
(2009) 03 DEL CK 0217
In the Delhi High Court
Case No : Writ Petition (C) 6339 of 2003

Vibha Jain

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 25-03-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 5 ILR Delhi 472

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : R.P. Gupta, for the Appellant; Sonia Sharma, for Resp-2, for the Respondent

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J.—Issue Rule. Ms. Sonia Sharma, Advocate waives notice of Rule. With consent of counsel for the parties, the matter was heard finally, for disposal.

2. The petitioner claims a direction to the second respondent to pay remuneration for the period of Post Graduate training undergone by her between 1997-1999 along with interest and compensation.

3. Briefly, the facts are that the petitioner applied for the Diplomate of National Board (DNB) course pursuant to an advertisement in 1997. The DNB course was instituted by the Central Government, Ministry of Health as an alternative to the regular Post Graduate course; it is scheduled in the Indian Medical Council Act as a qualification equivalent to Post Graduation in Medicine. Candidates desirous of admission to the course have to clear an admission process, after which they undergo training in an accredited Hospital or Institution. It is not in dispute that second respondent - DDU Hospital, Government of Delhi Institution is one such accredited Institution. The petitioner underwent training in the DDU Hospital between 1997-1999.

4. The Scheme of DNB is such that the candidate, after completing practical training appears in an "exit" examination followed by practical tests, which includes a viva voce component. It is claimed that the petitioner was not declared successful in the examination process, despite three attempts.

5. The petitioner submits having applied to the second respondent -Hospital, sometime in 2000 claiming stipend for the period of training when she was asked to discharge medical duties in the Hospital. She submits that the Medical Superintendent of the second respondent mentioned about a proposal to pay about Rs. 10,000/ - per month as stipend. The petitioner felt aggrieved by the result declared in the DNB and approached this Court by filing W.P. (C) No. 1448/2001. In those proceedings, she challenged the validity of Clause 6.7 of the Bulletin of Information issued by the DNB disentitling the students appearing in examination from information regarding the marks obtained by them. The petitioner contends that on 15.7.2002 she became aware of Regulation 13.3. of the Medical Council of India Regulations, 2000, enabled payment of a stipend. She, therefore, filed an Application being I.A. No. 6128/2003 for amendment of the relief clause. The Application was, however, disposed of permitting liberty to her to seek independent relief. The petitioner relies upon a judgment of this Court in Dr. Vishal Sehgal and Others Vs. Secretary (Health) and Others, .

6. The petitioner contends that though facially, the ratio of the decision is inapplicable because the Court rejected the contractual entitlement of the petitioner (in those proceedings) to the stipend, yet the relief was granted on the basis that denial of stipend amounted to an unconscionable bargain. Learned Counsel pointed out to the judgment, particularly para 28 which records that the petitioner No. 1 was clearly informed that the DNB course with the respondent - also a Government institution was unpaid. Learned Counsel submitted that though contractually it was held that there was no obligation to pay, however on an application of the principle enunciated by the Supreme Court in Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, and State of Haryana and Another Vs. Ram Chander and Another, the Court declared that denial of stipend amounted to arbitrariness. Learned Counsel submitted that the petitioner in this case also deserves a similar order.

7. The respondents through counsel relied upon the averments made in the counter affidavit. It was pointed out that like in Vishal Sehgal's case, the guidelines and the terms of the brochure expressly stated that the position would be unpaid. Counsel submitted that besides in this case the course was for the duration 1997-99. It was submitted that Rule 13.3 of the Rules framed in 2000 and entitling payment of stipend were prospective and if Courts were to apply the reasoning in Vishal Sehgal's case, the effect would be to extend it retrospectively.

8. Learned Counsel further contended that ratio in Vishal Sehgal's case was expressly limited as is evident from para 57 of the judgment itself. It was further contended that the petitioner has been unable to establish if any rule similar to

Rule 13.3 prevailed or existed at the time when she completed her course. In these circumstances, counsel submitted that it would not be in the interests of justice to issue the directions sought for by the petitioner.

