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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 02.05.2016

+ LPA 443/2015

NATIONAL BOARD OF EXAMINATIONS Appellant
Through: Mr. Mukul Gupta, Sr. Adv. with
Mr. Rakesh Gosain & Mr. Tushar Gupta, Advs.

Versus

DR AMULYA MYSORE & ANR Respondents
Through: Mr. Guntur Pramod Kumar with
Ms. Perna Singh, Advs. for R-1.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE JAYANT NATH

JUDGMENT

G. ROHINI, (CHIEF JUSTICE)

CM No.12267/2015 (delay of 21 days)

For the reasons stated in the application, delay in filing the appeal is condoned and the application is allowed.

LPA No.443/2015 & CM No.12265/2015 (Stay)

1. This appeal is preferred against the order of learned Single Judge dated 14.5.2015 in WP No. 2724/15. The respondent No.1 in the writ petition/National Board of Examinations (hereinafter referred to as NBE) is the appellant before us.

2. The writ petitioner (respondent No.1 herein) who is a doctor, got herself enrolled with the appellant for the Secondary DNB Paediatrics Course on 02.05.2011 and for the purposes of training for a period of two years, she had joined the respondent No.2-Rainbow Children's Hospital. The theory examination was conducted by NBE on 8th and 9th December, 2012 and the writ petitioner had appeared for the same and had successfully passed. However, she could not appear for the practical examination as she was advised bed rest on account of pregnancy related complications. It is not in dispute that the writ petitioner was on leave from 10.01.2013 to 18.03.2013. Thereafter, the writ petitioner rejoined the training course in the respondent No.2 hospital and when the practical examination was conducted by NBE on 30th & 31st May 2013, she was allowed to appear and had successfully passed. The writ petitioner continued to work in the respondent No. 2 Hospital till 22.07.2013 and the respondent No.2 had issued the final Training Completion Certificate (TCC) on 24.07.2013 stating that the writ petitioner's training was completed on 22.07.2013.

3. However, by letter dated 07.08.2013, NBE declared the writ petitioner ineligible for DNB final examination December, 2012 stating that she had failed to satisfy the prescribed eligibility criteria. It was explained in the said letter that as per Clause 4.1(C) of the Information Bulletin for the DNB Examination held in December, 2012, candidates who have registered with NBE and would be completing their prescribed training by 30.06.2013 alone are eligible, whereas as per the TCC submitted by the petitioner, her training period had been extended up-to 22.07.2013 i.e. after completion of the academic term i.e. 30.06.2013.

4. Aggrieved by the decision of NBE, the writ petitioner filed W.P.(C) No.6864 of 2014 and the same was disposed of by this Court by order dated 01.10.2014 directing the writ petitioner to file a detailed representation within one week and that NBE shall decide the same on or before 31.12.2014 in accordance with law.

5. In pursuance thereof, the petitioner's representation was considered by NBE and the order dated 31.12.2014 came to be passed reiterating that her candidature for December 2012 final examination remains cancelled and that based on the TCC dated 24.07.2013 issued by the respondent No.2 Hospital, she is eligible to appear for DNB final theory examination in the subsequent examination session. It was stated in the said order that the petitioner was allowed to appear provisionally for DNB final examination held in December, 2012 based on the provisional Training Certificate issued by the respondent No.2 Hospital indicating that she will be completing DNB training on 01.05.2013 i.e. before the prescribed cut off date of 30.06.2013. Similarly, she was allowed to appear provisionally in the practical examination held on 30th and 31st May, 2013 on the basis of the provisional Training Completion Certificate and her result was declared. However, as per the final Training Completion Certificate dated 24.07.2013, she had actually completed her training on 22.07.2013. Since she had completed the training after the cut off date of 30.06.2013 prescribed for the Academic Term 2012, her candidature for DNB final examination held in December, 2012 was cancelled. Referring to a subsequent TCC dated 14.08.2013 issued by the respondent No.2 Hospital wherein it was mentioned that in fact, the petitioner had technically completed the course on 29.06.2013 since she had worked on Sundays and public holidays to compensate the 56 days

leaves, it was also mentioned by NBE that the subsequent TCC dated 14.08.2013 which was issued by the respondent No.2 Hospital after the cancellation of the petitioner's candidature by NBE cannot be taken into consideration.

6. Aggrieved by the same, the writ petitioner (respondent No.1 herein) filed W.P.(C) No.2724/2014 to quash the letter dated 31.12.2014 and to direct the NBE to issue DNB Certificate.

