

(2010) 10 SC CK 0067

In the Supreme Court Of India

Case No : Civil Appeal No"s. 9221-9223 of 2010 (Arising out of SLP (C) No"s. 29693-29695 of 2008)

State of Punjab and Another

APPELLANT

Vs

Dr. Viney Kumar Khullar and Others

RESPONDENT

Date of Decision : 22-10-2010

Acts Referred:

Citation : (2011) AIRSCW 7 : (2010) 11 JT 575 : (2010) 11 SCALE 219 : (2010) 13 SCC 481 : (2010) 10 UJ 4945

Hon'ble Judges : R. V. Raveendran, J;H. L. Gokhale, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.V. Raveendran, J.—Leave granted.

2. The Government of Punjab issued a prospectus notification dated 17.3.2008 (for short the 'Prospectus') regarding admission to post graduate degree/diploma in Medical/ Dental Courses for the year 2008. Clause 14 relates to allocation of seats and relevant portions thereof are extracted below:

14. In the Government institutions, 50% of the total seats in every such institution shall be filled by the Government of India on all India basis through an all India Competitive Entrance test. The remaining seats shall be filled through the Post Graduate Entrance Test - (PGET). 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 service PCMS/PCMS (Dental)/PDES) (i) The test shall be open to the candidates who have completed a minimum of three years rural service in PCMS/PCMS (Dental) or a minimum of three years Education Service. x x

(xi) All PCMS/PCMS (Dental) PDES doctors who are selected for admission to Post

Graduate courses under 60% quota shall have to produce a No Objection Certificate from the Director, Health and Family Welfare/Director, Research & Medical Education, Punjab, as the case may be before joining the course in accordance with instructions issued by the department of Health & Family Welfare vide memo No. 26/12/94- 5HB2/9990 dated 13/5/96 and any other instruction issued by Punjab Government.

(b) For 40% Seats:

(i) Medical/Dental graduates who are residents of the State of Punjab as per instructions of Department of Personnel (PP-II Branch) conveyed vide letter No. 1/3/95-3PPII/9619 dated 6/6/1996 and No. 1/2/95-3PPII/81 dated 1/1/1999.

(ii) Any candidate in State Government employment shall produce a 'No Objection Certificate' from his/her employer.

3. The Government Circular Memo dated 13.5.1996 referred to in Clause 14(xi) of the Prospectus contains the policy regarding issue of 'No Objection Certificate' ('NOC' for short). The relevant portions thereof are extracted below:

1.1) The regular PCMS doctors having 3 years rural service/including Adhoc service would be eligible for admission in diploma/PG courses in State Medical College against 60% quota.

xxxx

2) As per the notification issued by the Medical Education and Research Department, the candidates who are selected against 60% quota would be considered to be on deputation during the course, but not be paid any deputation allowance. On completion of the course, the doctor would be reverted to PCMS cadre....

3) Those doctors who do not fulfill the condition as mentioned in para No. 1 in case they are selected for diploma/PC courses would be given admission against the 40% quota. These doctors would have to resign from the job in order to join the diploma/PG courses in Medical Colleges of the state.

4) Those doctors who were selected for post graduation/Super speciality would have to fill the bond for government service for five years as follows:

(1) For PG course: Rs. 2 lacs

(2) For super speciality course: Rs. 3 lacs

If the doctors do not serve the government for the above mentioned period, he would have to return the above mentioned amount to the government.

xxxx

7) The PCMS doctors who are selected against 40% quota would not be issued any No Objection Certificate by Director health and family welfare.

(emphasis supplied)

The said circular dated 13.5.1996 was amended by government Circular dated 30.7.2007. Clause (2) of the amendment Circular required the in-service doctors who are selected for doing post graduate courses to give a bond for Rs. 10 lacs undertaking to render government service for 10 years (instead of a bond for Rs. 2 lacs for five years service earlier prescribed) and that if the candidate does not serve the government for the full period, he will have to give double of the amount of bond money to the government.

4. The first respondent in each of these appeals is an in-service PDES doctor. They applied for admission to the 2008-2011 post graduate courses. They obtained and produced provisional No Objection Certificates, along with their applications. The results of Entrance Examination 2008 were declared on 27.4.2008 and in the ensuing counseling at the Baba Farid University on 12th and 21st May, 2008, they were selected and admitted to different Post Graduate Courses in General Category in the 60% quota for in-service candidates. Dr. V.K. Khullar was selected for MD (Social and Preventive Medicine), Dr. G.S. Dhaliwal was selected for MD (Skin & V.D.) and Dr. Kamal Kishore for MD (Anesthesiology). When they sought No Objection Certificates which had to be produced, the department found that all of them were due to retire within 5 to 12 years and could not render the required minimum compulsory service for ten years after completing the three year Post Graduate Course. Therefore, the No Objection Certificates were not issued.

