4.2013) as eligible with 2/3 years service in More (Very) Difficult/"Difficult" areas; and to consider the petitioners for admission to the PG MD/MS/Diploma Courses for session 2013;

Issue a writ in the nature of prohibition restraining the respondent/state from shifting the unfilled seats in 60% reserved quota to 40% quota as provided in the Government Notification dated 5.4.2013 (Annexure P-4).

Any other suitable writ, order or direction as this Hon"ble Court may deem fit and proper in the facts and circumstances of the present case be issued;

It is further respectfully prayed that ad-interim and pending the decision of this Writ petition, the respondents be restrained from shifting the vacant seats of 60% quota and offer them to eligible candidates in 40% quota;

AND

Further, the petitioners may kindly be permitted to submit their admission application forms, for which the last date is 25.5.2013.

AND

Further, the petitioners may kindly be permitted to participate in the counselling under 60% quota and they be considered provisionally for admission to Post Graduate M.D./M.S. and Diploma Courses.

2. The learned Single Judge dismissed the above said writ petition on 22.5.2013 with the following observations: -

The petitioners, who are PCMS Medical Officers, challenge the classification provided under Clause 14(1)A(a)(ii) of the Government Notification dated 5.4.2013 contained in part B of the prospectus (Annexure P-4), as (i) people who have completed 5 years of service, and (ii) who have less than 5 years of service, as unreasonable and artificial classification, for the purpose of admission to the Post Graduate M.D./M.S./Diploma courses.

Reverting back to the facts of the present case and respectfully following the law laid down by the Hon''ble Supreme Court, the irresistible conclusion is that the classification provided under Clause 14(1)A(a)(ii) of the Notification is neither unreasonable nor arbitrary. Thus, it is not violative of Articles 14 and 16 of the Constitution of India. The classification aims at achieving a laudable object referred hereinabove.

Further, as observed by the Hon''ble Supreme Court, the respondent State was well within its jurisdiction to take the policy decision, which is the basis of impugned Clause 14(1)A(a)(ii) of the Notification. It cannot be said that the respondent State was not aware about the classification of PCMS in-service candidates. There is no ambiguity in Clause 14(1)A(a)(ii) of the Notification. Therefore, it is held that Clause 14(1)A(a)(ii) of the Notification is based on reasonable classification.

No other argument was raised.

Under the totality of peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present writ petition is misconceived, bereft of any merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, the instant writ petition stands dismissed.

3. The order of the learned Single Judge has been upheld in LPA No. 1019 of 2013, which has been dismissed in limine on 29.5.2013.

4. Present petition has been filed by the "P.C.M.S. Association, Punjab (Punjab Civil Medical Services Association), having Registered Office at Preet Vihar, Opp. Indian Oil Petrol Pump, Daad, Pakhowal Road, Ludhiana - 142022, through its General Secretary - Dr. Gagandeep Shergill, resident of #606, Sector 115, JTPL Society, SAS Nagar, Mohali (Punjab)."

5. In this writ petition, the following prayers have been made by the petitioner:-

Civil Writ Petition under Articles 226 and 227 of the Constitution of India, praying for the issuance of a writ in the nature of Mandamus, certiorari or any other writ, order or direction, quashing the Clause 14(1)(A)(a)(ii) of the Policy/Notification dated 5.4.2013 (Annexure P-8), being violative of the provisions of Articles 14 and 16 of the Constitution of India; AND

To issue a writ in the nature of certiorari, quashing the memo dated 17.7.2012 (Annexure P-4) issued by the respondents-Authorities, being arbitrary, unreasonable and unsustainable in the eyes of law.

To issue a writ in the nature of mandamus, directing the respondents - Authorities to consider the eligible members of the petitioner - Association for admission under 60% quota to the Post Graduate M.D./M.S. and Diploma Courses in view of Order dated 31.1.2011 (Annexure P-2) as eligible with 2/3 years of service in more difficult/difficult areas and to consider them for admission for the Session of 2013; AND

Further to issue a writ restraining the respondents from shifting the unfilled seats from 60% quota to 40% quota; AND

To issue any other appropriate writ, order or direction, as this Hon'ble Court may deem just and proper, keeping in view the peculiar facts and circumstances of the present case.