9. The preceding narrative would show that on the essential facts pertaining to the petitioner's admission, her not completing the course in March, 1999, the absence of an express stipulation vis-a-vis payment of stipend, etc., the parties are virtually ad idem. The question is whether the logic and the reasoning in Vishal Sehgal's case cannot be applied to the facts of this case. The respondents' objection on this score is firstly that the petitioner is relying upon Rules framed in 2000 which came into force on 22.8.2000. They state that Rule 1(2) specifically provide that its coming into force would depend on its Notification in the Gazette. Counsel contended that gazette notification was later and in the absence of any instructions to the contrary, the regulations could not be applied retrospectively. Counsel also made a pointed reference to Regulation 13.3 which is in the following terms:

The postgraduate 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 postgraduate 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 Postgraduate students.

10. The further submission was that in this case, the petitioner is relying upon Regulations - an element which was lacking in Vishal Sehgal's case. Therefore, submit the respondents, the relief sought cannot be granted on the basis of a norm which came into force after the completion of the training.

11. The arguments of the respondents are facially attractive. Undoubtedly, the norm i.e. the Post Graduate Medical Council Regulations were framed in 2000. Yet what is important to notice is that the respondents do not dispute that the petitioner was, during the course of her training being involved actively in discharging the duties of a medico or Doctor in the Hospital. This itself afforded a cause of action to her to claim the amount. The fact that the brochure of admission excluded any liability to pay stipend, does not in the opinion of the Court act as an impediment to her claim. There is nothing on the record to show that the duties discharged or performed by the petitioner were in any manner inferior to that of Doctors who performed their jobs in the Hospital with a similar qualification. If that be the situation, the mere fact that the DNB course form issued by the respondents expressly stated that no stipend would be paid or did not provide it in the brochure or admission form, would not make any difference.

12. In that respect, the application of the unenforceability of an unconscionable condition invoke the principle of non-discrimination and fairness in Central Inland Water Transport Corporation Ltd. case relied upon in Vishal Sehgal's decision would squarely apply. The Supreme Court has applied the same rule in two other

judgments i.e. LIC of India and Another Vs. Consumer Education and Research center and Others, and Hindustan Times and Others Vs. State of U.P. and Another, . Besides, such conditions cannot be enforced, as being hit by Section 23 of the Central Act.

13. It is now well settled that where a state agency is in a position of dominance and can dictate its terms or impose other standard form contractual terms in respect of employment, life insurance etc., the Court's scrutiny under Article 226 is not excluded; likewise the Supreme Court has insisted on application of principles underlining underlying Article 14, i.e. fairness and non-arbitrariness. Therefore, this Court is of the opinion that the argument about prospective application of the 2000 Regulations automatically excluding the liability of the second respondent, is not applicable and has to be rejected.

14. As far as the other aspect, i.e., para 57 of Vishal Sehgal judgment is concerned, it would be useful to relevant observations in the said ruling:

57. To avoid any doubt that may arise, it is made clear that this decision will be applicable to all DNB students who joined the course contemporaneously with petitioner No. 1. The respondents are directed to take a decision on the amount of stipend payable and the period for which it is payable as early as possible and in case before the next batch of DNB students are given admission. In Brojo Nath Ganguly, the Supreme Court noted that multiplicity of litigation should be avoided. Keeping this in mind, it is directed that the decision taken by the respondents will be applicable across the board to all institutions that are under the administrative control of respondent Nos. 1 and 2 and are also accredited to the NBE.

15. No doubt, the learned judge did state that the decision could be applied to all DNB students who joined the course contemporaneously with the first petitioner. However, one cannot lose sight of the fact that the reasoning which persuaded the Court was not on the basis of any rule or regulation. It was on the basis of an application of Constitutional and public law standards and the law declared by the Supreme Court which binds this Court as well as Respondent No. 2, a State agency. Moreover, in this case, it is a matter of record that the petitioner appears to have agitated this very issue in previous proceedings i.e. W.P. (C) 1448/2001), but was constrained to file the present Writ Petition, since she sought to introduce the claims through an amendment application, which was not accepted.

16. In the circumstances, the petitioner can neither be accused of delay nor can this Court be oblivious of the fact that the situation is not much different from the petition in Vishal Sehgal's case. In any event, both the petitioners were students in Government Institutions in a similar course conducted before the coming into force the 2000 Regulations.

17. In view of the above reasoning, it is held that the petitioner is entitled to the same relief as in Vishal Sehgal's case. The Respondents are hereby directed to calculate the amount of stipend granted in such cases and pay the same to the

petitioner within six weeks from today.

18. The Writ Petition is allowed in the above terms.