
(2016) 01 P&H CK 0439

In the Punjab And Haryana At Chandigarh

Case No : LPA Nos. 2120 of 2014 and 1725 of 2015 (O & M)

Sarbjit Kaur and Others

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 14-01-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 2 SCT 193

Hon'ble Judges : S.S. Saron and Gurmit Ram, JJ.

Bench : Division Bench

Advocate : Gagandeep Singh Sirphikhi and Rahul Sharma, Advocates, for the Appellant; P.P.S. Thethi, Additional Advocate General, for the Respondent

Final Decision : Allowed

Judgement

S.S. Saron, J.—1. This appeal (LPA No. 2120 of 2014) has been filed by the appellants Sarbjit Kaur and others against the judgment and order dated 17.7.2014 passed by the learned Single Judge in CWP No. 1143 of 2013. Lala Munshi Ram Institute of Health Sciences, Batala Road, Dera Baba Nanak (Gurdaspur), Punjab (respondent No. 4) has also filed LPA No. 1725 of 2015 against the said judgment and order, which is also being disposed of along with present appeal. The facts, however, are taken from the appeal filed by Sarbjit Kaur and others (LPA No. 2120 of 2014).

2. Sarabjit Kaur and others are 57 appellants undergoing the Auxiliary Nurses and Mid-wives Course (for short - the "ANM Course"). The appellants took admissions in the ANM Course at Lala Munshi Ram Institute of Health Sciences (respondent No. 4) ("Lala Munshi Ram Institute" - for short) in the 2011-12 Session, which commenced in September 2011. Due to lack of infrastructure and other shortcomings of respondent No. 4 - Lala Munshi Ram Institute, the appellants/students were not allowed to sit for the first year examinations of the ANM Course to be conducted by the Punjab Nurses Registration Council, Chandigarh (respondent No. 2) ("Nurses Council" - for short). Therefore, they

filed a writ petition in this Court for directing the respondents i.e. respondent No. 2 - Nurses Council and respondent No. 3 -Registrar of the Nurses Council to issue Roll numbers/Admit cards to them to sit in the ANM theory examinations to be held for the first year on 22.01.2013. This Court by an interim order allowed the appellants/students to appear in the first year of the ANM Course. In consequence of the interim order, the appellants/students have completed their first year and also the theory examinations of their second year of the ANM course. The results of the first year examinations have been declared but that of the second year have not been declared as the appellants/students are yet to undergo their clinical training.

3. The learned Single Judge vide impugned judgment and order dated 17.07.2014 has, however, dismissed the writ petitions filed by the appellants/students for directing the respondents to issue Roll numbers/Admit cards to them to sit in the ANM theory examinations. Aggrieved against the same, the appellants/students have filed this appeal.

4. During pendency of the appeal, Civil Miscellaneous No. 2664-LPA of 2015 was filed by the appellants for impleading the Majha International School of Nursing, Adda Gaillanwali, near Sugar Mill, Batala, Punjab (respondent No. 5) ("Majha School of Nursing" - for short) as a respondent. Notice of the civil miscellaneous application was issued to Majha School of Nursing on 01.09.2015. In terms of order dated 05.10.2015, Majha School of Nursing was impleaded as respondent No. 5. Kulwant Rai son of Lala Munshi Ram was impleaded as respondent No. 6 in the appeal vide order dated 29.10.2015.

5. Learned counsel for the appellants/students on 21.12.2015 submitted the result-cum-detailed marks card issued by the respondent No. 2 - Nurses Council of all the 57 appellants showing that they had qualified and passed in the first year ANM Examinations. The appellants except Sarbjit Kaur (appellant No. 1), Vinod Kumari (appellant No. 24), Madhu Kumari (appellant No. 27), Sarita Khatkar (appellant No. 33) and Poonam Devi (appellant No. 54) passed their first year examinations in January, 2013. Out of said five appellants who did not clear their examinations in January, 2013; Sarabjit Kaur (appellant No. 1), Vinod Kumari (appellant No. 24), Madhu Kumari (appellant No. 27) and Poonam Devi (appellant No. 54) cleared their supplementary examinations in September, 2013. Sarita Khatkar (appellant No. 34) cleared her supplementary examinations in January, 2014. The detailed marks cards of the appellants/students submitted by their learned Counsel were taken on record.