It is further respectfully prayed that the eligible members of the petitioner - Association (whose particulars are annexed as Annexure P-1) may kindly be allowed to participate in the counselling, commencing from 17.7.2013, under 60% quota provisionally for admission to M.D./M.S. and Diploma Courses, subject to the decision of the present Civil Writ Petition in the interest of justice.

It is further respectfully prayed that the respondent No. 3 may kindly be directed to defer the counselling as per communication dated 18.5.2013 (Annexure P-11) sent by the respondent No. 1 to the respondent No. 3.

6. In the index of the writ petition, a note has been given that the present case is similar to CWP No. 11538 of 2013 titled as "Anjali Nagpal and others Vs. State of Punjab and others", which was pending for hearing.

7. A request was made to the Court for fixing the case on the same day on the ground that it pertains to the admission to the Postgraduate Course. After the permission was granted, the case was listed on the same day i.e. 16.7.2013. The learned Counsel for the petitioner relied upon an interim order passed in CWP No. 11538 of 2013 and claimed parity. Consequently, on 16.7.2013, following order was passed by this Court: -

Present: Mr. K.K. Goel, Advocate, for the petitioner.

The members of the petitioner-association (as mentioned in Annexure P-1) are in-service PCMS doctors, who are seeking admission in the Postgraduate Course under 60% quota for the session 2013-14. The petitioner has also assailed the validity of Clause 14(1)(A)(a)(iii) of the prospectus.

Counsel for the petitioner relies upon the interim order dated 24.05.2013 passed by this Court in CWP No. 11538 of 2013 and has claimed parity.

Notice of motion for 23.07.2013.

To be heard along with CWP No. 11538 of 2013.

In the meantime, the Principal Secretary, Department of Health and Family Welfare, Punjab, is directed to issue forthwith, the requisite No Objection Certificates to the members of the petitioner-association, as mentioned in Annexure P-1, on provisional basis, enabling them to seek admission in the Postgraduate Courses, in 60% quota for PCMS in-service doctors and they shall be permitted to participate in the counselling. However, it is made clear that this interim direction shall not create any equity in favour of the members of the petitioner-association and their admissions shall remain subject to the final decision of the writ petition.

A copy of this order be given to the learned counsel for the petitioner under signatures of the Special Secretary attached to this Court.

8. After notice, two applications have been filed, namely, CM No. 10302 of 2013 by Dr. Rohini Goyal, Dr. Anju Kansal and Dr. Mohit Manav, under Order 1 Rule 10 of the CPC for impleading them as parties; and CM No. 10303 of 2013 u/s 151 of the CPC read with Article 226 /227 of the Constitution of India for vacation of order dated 16.7.2013 on the ground that the same has been obtained by misrepresentation and concealment of facts.

9. Notice in both the applications was issued on 22.7.2013 to the counsel for the non-applicants to which Mr. K.K. Goel, counsel for the petitioner/non-applicant appeared and prayed for time to file reply.

10. The reply is filed today in Court. After considering the averments made in CM No. 10302 of 2013, the same is hereby allowed. However, arguments of the counsel for the parties on CM No. 10303 of 2013 as well as in the main case were heard.

11. Learned counsel for the petitioner has submitted that on 17.5.2013, admissions to the Postgraduate Degree/Diploma courses was offered to the candidates, who had qualified the National Eligibility Entrance Test (PG)-2013 [for short "NEET"]. The NEET prepared all India ranking as well as State-wise ranking of Punjab because 50% quota was meant for the State out of which 60% quota was kept for the in-service PCMS Doctors and 40% for the Graduates, who were not in-service PCMS Doctors. The Baba Farid University of Health Sciences issued the prospectus on 17.5.2013 in which Para-B contains the notification dated 5.4.2013 in respect of admissions to Postgraduate Degree/Diploma Courses Session-2013 in the Health Sciences Institutions (Medical/Dental) in the State of Punjab.

