

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

**CWP No. 5745 of 2016
Date of decision: 29.3.2016**

Dr. Vimal Vir Chakwalia ... Petitioner

Versus

Baba Farid University of Health Sciences & anr. ... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. R.K. Malik, Sr. Advocate, with
Mr. Kuldeep Sheoran, Advocate,
for the petitioners.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

1. Having heard learned Senior counsel for the petitioner in the matter, I am wholeheartedly in agreement with his contention that this matter is covered by the ratio of the decision rendered by a coordinate bench of this Court in CWP No.6464 of 2015, Dr. Dinesh v. State of Punjab & ors. decided on May 21, 2015 allowing the writ petition while ordering the conversion of Primary Health Centre (PHC), Dorangla, District Gurdaspur from Category 'C' to 'D'. The Doctor posted at PHC Dorangla was the petitioner therein i.e. Dr Dinesh, who was similarly situated as the petitioner with the only difference that the experience earned by the petitioner was from Subsidiary Health Centre(SHC), Jhabkara which also has been Categorized as 'D' after the recommendations were received from the multi member State Level Committee headed by the Director, Health Services, Punjab

recommending classification and re-classification of PHCs and SHCs as “very difficult” Category-D areas and “difficult” Category-C areas or an appropriate combination of both for which 48 months service was required as qualifying to fall within the 60% quota of in service candidates from PCMS/ PCMS (Dental) for admission to Post Graduate courses in the medical and dental colleges in Punjab. The petitioner has earned experience while posted at Category D SHC to qualify within the quota and has a right to admission as per the experience and other criteria prescribed by the Government on equal footing with Dr Dinesh who has secured admission to Post graduate courses.

2. Notice of motion.

3. Since the matter is no longer *res integra* and is covered by the decision of this Court, the matter can be resolved even today instead of keeping the petitioner in the queue of motion hearing. The urgency of the matter which has been portrayed by Mr. Malik is that the counselling for placement of candidates in different medical institutions and in different fields of study is to begin on 6th April, 2016. Accordingly, on the asking of Court, Mr. Inqulab Nagpal, AAG, Punjab, accepts notice on behalf of the respondents and waives service on them. No third party rights are involved at this stage since counselling is yet to begin. Mr. Kuldeep Sheoran, Advocate, appearing with learned Senior counsel has supplied requisite numbers of the paper-books to Mr. Nagpal in court.

3. Mr. Nagpal submits that in case the petitioner has the requisite experience in terms of length of service in terms of the criteria at page 16 of the paper-book then he has nothing to say as against the

decision of this Court relied upon by Mr. Malik which is on all fours. Having regard to the proceedings of the meeting held on February 19, 2015 regarding categorization of Health Institutions of Punjab and Subsidiary Centres lying under Zila Parishads, there can be no manner of doubt that items No. 1 and 2 found at page 41 of the paper-book clearly spell out the classification of PHC Dorangla and SHC Jhabkra as relegated from “C” to “D” changing the criteria of the postings from 'difficult' to 'very difficult' thereby falling within the mandate of para 20-II (a) (ii), of the Punjab Government notification dated 30.12.2015 which reads:-

“20. Distribution of Seats in Govt. Institutions (Govt. Medical/Dental College, Amritsar & Patiala, GGS Medical College, Faridkot.)

II. For 60% quota candidates (PCMS/PCMS (Dental) in service doctors).

a) The Eligibility requirement are as under:

- i. Regular PCMS/PCMS (Dental) employee
- ii. Has completed 4 full years (48 months) service in very difficult (Category-D) area or 6 full years (72 months) service in difficult (Category C) are or an appropriate combination of both. In case of candidates who have completed 5 full years (60 months) (of service as on 01.01.2012), they should have completed 2 full years (24 months) of service in most difficult areas or 3 full years (36

months) of service in difficult areas.”

4. Since the decision of the Coordinate Bench in *Dr. Dinesh's case (supra)* is an elaborate order discussing all aspects deserving attention, no further debate is required on the point in this case. It would no longer be required to file written statement or call for it from the State only to establish what is self-evident today on the file. Indisputably, the matter is indeed covered by the judicial precedent relied upon.

5. For the foregoing reasons, this petition is allowed. A mandamus is issued in terms of the orders passed by the coordinate bench which are quoted below for convenience of the Government for implementation of this order by tying the two cases together. The operative part of the order of the learned Single Judge is reproduced below:-

“After hearing learned counsel for the parties and examining the available record, I am of the considered opinion that the reason assigned in the letter dated 30.04.2015 (Annexure R-2/T) is not only flimsy but also unreasonable and arbitrary in the face of the recommendations made by the committee of seven members who had recommended conversion of the PHC, Dorangla, from Category-C to D and also after recommendation of the Director, Health & Family Welfare, Punjab, on the basis of the report of the committee, for converting the PHC, Dorangla, from Category-C to D.

Even otherwise, the reasons given by the Senior Medical Officer, PHC, Dorangla, which have already been reproduced hereinabove, are

sufficient for converting the PHC, Dorangla, from Category-C to D.

Thus, in view of the aforesaid facts and circumstances, this writ petition is hereby allowed and the PHC, Dorangla, Gurdaspur, is ordered to be converted from Category-C to Category-D and respondent no.1 is further directed to issue NOC to the petitioner forthwith so that the petitioner may attend the counselling to be held by respondent no.2 on 25.05.2015.”

Ordered in the same terms with the minor inconsequential difference that Dorangla in the said order will be read as Jhabkra in the instant case. Non-consideration of the case of the petitioner is declared illegal. A direction enabling participation of the petitioner at the forthcoming counselling stands issued as per merit and in accordance with law and subject to eligibility on all counts by giving benefit of experience earned at SHC, Jhabkra.

(RAJIV NARAIN RAINA)
JUDGE

29.3.2016
monika