6. It is the accepted position of the learned Counsel appearing for their respective parties that all the appellants/students have now also completed their second year theory examinations, however, the clinical training remains to be completed. The result of the second year examinations, therefore, are yet to be declared, which can be declared only on successful completion of clinical training.

7. Mr. K.S. Dadwal, Advocate for respondent No. 4 - Lala Munshi Ram Institute

has submitted that the National Welfare Health and Education Awareness Charitable Society (Regd.), Batala (Punjab) runs the respondent No. 5 - Majha School of Nursing. Some members of the said Society are common in the management of both the Institutes i.e. respondent No. 4 - Lala Munshi Ram Institute and respondent No. 5 - Majha School of Nursing. Respondent No. 4 - Lala Munshi Ram Institute in fact is more or less defunct and according to the State they have been conducting surreptitious admissions. However, after 2011 i.e. in the Session in which the appellants/students were admitted, no admissions have been made in respondent No. 4 - Lala Munshi Ram Institute and the present appellants are of the last batch.

8. Mr. Jagjit Singh Dahiya, Advocate, who is appearing for the applicants in the CMs has submitted that the students whom he represents were admitted in respondent No. 5 - Majha School of Nursing but were shown to be students of respondent No. 4 - Lala Munshi Ram Institute. In fact the students of respondent No. 5 - Majha School of Nursing completed their courses much earlier and have been given their degrees even. However, students of respondent No. 4 - Lala Munshi Ram Institute were left in the lurch. Their classes could not be completed earlier and now the students have completed their theory classes of the second year of ANM Course in respondent No. 4 - Lala Munshi Ram Institute and even appeared for the examinations but due to clinical training being not conducted, their results are not being declared.

9. The factual position is that in September 2011, the 57 appellants/students were admitted in the first year of the two years ANM course in respondent No. 4 - Lala Munshi Ram Institute. They have completed one year of their ANM Course. They submitted self-certification proformas along with their fees on 04.09.2012 with the respondent No. 2 - Nurses Council through respondent No. 4 - Lala Munshi Ram Institute for issuances of roll numbers/admit cards. The respondent No. 2 -Nurses Council issued receipts for an amount of Rs. 36,900/- for 60 students who had submitted their fees. In pursuance of an interim order passed by this Court on 21.01.2013 in the writ petition filed by the appellants/students i.e. CWP No. 1143 of 2013, this Court permitted them to appear in the first year of the ANM Course commencing from 22.01.2013. The affiliation of respondent No. 4 - Lala Munshi Ram Institute was under a cloud; however, all the appellants/students appeared in terms of the said order passed by this Court. All the appellants/students, as already noticed, have since cleared their first year examinations of the ANM course and their mark sheets have been placed on record.

10. In the second year of the ANM course, the dispute regarding affiliation of respondent No. 4 - Lala Munshi Ram Institute continued. The dispute was due to lack of infrastructure and other shortcomings. However, dates for inspection of respondent No. 4 - Lala Munshi Ram Institute were not fixed. In this manner, the second year of the ANM Course of the appellants/students was again disrupted and on orders of the Court, roll numbers were issued to them and they appeared

in the second year theory examinations being conducted by respondent No. 2 - Nurses Council.

11. As per the syllabi, for the ANM second year course, students have to undergo clinical training apart from theory examinations. The clinical training is to be undertaken from a hospital to which the institute is attached. The syllabus consists of the following subjects:--

"(i) Health Centre Management;

(ii) Health Nursing; and

(iii) Midwifery and Nursing Care of Mothers at Risk"

12. For this training, even hours of training have been stipulated.

13. The appellants/students are now to undergo their clinical training from a hospital. The said clinical training can be provided by respondent No. 5 - Majha School of Nursing and seats are vacant in the said Nursing School. As has already been noticed, the National Welfare Health and Education Awareness Charitable Society (Regd.), Batala (Punjab) is running the respondent No. 5 - Majha School of Nursing and some members of the said Society are common in the management of both the Institutes i.e. respondent No. 4 - Lala Munshi Ram Institute and respondent No. 5 - Majha School of Nursing.

