

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

CWP No.11370 of 2017

Date of Order: 01.11.2017

Dr. Sukhchain Singh Bhullar

....Petitioner

Versus

Medical Council of India and Ors.

....Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr. C.M. Munjal, Advocate for the petitioner.

Mr. M.S. Longia, Advocate for the respondents.

RAKESH KUMAR JAIN, J (ORAL)

This petition is filed to challenge the order dated 16.2.2017 passed by respondent No.2-Ethics Committee of Medical Council of India (for brevity "Ethics Committee") which is further modified by respondent No.3 and conveyed to the petitioner on 16.5.2017.

The petitioner was working as Professor and Head of the Department of E.N.T at Sri Guru Ram Rai Institute of Medical and Health Sciences, Dehradun. During the investigation of some case, which was registered with the CBI, certain doctors, who were otherwise shown as regular faculty were found attending the hospital only at the time of inspection by the Medical Council of India (for short "the MCI"). The C.B.I found atleast 28 such doctors in which name of the petitioner also figured. The matter was taken up by the Ethics Committee of the MCI wherein it was noticed that the petitioner and one Dr. B.K. Sanjay were not full time faculty besides the other 26 doctors. The Ethics Committee recorded in its order that "All the alleged doctors felt guilty as they were unaware of the MCI rules and regulations and requested and promised before the Committee that they will never repeat such mistakes in future".

On the basis of the said report, the Deputy Secretary of the MCI vide letter/order dated 26.8.2015 observed as under:

“In view of above, you are hereby debarred from taking any teaching post/administrative post, in any medical college for a period of 5 (five years).”

The petitioner challenged the order dated 26.8.2015 (P.19) by way of writ petition bearing CWP No.22162 of 2015 titled Dr. Sukhchain Singh Bhullar Vs. Medical Council of India and Ors. During the pendency of this writ petition, Dr.Reena Nayyar, Secretary, Medical Council of India appeared and deposed in the Court that they would have a re-look into the impugned order because it was argued at the instance of the petitioner that the MCI was reviewing its earlier orders in respect of similarly situated persons. Thereafter, the petitioner was given an opportunity by the MCI to represent to the Ethics Committee. The Ethics Committee in its meeting held on 11th & 12th July, 2016 considered the matter of the petitioner as also on the issue of disparity in the punishment awarded to 23 other faculty members and it was observed that other 23 faculty members were mostly Junior Residents & Senior Residents who were in their early years of career and had also admitted their guilt while undertaking that they would not repeat such acts in future but in the case of the petitioner, this lenient view was not taken by the Committee on the ground that he was Senior Professor and being an experienced doctor, gave false declaration Forms during the MCI inspections and indulged in the acts, which are in violation of legal provisions and, therefore cannot be equated and treated at par with the other Junior and Senior Residents, who had just entered the profession. However, the Ethics Committee in its wisdom unanimously decided to recommend that the petitioner be debarred from taking up any teaching or administrative

position for a period of two years from the date of issuance of the earlier decision i.e 26.08.2015.

Since the Ethics Committee was not the final Authority, therefore, its recommendations were placed before the Executive Committee of the MCI, which were considered in its meeting held on 10.10.2016. The Executive Committee of the MCI however observed as under:

“The Executive Committee of the Council approved the recommendations of ethics committee with modification that the period of debarment would commence from date of communication of present order as the operation of original order has been stayed by Hon'ble Punjab and Haryana High Court till the matter is being relooked into.”

The Ethics Committee thus in its meeting held on 29th & 30th November 2016 noted that the Executive Committee has approved the decision with modification that “the period of debarment would commence from date of communication of present order”.

Learned counsel for the petitioner has submitted that pursuant to order dated 26.8.2015, the petitioner was debarred and could not take up any teaching post/administrative post for a period of two years which had already expired on 26.8.2017 but if the period is to be counted in terms of the impugned order from 16.5.2017 then it would continue upto 16.5.2019 and would tantamount to extended punishment for another two years. He has submitted that though the guilt is not being admitted but since the time has expired, therefore, the petitioner would be satisfied if his period of two years is counted from 26.8.2015.

On the other hand, learned counsel for the MCI has submitted that the order dated 26.8.2015 was stayed on 16.5.2016, therefore the period

of debarment has been ordered to commence from May 2017 so that the punishment of exact period of two years may be imposed.

I have heard learned counsel for the parties and after examining the record, am of the considered opinion that the approach of the Executive Committee to award punishment to the petitioner from May 2017 onwards for a period of two years is not justified as the petitioner had already suffered the debarment from taking up any teaching post/administrative post for a period of two years starting from 26.8.2015 which has already been over with the efflux of time on 26.8.2017 and therefore merely there was stay on 16.5.2016, the period cannot be extended to make another period of two years for the petitioner to suffer. In my considered opinion, the fault of the petitioner is also similar to the fault of other 23 faculty members and he had to suffer only because he was Senior Professor and experienced Doctor who should have been more careful in making declaration. So called accomplices of the petitioner have been let off by the MCI only with the warning whereas the petitioner had to suffer for a period of two years, which is already over by 26.8.2017. Thus in my considered opinion, the impugned order dated 16.2.2017 modifying earlier decision of the Ethics Committee thereby putting the petitioner to suffer the punishment for the period from the date of communication of the order is not justified and the same is therefore set aside and the writ petition is allowed though without any order as to costs.

November 01, 2017
manoj

(RAKESH KUMAR JAIN)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No