

202+117IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-2577-2021 (O&M)

CM-4505-CWP-2021

CM-6636-CWP-2021

CM-8029-CWP-2021

CM-9709-CWP-2021

CM-332-CWP-2022

Date of Decision: 14.01.2022

JAGIR SINGH

...Petitioner

Versus

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Jagdish Manchanda, Advocate
for the petitioner.

Mr. Rohit Arya, D.A.G., Haryana.

Mr. Deepak Manchanda, Advocate
for respondents No.3 and 4.

(Presence marked through video conference)

ARUN MONGA, J. (ORAL)

Grievance of the petitioner, serving as an Ayush Medical Officer in the State of Haryana, is qua an order dated 25.01.2021, whereby, 'No Objection Certificate' granted to him vide an earlier order dated 15.01.2021, granting him permission to take admission in MD Ayurveda (Panchkarma) Course for the academic session 2020-2021, was withdrawn.

2. Essentially, the controversy involved herein is as to whether or not, the petitioner is (a) eligible for admission in the course of MD Ayurveda (b) if eligible, is he, as a matter of right, entitled to relaxation of the maximum age i.e. 45 years prescribed for admission in the course by the

department. Concededly, the petitioner as on the date of applying for the admission was 47 year and 01 month old.

3. Adverting to the first issue foremost. Having gone through the records and after hearing the rival contentions, it appears that at the time of passing the impugned order, the competent authority was under the impression that the petitioner is not eligible in view of having less than 07 years of service left after he completes the three years MD course, which is one of the essential pre-requisites for granting permission to do the said course.

4. Having gone through the averments of the petition and also the record available, particularly the averments as contained in para No.22(v) which for ready reference are reproduced herein below :-

“That the respondent no.1 and 2 has filed the written statement to the writ petition filed by the present petitioner by taking preliminary submissions. In 1st preliminary submission which is affirmative and explained the prayer of the writ petition for quashing of the order Annexure P-10, no objection has been raised for the same by the respondent no.1 and 2. In para no.2 of the preliminary submission, it is said with regard to the notification of reserving three seats and against which the present petitioner has applied and NOC has been given. In para no.3 & 4 of the preliminary submission, it is stated that as per condition no.(ix) of the policy dated 16.11.2018 which required before relieving the employee from the department, he or she have to execute a service bond for a period of 7 years and it is stated that minimum 7 years of service is required for after completion of PG Degree and the present petitioner is completing the same and took the objection that there is a violation of condition no.(ix) of the policy dated 16.11.2018 which is factually incorrect. The present petitioner has filed the replication by mentioning specifically that the date of birth of the petitioner is 05.02.1973. The petitioner has joined the services on 09.10.2000 and date of retirement of the petitioner would be 28.02.2031, the classes were started on 18.02.2021, the course of MD Ayurveda will be completed till 17.02.2024 within 3 years. The petitioner will be left with the service of 7 years and 11 days. If it is presumed that the classes would have been started on 01.03.2021 even then the course will be completed on 28.02.2024 within 3 years. The petitioner is going to be retired on 28.02.2031, even after completing the

course/degree MD Ayurveda, the present petitioner is having 7 years of his service. The petitioner fulfills the condition of the NOC which has already been granted on 15.01.2021. Therefore, there is no violation of the notification/policy as alleged by the respondent no.1 and 2. Therefore, the order dated 25.01.20021 (Annexure P-10) and minutes of the meeting as well as order dated 03.02.2021 (Annexure P-15) and letter dated 26.04.2021 (Annexure P-17) are illegal, arbitrary, against the principle of natural justice and violative of Articles 14 and 16 of Constitution of India as well as violative of instructions, rules and regulations and liable to be set aside.”

5. From perusal of the above, it appears that the petitioner is eligible as he has little more than 07 years of service left after he finishes the course. The above stand was taken in the un-amended petition also and is uncontroverted as no fresh return theretohas been filed. Inview thereof, I am of the opinion that the petitioner was indeed eligible for admission.