14. An affidavit dated 21.12.2015 of Smt. Malkit Kaur Vice President of respondent No. 5 - Majha School of Nursing has been filed wherein it has been submitted that in the Session of 2015-16, only eight students were admitted in the ANM first year and out of them two have left the course and now six students were undergoing the ANM course. In the second year of ANM course, it is submitted that there are 27 students who are to pursue their course in the Session, which is to commence from January, 2016. It is submitted that the students can be immediately admitted in respondent No. 5 - Majha School of Nursing without any loss of further time and necessary arrangements for their training and other course requirement as per the stipulations of the Indian Nursing Council and respondent No. 2 - Nurses Council guidelines (syllabus) would be made and further if excess students are found to have been admitted then necessary cut from next year regarding all seats can be ordered. Keeping in view the fact that only six students are pursuing their ANM first year course who would be promoted to the second year, the cut in the next year may not even be required. In other words, according to the said affidavit, it would not be necessary to impose any cut in the next year even if excess students are there in the present year as only 6 students at present are pursuing first year of ANM course.

15. According to Mr. D.S. Sobti, Advocate appearing for respondents No. 2 - Nurses Council and No. 3 - Registrar of the Nurses Council, eight students are undertaking their first year of ANM course in the current session of 2015-16 in respondent No. 5 - Majha School of Nursing. Mr. Sobti has also submitted that at

present the appellants/students have not successfully completed their clinical training; however, they have finished their written theory examination of the second year of ANM course as applicable at the relevant time i.e. for the Session 2011-12. Their results of theory second year examinations have not been declared.

16. Learned counsel for the respondent No. 4 - Lala Munshi Ram Institute and respondent No. 5 - Majha School of Nursing submitted that the appellants are undergoing their clinical training at the CHC Naushehra Majha Singh (Gurdaspur) and at Civil Hospital, Gurdaspur for which necessary fees has also been deposited with the Punjab Health Systems Corporation and at the Central Collection, CHC Naushehra Majha Singh, (Gurdaspur) from time to time. Photostat copies of some receipts were handed over to the learned State Counsel on 23.12.2015, who submitted that he shall verify the position.

17. Mr. P.P.S. Thethi, learned Additional Advocate General for respondent No. 1 - State has verified the fact regarding deposit of the amount of training fees from the students of respondent No. 4 - Lala Munshi Ram Institute from time to time. The photostat copies of some of the receipts regarding payment of fees that has been deposited for clinical training have also been placed on record. Mr. Thethi further submits that the State Government would have no objection to impart necessary clinical training to the appellants/students in accordance with law and rules as also the requirements of Indian Nursing Council and respondent No. 2 - Nurses Council.

18. Mr. Jagjit Singh Dahiya, Advocate appearing for some of the appellants in the CMs submits that the main endeavour of the appellants on whose behalf he has filed CM No. 1088-LPA of 2015 were to withdraw their names from this litigation and seek permission to file fresh one so that they could successfully complete their ANM course. He further submits that in view of the fair stand taken by respondent No. 2 - Nurses Council and the State of Punjab, he may be allowed to withdraw the CMs filed by him. It is the admitted position that the applicants in the said CMs who are also appellants have also completed their 2nd year theory examination of the ANM course and are to complete their clinical training only.

19. It is to be noticed that the appellants are all ladies nursing students most of them are from the rural areas of the State of Rajasthan. They came to pursue their ANM course from respondent No. 4 - Lala Munshi Ram Institute in the Session 2011-12.

20. According to the written statement filed by respondent No. 4 - Lala Munshi Ram Institute, it has been submitted that in fact affiliation was granted to the Institution on 16.03.2001; besides, as per procedure of respondent No. 2 - Nurses Council each year after submitting the self-certification proforma along with requisite fees by respondent No. 4 - Lala Munshi Ram Institute, letter of affiliation was being issued by the respondent No. 2 - Nurses Council to the Institution. For the Session 2010-11 letter of affiliation was issued on 07.09.2010

(Annexure R-4/2). Students were admitted in the Session 2010-11 and the result was declared. Thereafter, for the Session 2011-12, the Self-Certification Proforma along with fee of Rs. 10,000/- was submitted to respondent No. 2 - Nurses Council on 11.07.2011 (Annexure R-4/3). The appellants were admitted in the ANM course in September 2011 for the Session 2011-12. The examination forms and fees of the appellants were submitted by the respondent No. 4 - Lala Munshi Ram Institute to respondent No. 2 - Nurses Council vide letter dated 04.09.2012 (Annexure R-4/4). After receiving the same, a receipt (Annexure P-1) was issued. It was, therefore, the duty of the respondent No. 2 -Nurses Council to issue roll numbers and admit cards to the students.

