

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

CWP No. 17147 of 2004
Date of decision: 02.08.2016

Dr. Parveen Kumar Mongre

....Petitioner(s)

Versus

The Post Graduate Institute of Medical Education and Research,
Chandigarh and another

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Arun Jain, Sr. Advocate,
with Mr. Sunil Sharma, Advocate,
for the petitioner.

Mr. Ishaan Bhardwaj, Advocate,
for Mr. Vijay Pal, Advocate,
for the respondents.

G.S.SANDHAWALIA, J. (Oral)

The petitioner challenges the order dated 15.02.2003 (Annexure P-9) passed by the Director of the respondent-institute whereby, his representation dated 07.09.1993 was rejected. It was held that his services were dispensed with on 15.06.1991 and his name had been struck off the rolls and he had to complete his residency of M.S. Ophthalmology examination on 30.06.1991. Therefore, he had not completed the full period of residency. Resultantly, his result was not declared and the certificate was not issued to him on the ground that rules governing examinations do not permit as such declaration of result without completing the full period of residency of 3 years.

The reasoning given in the said order seems to be based on a

wrong premise that the services were dispensed with on 15.06.1991 in view of the fact that there was a string of litigation which will be referred to as below.

The above said order, thus, cannot be justified since inter se parties, relief has been granted to the petitioner that the order of dispensing with the services was to be w.e.f. 10.12.1992. The facts which need consideration are that the petitioner was selected in May, 1988 as a junior resident for the course of Master in Surgery in Ophthalmology, which was to commence on 01.07.1988. The course was of a duration of 3 academic years i.e. 6 sessions as per the agreement inter se the parties (Annexure P-2). As per the agreement also, the course was for a period of 3 years commencing from the 1st day of July, 1988 and would thus terminate on 30.06.1991. The case of the petitioner is that the course was completed on 15.05.1991 as per the circular (Annexure P-4) when the training programme for the post graduate course of Ophthalmology was completed from 01.01.1991 to 15.05.1991.

The petitioner was involved in an incident of molestation of a patient on 06.06.1991, due to which a complaint was received on 10.06.1991. After holding a regular inquiry, the Director of the respondent-institute came to the conclusion that he had committed an act of gross misconduct of violating the modesty of a young woman patient which is unworthy of a member of the medical profession and his conduct was highly reprehensible. Accordingly, two punishments were imposed upon the petitioner vide order dated 10.12.1992 (Annexure P-6). One of termination of service as a junior resident w.e.f. 15.06.1991 and secondly, he would not be eligible to apply for any post or for admission to any course of the

institute. The relevant portion reads thus:-

“The undersigned therefore terminates the service of said Dr. Parveen Kumar Mongre as Junior Resident in the Department of Ophthalmology of this institute w.e.f. 15.6.91. It is also ordered that Dr. Mongre shall not be eligible for any post or for admission to any course of the institute.”

The petitioner challenged the said order by filing CWP No. 1473 of 1993. The Division Bench dismissed the writ petition on 03.06.1993 (Annexure R-2/1), however, the fact that the service had been terminated retrospectively was taken into account and it was held that the order of termination would be operative from the date of its issue. The relevant portion reads thus:-

“It is correct that the order of termination from service cannot be passed retrospectively. Learned counsel for the institute very fairly at the Bar that order termination the petitioner's services may be modified accordingly and it will be deemed to have come into operation from the date of the order and not from an anterior date, in the light of the concession given by the counsel for the institute, we hold that the order of termination from service will be operative from the date of its issue i.e. June 10, 1992 and not from a back date.” (sic 10.12.1992)

The petitioner filed Special Leave to Appeal (Civil) No. 2053 of 1994 before the Apex Court, which was dismissed vide order dated 04.03.1994 (Annexure P-7). The question whether the petitioner was entitled to obtain the M.S. Degree was left open to be agitated by him in separate proceedings and it was observed that if at all there was any attempt made to tag it along that was a misjoinder. Relevant portion of the order

reads thus:-

“The Special Leave Petition is dismissed. This settled the outcome of the enquiry against the petitioner. With regard to his claim to have become entitled to obtain the M.S. Degree that is a question which would have to be agitated by the petitioner in separate proceedings. If at all any attempt was made ever herein to tag that along that was a misjoinder. The present outcome can not effect such claim of the petitioner, if there is any.”

The petitioner, thereafter, filed the representation dated 07.09.1993 praying for the necessary relief. On account of the same not being decided, he filed CWP No. 6137 of 1994, which was disposed of on 04.12.2002 (Annexure P-8) with a direction to the respondent-institute to pass appropriate orders on the said representation keeping in view the orders of the Apex Court. Resultantly, the impugned order has been passed.

As noticed above, the reasoning given by the respondent is that his services were dispensed with on 15.06.1991, which is in contradiction to the finding and the relief granted to the petitioner by the Division Bench on 03.06.1993 (Annexure R-2/1), reproduced above and not challenged by the respondents. Once the order does not relate back and would operate only from 10.12.1992 after the regular inquiry was completed and the termination order was passed, the reasoning given that the course had to be completed by 30.06.1991 and the termination order had been passed earlier on 15.06.1991 and, therefore, the petitioner had not completed his full period of residency is not justifiable in the facts and circumstances. While passing the impugned order, the necessary relief which was granted by the Division Bench has been ignored and resultantly, the said order cannot be

sustained.

Counsel for the petitioner has also, as noticed above, referred to Annexure P-4 to submit that the course was for a period of 3 academic years spreading in 6 sessions. The last session was only from 01.06.1991 to 15.05.1991 and, therefore, it had already been concluded by the time the incident took place. Once the petitioner had completed the said course by 30.06.1991, the subsequent punishment imposed on 10.12.1992 would not as such take away his right to the degree. As noticed, the punishment has already been imposed upon the petitioner and his service was terminated and the right to apply for any post or admission in the respondent-institute was taken away.

In such circumstances, this petition is allowed and the impugned order dated 15.02.2003 (Annexure P-9) whereby he has been denied the declaration of result and degree in M.S. Ophthalmology cannot be said to be justified. The respondent-institute is directed to declare the result of the petitioner and issue him the requisite degree within a period of 4 weeks from the date of receipt of certified copy of the order.

02.08.2016
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No