

Sr. No.

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

**CWP No. 27006 of 2016
Date of decision:27.01.2017**

Dr. Khimit Jain and others

.....Petitioners

versus

**Post Graduate Institute of Medical Education & Research and another
.....Respondents**

CWP No. 27484 of 2016

Dr. Mukesh Kumar

.....Petitioner

versus

**Post Graduate Institute of Medical Education & Research and another
.....Respondents**

Coram: Hon'ble Mr.Justice Rakesh Kumar Jain

Present: Mr. R.Kartikeya, Advocate and
Mr. Vipul Dharmani, Advocate
for the petitioners.

Mr. Girish Agnihotri, Sr. Advocate with
Mr. Vijay Pal, Advocate and
Mr. Arvind Seth, Advocate
for respondents No. 1 and 2.

Mr. Gurminder Singh, Sr. Advocate with
Mr. J.S.Gill, Advocate
for respondent No. 3.

Rakesh Kumar Jain, J.(Oral)

This order shall dispose of two petitions bearing CWP No. 27006 Dr. Khimit Jain and others vs. PGI, Chandigarh and another (hereinafter referred to as the 'Ist petition') and CWP No. 27484 of 2016 Dr.Mukesh Kumar vs. PGI, Chanidgarh and another (hereinafter referred to as the 'IInd petition') as the issue involved in both the petitions is common.

However, for the sake of convenience, facts are being extracted from the Ist petition.

The Ist petition is preferred by four petitioners namely, Dr. Khimit Jain, Dr. Sachin Sharma, Dr. Viper Sharma and Dr. Rishabh Chadha whereas IInd petition is filed by Dr. Mukesh Kumar. All the petitioners, in both the petitions, belong to Himachal Pardesh and are in service of the State of Himachal Pardesh. The PGI issued the prospectus for the session 2017 regarding MD/MS courses on 15.09.2016. The last date to apply was 15.10.2016. The petitioners in both the petitions were sponsored by the State of Himachal Pardesh. All the petitioners appeared in the written test and qualified. The first counseling was held on 16.12.2016. At that time, Dr. Nikhil Gupta who had secured 93.3292 marks in percentile opted for Radiology. Since he was from Himachal Pardesh, therefore, the IInd candidate namely, Dr. Khimit Jain who had secured 90.1949 percentile was not given the discipline of Radiology because it was categorically provided in the prospectus that the sponsoring institute should not nominate more than one candidate for the same specialty. Accordingly, he opted for Dermatology. Petitioner No. 2 namely, Dr. Sachin Sharma secured 56.8888 percentile and opted for Pathology. Petitioner No. 3 Dr. Viper Sharma secured 59.4304 percentile and was given Radio Therapy whereas petitioner No. 4 namely, Dr. Rishabh Chadha who had secured 61.638 percentile was given Nuclear Medicine. In so far as, the petitioner in IInd petition namely, Dr. Mukesh Kumar is concerned, he secured 62.2309 percentile and was given ENT. Respondent No. 3 arrayed in the Ist petition namely, Seema Rathee was sponsored by the Central Government and was at Sr. No. 4 in the merit list having secured 88.178 percentile was given Radiology.

The petitioners have prayed for a writ in the nature of mandamus seeking direction to the PGI to consider the petitioners for admission in MD/MS course strictly in accordance with their merit against the available specialties as per their choice without depriving them of their right to opt for a specialty, opted by other candidate from the same State and also to declare the action of the respondent in shifting the petitioner to such other discipline as depicted in Annexure P-6 which the petitioner had not opted for as illegal and in the alternative quash the entire counseling, conducted by the PGI, on the basis of illegal and erroneous interpretation.

After notice of motion was issued, vide order dated 30.12.2016 it was ordered that *“any admissions made will be subject to final decision of the present writ petition.”*

During the pendency of Ist petition, the petitioners filed an application for amending the writ petition. The said amendment was allowed on 18.01.2017 and only respondent No. 3 was impleaded.

Counsel for the petitioners has submitted that there is no bar, in so far as, the offering of a specialty to more than one candidate is concerned because it relates to an institute whereas the petitioners have been sponsored by the department of the State Government. It is also submitted that the respondent PGI has practiced a policy of discrimination as in the past i.e. in the session June, 2016 as many as four candidates sponsored by the State of Himachal Pardesh were selected amongst the sponsored candidates out of which two opted for Pediatric and two opted for ophthalmic specialty and in the session July, 2015 two doctors namely, Dr. Pankaj Dharmani and Dr. Rakesh Thakur, both sponsored candidates by State of Himachal Pardesh were granted admission in the same specialty.