21. Respondent No. 4 - Lala Munshi Ram Institute by way of additional affidavit dated 18.10.2013 has further submitted that as per instructions, precedent and procedure issued by respondent No. 2 - Nurses Council, the Institutions who are already affiliated with the Council for the next year are to submit Self-Certification Proformas which are available on the website of the Council along with requisite fees. A blank proforma (Annexure R-4/5) has been placed on record. The students were being admitted in the respective courses unless and until it was refused. It is also submitted that in response to the Self-Certification Proforma and requisite application dated 11.07.2011 (Annexure R-4/3), no reply was received. On enquiry it was orally informed and conveyed by the office of respondent No. 2 -Nurses Council that as per procedure and precedent, the students can be admitted in the said course till the cancellation/refusal of admissions. Since, the respondent No. 4 - Lala Munshi Ram Institute was allowed to admit the students for the academic year 2011-12 by the Indian Nursing Council vide circular dated May 2011 (Annexure R-4/6), the respondent No. 4 - Lala Munshi Ram Institute admitted the students for the ANM Course in October 2011. The first year examination was to be held in the month of October/ November 2012. The respondent No. 4 - Lala Munshi Ram Institute submitted examination fees of Rs. 36,900/- on 04.09.2012 (Annexure R-4/4). Receipt dated 10.09.2012 (Annexure P-1) in this regard is on record. Therefore, had there been any objection by the respondent No. 2 - Nurses Council, the fees and forms would not have been accepted.

22. The facts and circumstances of the case evidently show that there is no fault of the appellants/students in securing admissions to the ANM course in the respondent No. 4 - Lala Munshi Ram Institute in the Session 2011-12. The appellants are not liable to suffer for the lapses on the part of respondent No. 4 - Lala Munshi Ram Institute or the respondent No. 2 - Nurses Council. In fact the learned Single Judge also noticed that the fault lies with respondents No. 2 and 3 i.e. the Nurses Council and Registrar of Nurses Council, who failed to carry out the inspection in order to notice as to whether there was any infrastructure being maintained by respondent No. 4 - Lala Munshi Ram Institute. Be that as it may, after the Session 2011-12, however, no admissions have indeed been made in respondent No. 4 - Lala Munshi Ram Institute. The affiliation given to respondent No. 4 -Lala Munshi Ram Institute for the Session 2011-12 though is said to be

somewhat unclear by the respondent State; however, for that the appellants/students are not liable to suffer especially when the Indian Nursing Council vide circular dated May 2011 (Annexure R-4/6) has notified respondent No. 4 - Lala Munshi Ram Institute to be a recognized Institute. The Indian Nursing Council vide Annexure R-4/6 issued a list of ANM Schools of Nursing recognized and permitted to admit students for the academic session 2011-12. The name of respondent No. 4 - Lala Munshi Ram Institute is at serial No. 813 of the said list of amongst the recognized institutions. Even during the course of hearing, it was not disputed by learned counsel appearing for respondent No. 2 - Nurses Council that there could be no fault of the appellants/students in their being admitted to respondent No. 4 - Lala Munshi Ram Institute. Moreover, the appellants/students have successfully completed their first year of their ANM course being conducted by respondent No. 2 - Nurses Council and their detailed marks results have also been placed on record. All the students have completed their theory examination of the second year of ANM course and are now to undergo their clinical training from a hospital. The respondent No. 5 - Majha School of Nursing has agreed to take the students on the rolls of its Institute for the purpose of imparting clinical training. Besides, the State of Punjab has also consented that it shall impart necessary training to the appellants/students.