6. Coming now to the second issue i.e. whether the petitioner can seek relaxation of age as a matter of right, reference may be had to the policy dated 16.11.2018 (Annexure R-2/2). The relevant clauses thereof are asunder :-

“7. xxx xxx xxx

- (i) *NOC shall be provided only in accordance with the condition prescribed in this policy.*
- (ii) *The upper age limit for PG Diploma/PG degree/Super Specialization will be 45 years on 31st March of the admission year.*
- (iii) *The applications for NOC will be considered subject to the condition that there was nothing adverse against the integrity, efficiency and disciplinary proceedings U/R-7 pending against the officers. Unjustified and unauthorized absence for a long period of time, repeated absenteeism, or adverse reports of professional conduct will be taken into account while considering the service of a Person satisfactory/qualifying service or otherwise for the grant of NOC.*
- (iv)-(viii) xxx xxx xxx
- (ix) *Before his/her relieving from the department, he/she will have to execute a service bond for a minimum period of 7 years and commit to payment of an amount of Rs.25 lacs to the Haryana Government in lieuthereof in the case of PG Degree/Super Specialty coursesand for a minimum period of 5 years or*

payment an amount of Rs.10 lacs in lieu thereof in the case of PG diploma.”

7. Perusal of the above leaves no manner of doubt that the maximum age prescribed is 45 years and there is no provision for any relaxation in the policy. Ordinarily, this Court would have on that short ground alone, negated the right of the petitioner to seek a *mandamus* from this Court directing the respondents to grant him relaxation. To be noted, that the aforesaid policy is not under challenge in the writ proceedings before this Court.

8. Be that as it may, the petitioner has since contended that he has been meted out with hostile discrimination, inasmuch as, on an earlier occasion, one Dr. Dinesh Kumar Sharma, who too was over aged by about two years, was granted age relaxation for the academic session 2018-19. Whereas, in the case of the petitioner, similar benefit has not been accorded. It was in these circumstances that this Court, vide an order dated 12.01.2022 asked the learned State counsel to seek instructions as below :-

“ Learned State counsel seeks time to file amended reply, if any, to the amended petition, after obtaining instructions.

In case, no reply is filed on or before the next date of hearing, let a specific short affidavit be filed with regard to the averments contained in para 8 of the amended petition. It be deposed therein whether or not any relaxation was given to one Dr. Dinesh Sharma and if so, what was the period of relaxation and the compelling circumstances warranting such relaxation.

In case an affidavit is not filed, learned State counsel to seek verbal instructions and assist the Court.

Post it on 14.01.2022.”

9. *Apropos* above order, today on resumed hearing, learned State counsel submits that due to paucity of time, the affidavit could not be filed. However, per his instructions from Mr. Adit Rana, Law Officer, Ayush Department, he submits that as far as query No.1 and 2, it is correct that

indeed he was over aged by little more than two years and relaxation was given. As regards the 3rd query, as to the circumstances which warranted the relaxation, learned State counsel apprises this Court that for the relevant academic year, there was no other candidate competing for the slot qua which Dr. Dinesh Kumar Sharma was granted admission. Therefore, there was no likely prejudice to be caused to anyone. He submits that there are only limited number of seats and admission is granted as per merit to the limited candidates, who are found eligible.

10. Learned State counsel further submits that in the present case, respondent No.5-Jaibir Singh, who is more eligible on all squares, including the number of years of service left after he finishes the course, as well as, being below the maximum age prescribed, and has also been since granted the permission and pursuant thereto has been attending the classes, cannot be put to adverse consequences by way of granting relaxation to the petitioner, which in any case, is not a matter of right.

11. I am in agreement with the submission put forth by the learned State counsel. The relaxation granted to Dr. Dinesh Kumar Sharma for the academic year 2018-19 was in the peculiar circumstances. It granted only for that particular academic year and cannot be made as a bench-mark for subsequent academic years. Particularly, when there are other competing candidates available in the same category (SC), in which, the petitioner had applied.

12. At this stage, learned counsel for the petitioner submits that the respondents may take an equitable view since the petitioner has already attended the classes for the academic year, by directing the University to create one more seat for the academic session 2020-21. I am not inclined to

make any observations qua the same and it is for the respondents to take their own view on the same, if they so wish.

13. In the aforesaid premise, no grounds to interfere.
14. Dismissed.
15. Pending application/s, if any, shall also stand disposed of.

January 14, 2022
gurpreet

(ARUN MONGA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No