5. The said three candidates filed writ petitions in the Punjab & Haryana High Court, praying for issuance of direction to the appellants herein, to issue NOCs to them to enable them to join the post graduate Medical course and also sought a direction to the Government Medical College, Amritsar to permit them to join their respective courses. The High Court by three short identical orders disposed of the writ petitions with a direction to the Appellants (the Principal Secretary, Department of Medical Education & Research, Punjab and Director, Health & Family Welfare, Punjab) to verify the provisional NOCs issued to the writ petitioners within two weeks with a further direction to permit the writ petitioners to continue their studies. The said orders are challenged in these appeals by special leave.

6. The appellants contend that as the three writ petitioners were not issued NOCs, the High Court ought to have considered the reason for non-issue of NOC instead of permitting the three writ petitioners to join their courses or continue their studies. It is contended that only those in-service candidates who had sufficient service and who were in a position to furnish a bond undertaking to serve for a period of 10 years could be selected for the PG courses; and that the three writ petitioners were not eligible for getting the NOCs as they did not have ten years service after completion of the course. The appellants submitted that the provisional NOCs issued to the three writ petitioners were declared invalid after verification as they did not comply with the requirement of the circular

dated 13.5.1996 as amended by circular dated 30.7.2007. The appellants submitted the following service particulars of the three candidates:

Sl. No.

Name of Doctor

Duration of PG course

Date of retirement

Service left after completion of course

1

Dr. V.K. Khullar

2008-11

31.08.2012

1 year 2 months

2

Dr. Kamal Kishore

2008-11

30.6.2019

8 years

3

Dr. G.S. Dhaliwal

2008-11

31.8.2020

9 years 2 months

7. The three writ petitioners (first respondent in each of the appeals) contended as follows:

(a) Dr. Kamal Kishore and Dr. G.S. Dhaliwal were eligible for admission to the course in terms of the prospectus notification dated 17.3.2008 and that they were also eligible to get NOC in terms of the circular dated 13.5.1996 which required the candidates admitted to the course to serve for five years after completion of the course.

(b) The amendment circular dated 30.7.2007 (which introduced the requirement of 10 years service after completion of the course) was inapplicable to them as the prospectus notification dated 17.3.2008 stated that they should only obtain an NOC in terms of the circular dated 13.5.1996 issued by the Punjab

Government, and did not refer to the amendment memo dated 30.7.2007.

(c) Dr. V.K. Khullar was ready to serve for five years after completion of the course in 2011; and his retirement would not be a bar to his service as he could work on retirement on contract basis. In the event of Dr. V.K. Khullar being found to be ineligible for being selected under the 60% quota, he should be considered as having been admitted under the 40% quota.

They also submitted that the circular dated 30.7.2007 had been challenged other similarly situated candidates (in CWP No. 8340/2009 Dr. Gobind Tandon and 37 Ors. v. State of Punjab and Ors.) wherein the Punjab & Haryana High Court has made an interim order dated 28.5.2009 permitting the writ petitioners therein to join the course by furnishing bonds for the remainder of their service instead of furnishing bond for 10 years service. They also submitted that they have virtually completed more than three-fourth of the MD Courses and if any action is taken against them at this belated stage by cancelling the admissions, the society would lose the services of three specialized doctors on whose education, considerable money has been spent by the government. They therefore requested that they should be permitted to complete the degree and serve for the balance period of their service.

8. The question for consideration is whether the High Court could have disposed of the writ petitions by virtual non-speaking orders, without considering the various issues, only with a direction to verify the provisional NOCs within two weeks and permitting the writ petitioners to continue with their studies. We find that the orders of the High Court are unsatisfactory as they do not specify what should happen if on verification of the provisional NOCs, it was found that they are not valid. We also find that the direction to appellants to permit the three writ petitioners to continue their studies was unconditional and was not restricted to the period required for verification of the provisional NOCs. Normally, we would have set aside the said orders of the High Court and remanded the matters with a direction to the High Court to consider the contentions raised and pass appropriate orders. But having regard to the fact that the three writ petitioners (first respondent in each of the three appeals) have already completed 2 years and 3 months out of the 3 year MD course, any remand would result in further delay, thereby adversely affecting their interests and also deny the benefit of their specialised service to the society. Therefore, we propose to dispose of the matters without remand.