12. The relevant extract of the provisions of the said notification having the statutory force is as under:-

(I) Government Institution (Government Medical College Amritsar and Patiala,

G.G.S. Medical College, Faridkot; Government Dental College Patiala and Amritsar.

In the Government institutions, 50% of the total seats in every such institution shall be filled by the Government of India at all India level through NEET PG-2013. The remaining seats shall be filled through NEET-PG at State Level from amongst candidates having Punjab resident status. Out of the remaining seats, 60% seats shall be filled up from amongst the eligible PCMS/PCMS (Dental)/PDES in service doctors and 40% shall be open to all eligible medical/dental graduates.

A. For 60% Seats in Post Graduate Degree for PCMS/PCMS (Dental)/PDES.

The Eligibility to 60% quota candidates will be as per letters of Deptt. Of Health and Family Welfare Endst. No. 26/12/94-5HB2/795-805 dated 31.01.2011; and Memo No. 26/12/94-5HB2/4456-58 dated 17.07.2012 No. 2/149/12-1HBI/7260-77 dated 13-09-2012 and any other notification issued from time to time.

a) The eligibility requirements are as under:

(i) Regular PCMS employee; and

(ii) Have completed four years" service in very difficult (Category D) area or six 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; and RMO once they are selected in PCMS, they will be given benefits of rural service rendered by them as RMO's under Zila Parishads.

(iii) Have cleared the probation period; and

(iv) Whose service record is good; and

(v) After completion of Post Graduate Course have minimum of 10 years" service left; and

(vi) There is no vigilance/departmental/disciplinary inquiry pending against the employee.

13. Petitioner has challenged the validity of Clause 14(1)(A)(a)(ii) of the Notification dated 5.4.2013. The present petition has been filed by the petitioner/ Association to espouse the cause of its following members, in whose favour the interim order has been obtained: -

14. The argument of learned counsel for the private respondents as well as of the State is that the issue involved in this case has already been decided by this Court in CWP No. 11192 of 2013 vide order dated 22.5.2013 which has been upheld by the Division Bench vide its detailed order dated 29.5.2013 in LPA No. 1019 of 2013. It is also submitted that even the order passed in CWP No. 11538

of 2013 is not applicable because in the said case they had challenged the condition of probation period after doing rural service of 4 to 6 years whereas the petitioner in the present case has challenged the condition of 4 to 6 years of rural service as unreasonable and violative of Article 14 and 16 of the Constitution of India. It is also submitted that no averment has been made in the entire writ petition about the filing of earlier writ petition bearing CWP No. 11192 of 2013 rather it has been averred in para No. 42 of the writ petition that the petitioner/associating has not earlier filed any such or similar writ petition challenging the vires of the notification/policy dated 5.4.2013 and the validity of the order dated 17.7.2012, either in this Court or in the Supreme Court of India.

15. It is further submitted by counsel for the respondents that the writ petition has been designed in such a manner to mislead and over-reach this Court in order to obtain a favourable interim order.

16. In reply, learned counsel for the petitioner has admitted that there is no reference of the earlier writ petition filed by the persons mentioned in Annexure P-1 of the writ petition and is also not denied that they had not filed the earlier writ petition bearing No. 11192 of 2013 but it is submitted that the present writ petition has been filed because of the reason that on 18.6.2013, the Principal Secretary Health, Punjab, wrote a letter to the Vice Chancellor, Baba Farid University of Health Sciences, Faridkot, in which she had alleged that 60% quota for in-service PCMS Doctors has not been filled in the past year whereas the Department of Health needs the services of Postgraduate Doctors in order to provide secondary level service in its hospitals. Many PCMS Doctors are also keen on doing their Post-Graduation against these sponsored seats. The Health Department is considering some minor relaxation in the eligibility conditions relating to 4 years of service in category "D" or 6 years of service in category "C" and a request was made to defer the counselling scheduled on 19th & 20th June, 2013 qua the quota seats to facilitate decision in this matter and also requested that no seat is converted from this quota to the General Category at any stage without the concurrence of the Department of Health. It is also submitted that because of the conditions laid down in Clause 14(1)(A)(a)(ii) of the Notification of 4 years and 6 years service in "difficult" and "more difficult" areas most of the seats remain vacant, therefore, in this case a prayer was made for quashing of that clause being violative of Article 14 & 16 of the Constitution of India.