On the other hand, counsel appearing for respondent No. 3 has submitted that the petitioners were not specifically sponsored for any specialty by the State Government which is evident from the merit list available at page No. 55 of the paper book. He has also referred to certain doctors who were specifically sponsored by their sponsoring authority for a specific discipline. It is submitted that the question of grant of specialty arises not from the date of sponsorship but from the date of counseling because at the time of sponsorship sponsoring State is not sure as to whether the sponsored doctor would be in a position to clear the written test or not and what would be his merit position for the purpose of asking for a specific specialty. It is also submitted that the parties are governed by the terms and conditions of the prospectus in which conditions with regard to sponsored/deputed candidates is specifically provided. It is also submitted that the sponsored candidate has to be a permanent/regular employee having worked for atleast last three years(on or before 30th June, 31st December for July and January session respectively) and the sponsoring institute has no right to nominate more than one candidate for a specialty. In so far as petitioner No. 1 in the Ist petition, namely, Dr. Khimit Jain is concerned, he is not a permanent/regular employee of the government as no record is brought on record and thus, he is barred from raising this issue in view of the provisions made in the prospectus to the effect that the *“Deputation/Sponsorship of candidates holding tenure appointments(like house job, Junior of Senior Residency, adhoc or contract or honorary appointment against a leave vacancy) shall not be accepted.* So far as other three petitioners in the Ist petition are concerned, the documents placed on record, even during the course of hearing, shows that they are regular

employees and have completed their three years in service and were eligible. It is further submitted that even if the other three petitioners in the Ist petition and the sole petitioner in the IInd petition are eligible being regular employees having worked for last three years as per the terms and conditions mentioned in the prospectus, they cannot ask for the same specialty being the candidate from the same sponsoring institute. In this regard, it is also submitted that the word Central/State department or institute is interchangeably used in the prospectus which means that word institute applies to the State government also. It is also submitted that the prospectus was issued in the month of September, 2016 and the petitioners had ample time to challenge the provisions of the prospectus, had they been really aggrieved against the provisions made therein but inspite of that, they participated in the selection process and failed. He has relied upon the decision of the Supreme Court rendered in the case of *Om Prakash Shukla vs. Akhilesh Kumar Shukla and others 1986 AIR(SC) 1043* to contend that the petitioners are estopped by their own conduct because once they have appeared in the competition test and failed, they cannot challenge the terms and conditions of the examination thereafter. It is also submitted that the answering respondent PGI has categorically stated in their reply that there was no agitation of any candidate in respect of the selection of two sponsored candidates for the same specialty in the past i.e. in the year 2015-16, therefore, respondent did not bother about it but they cannot get out of the provisions of the prospectus which specifically provides that the sponsored institute should not nominate more than one candidate for the same specialty and therefore, the counseling committee has specifically decided to stick to the provisions of the prospectus. It is thus submitted that

the petitioner cannot claim negative parity/equity and has relied upon the judgment of the Supreme Court rendered in the case of *State of Orissa and another vs. Mamata Mohanty (2011) 3 SCC 436*.

I have heard learned counsel for the parties and examined the record with their able assistance and in order to appreciate the rival contentions, it would be relevant to refer to the basic provisions of the prospectus which requires interpretation by this Court and reads thus:-

“Sponsored/Deputed Candidates

A candidate applying for admission MD/MS as a sponsored/deputed candidate is required to take the print out of the online application form and furnish the following certificates(as per format given in Annexure 5) with his/her application through his/her employer/Sponsoring Authority for admission to the course.

a) That the candidate concerned is a permanent or regular employee of the deputing/sponsoring authority, and should have been working for at least last three years(on or before 30th June/31st December for July & January session respectively).

b) That after getting training at PGIMER, Chandigarh, the candidate will be suitably employed by the deputing/sponsoring authority to work for at least five years in the specialty in which training is received by the candidate at the PGIMER.

c) That no financial implications, in the form of emoluments/stipend etc. will devolve upon PGIMER, Chandigarh during the entire period of his/her course and such payment shall be the responsibility of the sponsoring authority.