7. By order dated 14.5.2015 the learned Single Judge allowed the said writ petition and quashed the letter dated 31.12.2014 directing the appellant/NBE to issue DNB Certificate to the writ petitioner/respondent No.1. Hence, the present appeal by NBE.

8. We have heard the learned Counsels for both the parties.

9. As per Clause 4.1(C) of the Information Bulletin for DNB Final Examination held in December 2012, the candidates who have completed the prescribed training by 30.06.2013 alone are eligible to appear for the final examination. The TCC issued by the respondent No.2 Hospital dated 24.07.2013, reflected that the writ petitioner had completed the mandatory training course of two years on 22.07.2013, i.e. beyond the cut off date of 30.06.2013. However, the respondent No.2 Hospital issued another TCC on 14.08.2013 (mentioned as 13.08.2013 in Para 3.6 of the order under appeal) stating as under:

"3.6 Dr.Amulya at the time of appearing theory exams has fulfilled all the criteria as per DNB to be eligible to appear for exam. However, after theory, she took leave for 56 working days on medical grounds for her pregnancy. She has rejoined the institute as a full time from 18.03.2013. She has worked on Sundays and public holidays to compensate the 56 days leave.

Based on her leave eligibility including casual leaves, academic leaves, she has technically completed the course on 29.06.2013.

She continued to work as Senior Registrar upto 22.07.2013 because of which the earlier certificate was issued. We certify that the completion date of mandatory two years of training is 29.06.2013."

10. It is not disputed before us that the DNB training is based on calendar years. Even according to NBE, the writ petitioner had consumed her permissible 50 days leave till December, 2012. The controversy is regarding the number of excess leave availed by the petitioner in the calendar year 2013 and the period of extension of training required to be compensated for the said excess leave. As noticed above, the writ petitioner was on leave from 10.01.2013 and she had rejoined the duty on 18.03.2013. Thus, she had availed 67 days of leave in the calendar year, 2013. As per Rule 2 of the NBE Leave Rules contained in the Handbook for DNB CET, a DNB candidate can avail a maximum of 20 days of leave in a year excluding regular duty off/Gazette holidays as per the hospital policy. Though as per Rule 6 the leave of one year should not be carried forward to the next year, the said rule also provides that in exceptional cases, such as prolonged illness, the leave across DNB training programme may be clubbed together. In the light of the said Rules, the learned Single Judge rejected the contention of NBE that Sundays which fall within the period of leave availed by the writ petitioner should be included while calculating the number of leaves availed by the petitioner. Thus, the learned Single Judge accepted the plea of the writ petitioner that she had availed the leave of 56 days only.

11. Though the said finding regarding the number of leaves availed by the writ petitioner has not been contested before us, it is contended on behalf of the appellant/NBE that the writ petitioner cannot be allowed to compensate the leave beyond the cut off date of 30.06.2013.

12. As noticed above, the specific case of the writ petitioner as well as the respondent No.2 Hospital is that the petitioner had compensated the 56 days of excess leave by 29.06.2013 i.e. before the cut off date of 30.06.2013. Therefore, we do not think it is necessary to go into the question as to whether the excess leave can be compensated by extending the training period. In fact, the learned Single Judge also did not consider the said question.

13. In TCC dated 14.08.2013, it was clarified by respondent No.2 Hospital that during the extended period of training from 02.05.2013, the petitioner had worked for three Sundays during the month of May, 2013 and one Sunday during the month of June, 2013 and thus, she had worked for 30 extra days in May, 2013 and 26 extra days in June, 2013 and had compensated the 56 days of excess leave by 29.06.2013 itself before the cut off date of 30.06.2013.

14. Rejecting the contention on behalf of the NBE that the training period cannot be shortened by working on Sundays and holidays, the learned Single Judge held:

" 21. NBE has not produced any policy document or any other document which indicates the manner in which the extension of training period is to be calculated. Rule 7 of the NBE Rules only indicates that leave beyond the permissible limit would lead to extension of DNB course. Thus, it would stand to reason that the period of leave availed of by a candidate should be compensated by working the number of days of excess leave.

The Hospital has certified that the petitioner had worked for 56 days to compensate for excess leave and as such her training was concluded on 29.06.2015. There is no provision in the Rules or any other document to contradict the manner in which the petitioner and the Hospital have considered the period of extension of DNB training.