9. The prospectus notification dated 17.3.2008 requires the in-service doctors to produce NOCs. from the Director, Health & Family Welfare or the Director, Medical Education & Research as the case may be before joining the course, in accordance with the instructions contained in the circular dated 13.5.1996 and any other instructions issued by the Punjab Government. What is significant is that the circular dated 30.7.2007 increasing the period of minimum service under the bond from 5 years to 10 years (and bond amount from Rs. 2 lakhs to Rs. 10 lakhs) for PG courses is not mentioned or made applicable. The words "any other

instruction issued by the Punjab Government" in the context of the said clause in the Prospectus cannot be interpreted as referring to any instruction increasing the burden on the candidates to secure the No Objection Certificate. A candidate should be made known about the requirements to be fulfilled by him and cannot be exposed to unknown liabilities or limitations. If the intention was to make the amendment notification dated 30.7.2007 applicable to the 2008 PG admissions, the Prospectus should have referred to that amendment circular dated 30.7.2007, while mentioning the circular dated 13.5.1996. Nothing prevented the Government from stating that the NOC should be subject to the conditions mentioned in the circular dated 13.5.1996 as amended by circular dated 30.7.2007. It should be noted that the amendment circular dated 30.7.2007 was issued after the 2007 admissions and was sought to be made applicable for the first time in respect of the 2008 admissions. Therefore, the candidates for 2008 admissions would not know about the said amendment circular dated 30.7.2007 unless it was mentioned in the Prospectus. The candidates would have bonafide proceeded on the basis that eligibility for the NOC was in terms of the government circular dated 13.5.1996. The fact that provisional NOCs had been issued to them also would have led them to believe that prima facie they were eligible to get the NOCs.

10. In these peculiar circumstances we are of the view that the admissions of Dr. Kamal Kishore and Dr. Gurjeet Dhaliwal should not be interfered and they should be permitted to continue the course subject to giving a bond undertaking to serve for a period of five years after completion of the course, and in default pay Rs. 200,000/-, in terms of the circular dated 13.5.1996 without reference to the amendment dated 30.7.2007. We hasten to add that this would be the position in respect of the 2008 PG admissions.

11. The position is however different in regard to Dr. V.K. Khullar. He was ineligible to obtain the NOC even as per the circular dated 13.5.1996. As he is due to retire on 31.8.2012, he could not serve even for five years, which is the requirement under the circular dated 13.5.1996. As the Prospectus clearly refers to the circular dated 13.5.1996, he is deemed to know that he was ineligible to get a NOC. Hence he will not be entitled to the relief extended to the other two candidates. However as he has also completed more than three-fourth of a valuable post-graduate course, it will not be proper to remove him from the said course at this belated stage. Therefore, he should be given a chance to complete the course, but subject to conditions. Dr. V.K. Khullar shall have the option either to resign from service so that he could be considered as having been admitted under the 40% quota with all consequences flowing therefrom, or to continue and complete the course without resigning, subject to his paying the bond amount of Rs. 2,00,000/- for not being able to serve for five years after completing the course.

12. In view of the above these appeals are allowed in part as follows:

(i) Dr. Kamal Kishore and Dr. G.S. Dhaliwal shall be issued NOCs on furnishing a

bond for Rs. 2 lakhs undertaking to serve for a period of five years after completing the MD degree course. Their admission and continuation in the MD course shall not be disturbed.

(ii) Dr. V.K. Khullar shall be permitted to complete the MD course, but subject to either resigning from service and continuing in the course with the terms applicable to candidates admitted under the 40% quota, or alternatively continue as in-service candidate and complete the course under the 60% quota subject to payment of Rs. 2,00,000/- as liquidated damages for non-fulfillment of the essential term of eligibility in terms of the bond that will have to be executed by him .

(iii) On the facts and circumstances, there is no need to consider the validity of the correctness of the circular dated 30.7.2007 in these appeals, as the same is held to be inapplicable to 2008 admissions. We make it clear that the non-applicability of the amendment memo dated 30.7.2007 is only with reference to 2008 admissions. We do not express any opinion about its applicability with reference to the admissions for subsequent years.