Deputation/Sponsorship of candidates holding tenure appointments(like house job, Junior or Senior Residency, adhoc or contract of honorary

appointment against a leave vacancy) shall not be accepted. Deputation/Sponsorship of any candidate by private hospitals, institutes or nursing homes are not accepted. The sponsoring institute should not nominate more than one candidate for a specialty. Sponsorship/deputation of candidates will be accepted only from the following:

a. Central or State Government Departments/Institutions

b. Autonomous Bodies of the Central or State Government

c. Public sector colleges affiliated to universities and recognized by the MCI. In case of candidate deputed/sponsored by the Medical College affiliated to Universities and recognized by Medical Council of India, deputation/sponsorship certificate signed by the Principal of Medical College concerned only shall be accepted.

Deputed/Sponsored candidates are also required to appear in the selected test. If selected for admission to any course of the Institute, these candidates are required to make their own arrangement for stay during the period of their studies.”

Admittedly, all the five petitioners in both the petitions are in service doctors from Himachal Pradesh. They have been sponsored by the government for the purpose of taking the MD/MS entrance exam offered by the PGI, Chandigarh. At the time, when they were sponsored, their specialty was not specifically mentioned. All the five petitioners appeared in the written test and qualified. Merit list was prepared according to their marks. Counseling was held on 16.12.2016 in which the 1st candidate in the merit, who also happened to be from Himachal Pradesh, in service doctor opted

for faculty of radiology and was granted. Petitioner No. 1 in the Ist petition namely, Dr. Khimit Jain who was at Sr. no. 2 in the seniority list also wanted to take Radiology as there were two seats in that specialty but it was not offered to him only because of the reason that in the prospectus it was provided that *“the sponsoring institute should not nominate more than one candidate for specialty”*. Accordingly, the said specialty of Radiology was given to respondent No. 3, namely, Seema Rathee who was at Sr. No. 4 in the merit list as it was not opted by the candidate at Sr. No. 3. The other petitioners were given specialty according to their merit. In so far as, petitioner No. 1 in the Ist petition is concerned, he is not found to be eligible because he was working on contract basis and there is nothing on record which shows that his service was regularised except for the certificate of sponsorship is brought on record during the course of hearing by the petitioner. Counsel for the petitioner who has been repeatedly asked by the Court to produce the record of regularising the service of petitioner No. 1 has failed to bring on record the said certificate/documents. In so far as the other petitioners are concerned, they have been working on regular basis and fulfill all the eligibility criteria but they cannot choose the same specialty offered to other candidate from the same State in view of the bar provided in the prospectus that *“the sponsoring institute should not nominate more than one candidate for a specialty”*. Interestingly, there is no challenge to this provision in the writ petition meaning thereby, the petitioners accept the legality and validity of this provision but they have made the only prayer that their candidature should be considered for the purposes of opting for specialty which has already been opted by the other candidate from the same State on the basis of practice of the respondent in

the past i.e. session 2015-16 as mentioned in para 10 of the writ petition. In this regard, PGI has already replied that the earlier practice was not objected to by any candidate, therefore, it escaped their notice but now in this session the provisions of the prospectus have been specifically followed. The judgment relied upon by counsel for the respondent *State of Orissa and another(supra)* applies to the facts of the case in which it has been held that *“it is a settled legal proposition that Article 14 is not meant to perpetuate illegality and it does not envisage negative equality. Thus, even if some other similarly situated persons have been granted some benefit inadvertently or by mistake, such order does not confer any legal right on the petitioner to get the same relief.”*

More over, the petitioners are now estopped by their own act and conduct in filing the present petition and challenging the process of selection of the discipline/faculty because at that time, when the prospectus was issued, they did not challenge the provisions of the prospectus which is now stated to be offending. The petitioners failed to get the faculty of their choice and cannot now agitate before the Court of law in view of the decision of the Supreme Court rendered in the case of *Om Prakash Shukla (supra)* in which it has been held that *“moreover, this is a case where the petitioner in the writ petition should not have been granted any relief. He had appeared for the examination without protest. He filed the petition only after he had perhaps realised that he would not succeed in the examination. The High Court itself has observed that the setting aside of the results of examinations held in the other districts would cause hardship to the candidates who had appeared there. The same yardstick should have been applied to the candidates in the District of Kanpur also. They were not*

responsible for the conduct of the examination”.

Thus, the impleadment of respondent No. 3 at the instance of petitioner No. 1 to claim the seat offered to her in the discipline of Radiology is unsustainable. In view of the observations made hereinabove, petitioners do not have any merit in both the cases and hence, the writ petitions are hereby dismissed.

27th January, 2017

Shivani Kaushik

**[Rakesh Kumar Jain]
Judge**

Whether Speaking/reasoned

Yes/No

Whether Reportable

Yes/No