22. As pointed out by the learned counsel for NBE, the DNB training is based on calendar years. Clearly, the period of DNB training cannot be shorten by working on holidays and after normal working hours. There could be no dispute as to this position as the duration of the NBA training programme is expressed in years. However, this does not necessary imply that the extension of the training programme on account of excess leave - which is over and above the original period of training - must also necessarily be expressed in terms of calendar months or weeks. The extension of the training programme is based on the number of days of leave availed in excess of the permissible limit. The maximum leave available to a candidate is specified in number of days excluding regular duty off/Gazetted holidays. Thus, the extension of DNB training programme beyond the original duration, would thus necessarily have to be based on the number of compensatory days worked by a candidate. I see no prohibition either under the NBE Leave Rules or under any policy, which prevents a candidate for compensating the number of days of excess leave by working equivalent number of days. Both the excess leave and the extension of training are expressed in calendar days; there is no provision which mandates that Sundays and holidays should be excluded.

23. It is also relevant to note that although the training programme is conducted under the Ageis of NBE, the candidate effectively works as a quasi employee of a hospital/institute which imparts the necessary training and experience. It has been explained by NBE that the DNB programme is structured and monitored by NBE. However, the candidate after clearing the centralised entrance examination is enrolled as a DNB trainee with an accredited hospital/institute, the trainee

thereafter works as a junior resident doctor. The NBE ensures that the training structured and the standards are maintained by ensuring various parameters for accreditation of hospital/institute including ensuring 1:1 teacher resident ratio. Since the DNB trainee effectively works as a junior resident doctor he/she is also paid stipend by the concerned hospital/institute. Thus, it is apparent that the DNB trainee forms an integral part of the work force at a hospital. Therefore, in absence of any specific rule or policy framed by NBE, it would be necessary to take into account the policy of the hospital/institute while considering the period of extension of the training programme. If it is the policy of the institute/hospital not to permit trainees to work on Sundays and holidays towards fulfilling their training programme, the extension of training period for compensating excess leave would have to be computed after excluding Sundays and holidays. This would not be apposite where the hospital/institute permits the candidate to work on Sundays and holidays for the purposes of training and/or gaining experience. In such cases, the extension of the training period would necessarily have taken into account the number of days worked by a candidate, which may include Sundays and holidays. "

15. Having heard the learned counsels for both the parties at length and having perused the material available on record, we do not find any reason to take a different view on the issue as to whether Sundays and holidays can be included for computing the total period of the training. We see no error or perversity in the reasoning of the learned Single Judge and we entirely agree with the conclusion of the learned Single Judge that there is no need of excluding Sundays and holidays.

16. However, it is vehemently contended by Sh.Mukul Gupta, the learned Senior Counsel appearing for the appellant that in her earlier communication the writ petitioner herself had admitted that her training period had come to

an end on 22.07.2013 and that she cannot be allowed now to take a contrary stand.

17. As we could see, this contention was also considered and rejected by the learned Single Judge and it was held in Para 30 as under:

"30. Lastly the petitioners, representation had also been rejected on the ground that she in her earlier communication admitted that her training period had come to an end on 22.07.2013. In my view, this admission cannot be held against the petitioner as the details of the leave availed of by the petitioner had been furnished to NBE and although the petitioner is stated to have worked with the hospital till 22.07.2013, the details of the leave availed of by the petitioner indicate that her training was completed on 29.06.2013."

18. As rightly held by the learned Single Judge though the petitioner continued to work with the respondent No.2 Hospital till 22.07.2013, when it was clearly demonstrated that the leave period had been compensated by 29.06.2013 itself, there is no reason to hold contra merely on the ground that the petitioner had mentioned in her letter that her training period had come to an end on 22.07.2013. In the facts and circumstances of the case, we are of the view that the petitioner's letter cannot be treated as an admission for deciding the question as to whether the petitioner had completed the training period before the cut off date i.e. 30.06.2013 or not.

19. The writ petitioner had admittedly passed both the theory and the practical examinations. Though she was constrained to go on leave from 10.1.2013 to 18.3.2013 on account of pregnancy related complications, she had completed the practical training having worked with the respondent No.2 Hospital on Sundays during the extended period of training in May and

June, 2013 and it has been clearly demonstrated that her training period was completed before the completion of the academic term on 30.06.2013. Therefore, the learned Single Judge was justified in holding that the appellant/NBE had erred in declaring the writ petitioner ineligible for DNB December 2012 examination.

20. For the aforesaid reasons, the order under appeal cannot be held to have suffered from any error of fact or law. Hence, the interference by us is not warranted on any ground whatsoever.

21. Appeal is accordingly dismissed.

CHIEF JUSTICE

JAYANT NATH, J

MAY 02, 2016

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