17. Learned counsel for the State has submitted that the letter dated 18.6.2013 has no bearing to the facts and circumstances of the case in which the present writ petition has been filed because it does not talk of any decision of the Government.

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

19. Undisputedly, the persons mentioned in Annexure P-1 of the present writ petition, alleged members of the petitioner-Association for whom the interim

order has been obtained, were the petitioners in CWP No. 11192 of 2013.

20. Indubitably, the prayers made in the present writ petition were also the prayers in the CWP No. 11192 of 2013. Admittedly, CWP No. 11192 of 2013 has been dismissed on 22.5.2013 holding that classification provided in Clause 14(1) (A)(a)(ii) of the Notification is not violative of Article 14 and 16 of the Constitution of India and order dated 22.5.2013 has been upheld in Intra-Court appeal bearing CWP No. 1019 of 2013 on 29.5.2013. Concededly, the petitioner herein did not disclose anything about the earlier CWP No. 11192 of 2013 much less its result rather averments have been made in the writ petition to the contrary that no such writ petition has been filed.

21. Surprisingly, the petitioner has mentioned CWP No. 11538 of 2013 in the index to canvass that it is a similar case whereas in that case the petitioners had rendered performed 4 to 6 years rural service and only challenged the condition of probation whereas in the present case as well as in CWP No. 11192 of 2013, the petitioner has challenged the condition of 4 to 6 years of rural service to be ultra vires to the Constitution of India.

22. The petitioner-Association got their case listed on the same day by making request in the Court projecting it to be a case of utmost urgency and while relying upon the order passed in CWP No. 11538 of 2013, obtained favourable interim order. The petitioner, in order to wriggle out of the aforesaid facts and circumstances has taken shelter of letter dated 18.6.2013 referred above, which has no bearing to the facts and circumstances of the case because the whole argument of the petitioner is that because of the harsh condition of 4 to 6 years of rural service most of the seats in the Postgraduate course remain vacant which was also one of the pleas in CWP No. 11192 of 2013, which was decided on 22.5.2013.

23. Learned counsel for the petitioner has also tried to support his argument with the decision of this Court in the case of "Joginder Singh and others Vs. State of Punjab and others" 1995 (4) SCT 350, which rather goes against the petitioner because it has been held therein that provisions of Section 11 of the CPC and constructive res judicata are applicable in the writ proceedings.

24. After taking into consideration the entire aspect of the matter, this Court is dismayed with what is happening in the Courts. How a most literate Section of the Society namely, the Doctors, who are in PCMS service, have taken Court for a ride by misrepresentation and concealment of facts. Not only that, there is no merit in the writ petition but also the petitioner much less its members, who are mentioned in the list annexed as Annexure P-1 with the writ petition, for whom the writ petition has been preferred, are guilty of suppressio veri and suggestio falsi and are liable to pay exemplary costs. Consequently, the writ petition is hereby dismissed on merit with costs of Rs. 50,000/- to be paid by each Doctor whose name is mentioned in Annexure P-1, which shall be deposited by them in the office of State Legal Services Authority, Punjab against a receipt, within a

period of three months from today. In case the costs is not paid as directed, Registry is directed to list this case again before this Court for appropriate orders, which may also include proceedings under the Contempt of Courts Act, 1971.