

CWP No.6468 of 2010 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.6468 of 2010 (O&M)
Date of decision:13.04.2015**

Karamdeep Singh Kahal

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Rajiv Atma Ram, Sr. Advocate, with
Mr. Arjun Partap Atma Ram, Advocate, for the petitioner.

Mr. Nilesh Bhardwaj, DAG, Punjab.

Mr. Manish Dadwal, Advocate,
for respondents no.2 and 3.

Rakesh Kumar Jain, J.

Counsel for the petitioner has submitted that the main writ petition has become infructuous because the prayer made therein has become redundant with the efflux of time.

I order accordingly.

However, the petitioner has pressed two applications, bearing CM No.5214-CWP-2013 and CM No.1840-CWP-2015. In CM No.5214-CWP-2013, it is averred that the petitioner had taken admission in the Diplomat of National Board (DNB) in Orthopedic stream on 10.08.2010 and completed it in August, 2013. He has prayed for a direction to allow him to appear in the final examination of MD/MS course, alleging that the

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subjects of study and syllabi of DNB Orthopedic and MD/MS course are identical. He has submitted his thesis for DNB Degree to the National Board of Examinations (hereinafter referred to as the “NBE”), as required to be done in the MD/MS and that the DNB degree is equivalent to MD/MS.

In the reply filed to this application by the University, it is averred that as per University Calendar, the candidate appearing for MD/MS courses can appear in final examination if he/she has fulfilled conditions prescribed in the Calendar but since the petitioner has not fulfilled the conditions, therefore, he cannot be allowed to appear in the MD/MS exam.

Relevant Clauses 1.2, 1.3 and 4 of the eligibility criteria, attached as Annexure R-2/2 with the reply to the application, are reproduced as under:-

“1. Eligibility Criteria for admission:-

xxx xxx xxx

1.2 The admission to the Master of Surgery (M.S.) course shall be made on the basis of merit and securing at least 50% marks in the Postgraduate Entrance test (PGET) to be conducted by Baba Farid University of Health Sciences or by any other agency on behalf of the Punjab Government.

1.3 Any other eligibility conditions will be as notified by the Punjab Government/Medical Council of India from time to time.”

“4. Eligibility to appear in the examinations

A person who fulfills the following requirements shall be eligible to appear in the examination.

He/she has to submit the following certificates signed by the Department concerned and countersigned by the Head of the College/Institution affiliated to the University for M.S. Course where he/she received the training.

4.1 Good conduct certificate.

4.2 of having completed training for a period of not less than 36 months for both clinical and basic subjects in a College/Institute affiliated to this University for the Doctor of medicine Course.

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

Along with CM No.5214-CWP-2013, the petitioner has attached letter dated 01.06.2006, issued by the Ministry of Health & Family Welfare to the Health Secretaries of All States/U.T.s on the subject “*D.N.B. Qualification awarded by the National Board of Examinations-Equivalence of Board's qualification for appointment as teachers*” in which it is mentioned that “*it is reiterated that the medical qualifications awarded by*

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NBE are recognized qualifications included in the First Schedule to IMC Act, 1956 and are considered at par with MD/MS, DM/M.Ch qualifications of other universities”.

There is also a reference to the notification No.V.11025/12/2004-M.E.P., which reads as under:-

**“No.V.11025/12/2004-M.E.P.- (I)
Government of India
Ministry of Health & Family Welfare
(Department of Health and Family Welfare)**

NOTIFICATION

1. S.O. 522 (E) – In exercise of the powers conferred by sub-section (2) of the Section 11 of the Indian medical Council Act, 1956 (Act, 102 of 1956), the Central Government, after consulting the Medical Council of India, hereby makes the following further amendments to the First Schedule to the said Act, namely:-
2. In the Medical Council Act, 1956, in First Schedule “National Board of Examination”, after the entry “Diplomate National Board (Pharmacology) [Diplomate in N.B. (Pharma)], the following note shall be inserted namely:-

Note:- 1. The Diplomate National Board (DNB) qualifications included in this Schedule shall be treated as equivalent to M.D., M.S., D.M. and M.S., D.M. and M.Ch. qualifications of the respective specialty or super specialty, as the case may be, for all purposes including appointment to the teaching posts in the medical institutions.

3. The teaching experience gained while pursuing DNB courses shall be treated as teaching experience for appointment to the teaching posts in the medical institutions--

DEBASISH PANDA, Jt. Secy.”

The petitioner has also filed CM No.1840-CWP-2015 alleging

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that he has completed his DNB in June, 2014 as per letter dated 12.01.2015 issued by the NBE and the training having been registered as a DNB Trainee with the Government Multi Specialty Hospital, Sector -16, Chandigarh, accredited to the NBE in the specialization of Orthopedic, in which the petitioner was registered on 10.08.2010 for a training period of 3 years. The certificate has been issued to him by the SMO I/c Ortho, Govt. Multi-Specialty Hospital, Sector-16, Chandigarh dated 14.08.2013 on his successful completion of the tenure of 3 years training. Not only that, the petitioner has also been working as Senior Resident in Orthopedics in the Maharishi Markandeshwar University Mullana, Ambala, a deemed University. It is, thus, submitted that since Baba Farid University of Health Sciences, Faridkot (hereinafter referred to as the "University") has declared the date sheet for the MD/MS examinations to be conducted by it in which the last date for submission of examination forms for MD/MS course is 15th April, 2015 with the late fee of ₹1,500/-, therefore, he may be allowed to submit his examination form and appear in the MD/MS examination for the session 2015, to be conducted by the University.