23. In the circumstances, it would be just and proper that the Civil Surgeon, Gurdaspur would oversee the training programme of the appellants/students. Therefore, though the appellants/students may have been duped by respondent No. 4 -Lala Munshi Ram Institute. However, we leave it for the respondents No. 2 and 3 - Nurses Council and its Registrar and the State of Punjab to take appropriate action against it. They shall, in any case, ensure and take steps that such things do not happen in future.

24. In order to settle the equities for which the appellants/students who are mostly from the rural areas of Rajasthan do not suffer, it would be just and expedient in the facts and circumstances that they undergo their clinical training through respondent No. 5 - Majha School of Nursing from CHC Naushehra Majha (Gurdaspur) and Civil Hospital, Gurdaspur which shall be overseen by the Civil Surgeon, Gurdaspur either himself or through his duly authorized qualified doctors working with him or under him. On completion of the clinical training by the appellants/students, the Civil Surgeon, Gurdaspur shall also certify as to whether they have successfully completed their clinical training in accordance with the necessary norms of the Indian Nursing Council and the respondent No. 2 - Nurses Council as applicable for the Session of 2011-12 to which the appellants/students were admitted. Besides, it would also be just and proper that no further payments are taken from any of the appellants/students by respondent No. 4 - Lala Munshi Ram Institute or respondent No. 5 - Majha School of Nursing and in case any fees or expenses are required for completing the clinical training, the same shall be borne by respondent No. 4 - Lala Munshi Ram Institute, which has already taken the necessary fees.

25. The relief is being granted to the appellants/students in the peculiar facts and circumstances of the case for which they were not at fault and to settle equities. This Court in the case of Jagdev Sharma v. State of Punjab, , (2015 - 2) PLR 570 has held that the relief provided by Article 226 of the Constitution is a discretionary one. A writ may neither issue nor an order made merely because it is lawful to do so. The Writ Court sits in equity where the rules of prudence preside and occupy the field of vision when known legal principles may not come to the rescue or be of any intrinsic help to cull out the relief or to deny it. Equity in its brightest and the most sublime form is a jealous mistress which may not want to share its bed and be betrayed by pedestrian rules, shackled by plebeian legal principles which may be found insufficient whilst venturing to do unconventional justice in a case. It is often said that a case to be decided *ex aequo et bono*, overrides the strict rule of law and requires instead a decision based on what is fair and just, given the circumstances. Life and its vicissitudes are larger than the law.

26. Accordingly, both the appeals are allowed and the judgment dated 17.07.2014 passed in CWP No. 1143 of 2013 by the learned Single Judge is set aside and the appellants/students shall be imparted clinical training in accordance with the syllabus as was applicable in the year 2011-12 in which the appellants/students were admitted, besides, the clinical training shall be through respondent No. 5 - Majha School of Nursing at CHC Naushehra Majha Singh (Gurdaspur) and at Civil Hospital, Gurdaspur, which shall be under the supervision of Civil Surgeon, Gurdaspur who shall oversee the training either himself or through his duly authorize qualified doctors working with him or under him and on completion of the clinical training by the appellants/students, the Civil Surgeon, Gurdaspur shall submit a report as to whether or not the training has been successfully completed by each of the appellants/students and after the report is submitted by the Civil Surgeon, Gurdaspur, the result of those appellants/students who have successfully completed their clinical training shall be declared by respondent No. 2 - Nurses Council in respect of the theory paper and clinical training of the second year of ANM course. No further payments/fees shall be taken from the appellants/students by respondent No. 4 - Lala Munshi Ram Institute or respondent No. 5 - Majha School of Nursing and in case any fees or expenses are required for completing the clinical training, the same shall be borne by respondent No. 4 - Lala Munshi Ram Institute. The CM No. 1088-LPA of 2015 filed by Mr. Jagjit Singh Dahiya, Advocate is dismissed as withdrawn. There shall be no order as to costs. The respondent No. 2 - Nurses Council and the respondent No. 1 - State of Punjab shall take action in accordance with law against respondent No. 4 - Lala Munshi Ram Institute, in case they have committed any default, misconducted themselves or duped the appellants/students. The records of the case of respondent No. 4 - Lala Munshi Ram Institute that were taken be returned to its learned counsel against necessary receipts.