In support of his submissions, counsel for the petitioner has relied upon a decision of the Jammu and Kashmir High Court in the case of **Dr. Javed Choudhry v. State of Jammu and Kashmir**, 1998(1) S.C.T. 100 and a Single Bench judgment of the Gujarat High Court in the case of **Dr. Ravichandra J.B. v. Dean and Ors.**, AIR 2010 Guj 82.

On the other hand, counsel for the respondents has submitted that admission to the MD/MS courses has to be on the basis of merits

amongst the candidates having secured at least 50% marks in the Postgraduate Entrance Test (PGET), conducted by the University or by any other agency on behalf of the Punjab Government and has also alleged that the candidate should have completed training for a period of not less than 36 months for both clinical and basic subjects. He has further submitted that the Court should not show misplaced sympathy in breach of the Rules and has relied upon a judgment of the Supreme Court in the case of **Mahatma Gandhi University and another v. Gis Jose and others**, 2009 (1) RSJ 438 and a Full Bench judgment of this Court in the case of **Amardeep Singh Sahota v. State of Punjab**, 1993(4) S.C.T. 328 to the effect that the policy laid down in the prospectus cannot be changed by the State Government.

I have heard learned counsel for the parties and examined the available record with their able assistance.

The qualification of Diplomate of National Board (DNB) awarded by the NBE in various Broad and Super Specialties has been approved by the Government of India and included in the First Schedule of Indian Medical Council Act, 1956. The Government of India, Ministry of Health & Family Welfare, vide notification No.V.11025/12/2004-M.E.P.-(I), inserted a Note in the First Schedule “National Board of Examination” in the Indian Medical Council Act, 1956, after the entry “Diplomate National Board (Pharmacology) [Diplomate in N.B. (Pharma) to the effect that “*the Diplomate National Board (DNB) qualifications included in this Schedule shall be treated as equivalent to M.D., M.S., D.M. and M.S., D.M.*

and M.Ch. qualifications of the respective specialty or super specialty, as the case may be, for all purposes including appointment to the teaching posts in the medical institutions”, which has been clarified vide letter No.V.11025/13/2014-ME(P-I) dated 01.06.2006 issued by the Government of India, Ministry of Health & Family Welfare (Department of Health & Family Welfare”), reiterating that the medical qualifications awarded by NBE are recognized qualifications included in the First Schedule to IMC Act, 1956 and are considered at par with MD/MS, DM/M.Ch qualifications of other universities.

The petitioner has qualified his DNB examination but the respondents' objection is that it is not equivalent to the MD/MS and also the University Calendar does not permit it.

From the resume of the aforesaid facts and circumstances, the only question which arises for consideration is as to whether DNB is equivalent to MD/MS.

In Dr. Javed Choudhry's case (supra), the appointments were made through Public Service Commission for the posts of Lecturers in the discipline of Paediatrics. In the said selection, Dr. Javed and Dr. Rekha were appointed as Lecturers. In the order of appointment, Dr. Rekha was at Sr. No.1, Dr. Javed was at Sr. No.2 and one Dr. Kaisar Ahmed was at Sr. No.3. The Court presumed that the appointment was given on the basis of merit obtained by the candidates during their selection, but Dr. Javed challenged the order of appointment on the ground that his name at Sr. No.2 is wrong which would affect him in respect of his seniority in future. It

was argued by him that he is entitled to 5 additional marks for higher qualification because he had the Degree obtained in the MD in Paediatrics but the said marks were not given to him. He also submitted that he had obtained a Diplomate from the National Board of Examination and if it is to be considered a degree, he should be held entitled to 5 additional marks and if considered as a Diploma, he would be entitled to 2 marks and in both the cases, he would have been at Sr. No.1, ahead of Dr. Rekha.

While considering the documents on record, it was held by the Court that as per the Medical Council of India Act, 1956, the Diplomate from the NBE is equivalent to MD/MS.

Similarly, in **Dr. Ravichandra J.B.'s case (supra)**, the Gujarat University, issued a letter dated 21.07.2009 cancelling the admission of the petitioner therein made in MCH CT Surgery course on the ground that he does not hold the qualification of M.D., M.S., D.M. and was not eligible for admission. The petitioner took the plea that he has Diplomate of the National Board (DNB) which has been treated equivalent to M.D., M.S., D.M. and M.Ch., and hence, he cannot be held ineligible for the admission.

While referring to the notification dated 20.02.2009, it was held that the DNB is equivalent to the MD/MS.

Thus, there is no difficulty in holding that the DNB is equivalent to MD/MS and hence, the petitioner is entitled to appear in the MD examination for the session 2015. The judgment relied upon by learned counsel for the respondents are not applicable to the facts and circumstances of the present case as not only the petitioner has completed

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DNB course but also he has undergone 3 years/36 months training.

In view of the aforesaid discussion, the present applications bearing CM No.5214-CWP-2013 and CM No.1840-CWP-2015 are hereby allowed and the petitioner is held entitled to submit his examination form for the MD examination for the session 2015 with late fee of ₹1,500/- as the last date of examination form with the late fee is 15.04.2015.

April 13, 2015
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(Rakesh Kumar Jain)
Judge