

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No. 1347 of 2017
Reserved on: 11.03.2022
Pronounced on: 02.06.2022

Dr. Sangeeta Aggarwal and others

....Appellants

Versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE G. S. SANDHAWALIA
HON'BLE MR. JUSTICE VIKAS SURI

Present: Ms. Alka Chatrath, Advocate for the appellants.

Ms. Monica Chhibber Sharma, Senior D.A.G. Punjab.

(The proceedings were conducted through video
conferencing, as per instructions.)

VIKAS SURI, J.

1. This intra-court appeal has been filed by the writ petitioners against the judgment dated 31.05.2017 passed by the learned Single Judge in CWP No.12672 of 2017 titled '*Dr. Sangeeta Aggarwal and others vs. State of Punjab and others*'. The claim agitated in the writ petition was not entertained on the ground that order dated 28.02.2013 (Annexure P-25) was sought to be challenged in the year 2017 and that it was within the domain of the executive as to whether the officers or persons who have substantial part of the service career in Medical/Dental Colleges as Member of the Teaching Faculty should be repatriated or not and as such is the prerogative of the State for resolving any issue arising there from, as per the need and in public interest. It was also held that the writ petitioners could not have a lien over such posts by raking up the issue of the order dated 28.02.2013 in the year 2017.

2. The facts in brief, noticed by the learned Single Judge are that the appellants were appointed as Medical Officers (Dental) with the Department of Health and Family Welfare in pursuance to the advertisement issued by the Punjab Public Service Commission. They were governed by the Punjab Dental Service erstwhile (Class-II) Rules, 1968, as per the appointment letter (Annexure P-1). The writ petitioners, four in number have indicated their dates of joining in para No.3 of the writ petition, ranging from 10.12.1990 to 16.03.1999. After being appointed as Medical Officers (Dental), the writ petitioners served in Rural Dispensaries/Primary Health Centres in the State of Punjab. The writ petitioners were transferred/ posted by respondent No.1 in Govt. Dental College and Hospital, Amritsar/ Patiala as Medical Officer against the posts of Demonstrator/Senior Lecturer for teaching BDS (Bachelor of Dental Surgery) students in Govt. Dental College and Hospital and later designated as Demonstrator. The said appointment was done after getting 'No Objection Certificate' from their parent Department of Health and Family Welfare, Punjab. Reference can be made to the transfer/posting orders, Annexures P-2 to P-6, as Demonstrator/ Assistant Professor. Reference has also been made to the Punjab Dental Education Service (Class-II) Rules, 1977 (hereinafter referred as '1977 Service Rules') for regulating the conditions of the service of the persons appointed to the Punjab Dental Education Class-II service.

3. The mode of recruitment is provided under Rule 10 of the 1977 Service Rules. As per the said Rule, the three modes of appointment to the post of Demonstrator are (i) direct appointment, (ii) by promotion and (iii) by way of transfer or deputation from any officials already in service of Govt. of India or the State Government. The qualifications stipulated for appointment to the post of a Demonstrator (Dental), as appearing in

Appendix-B to the Service Rules, a person should have passed BDS degree from a recognized University or equivalent qualification with atleast 6 months experience as House Surgeon in a recognized Dental College and Hospital and should not have taken more than two additional attempts in passing all the University professional examinations during the BDS course with atleast 60% marks in the final BDS examination.

4. The petitioners were working as Medical Officers (Dental) and posted in the Medical Colleges, Dental Colleges and Ayurvedic Colleges, who were re-designated as Tutor/Lecturer-cum-Medical Officer vide order dated 08.08.2008 (Annexure P-7) passed by the Secretary to Govt. of Punjab, Department of Medical Education and Research. The said order noticed that the re-designated Medical Officers were engaged in teaching in their own pay scale for the strengthening of Teaching Faculty. The terms and conditions of service were to remain same as per the original orders PCMS and PCDS etc. It is also reflected from the record that the aforementioned postings had been done on account of the acute shortage of Teaching staff as per DC norms. Thereafter, the Govt. promoted/selected six Medical Officers (Dental) as Assistant Professors from the Department of Dentistry vide order dated 22.07.2008 (Annexure P-9), endorsed on 23.07.2008. The writ petitioners had also applied for appointment as Assistant Professor but they were not selected. It is also pleaded that before the writ petitioners could agitate their grievance against order dated 22/23.07.2008 (Annexure P-9), Secretary to Govt. of Punjab, Department of Medical Education and Research partially kept in abeyance the promotion orders regarding the post of Assistant Professor (Dentistry) vide subsequent order dated 25.07.2008 (Annexure P-10). In the writ petition it is averred that the respondents with an objective to deprive the writ petitioners from their adjustment as Assistant

Professor, initiated a move in the year 2011 to transfer them from teaching post to a non-teaching post by transferring them back on the post of Medical Officer (Dental) in the PCMS cadre, despite them having discharged their duties to the entire satisfaction of the respondents. Thus, it was highlighted that there was acute shortage of teaching staff in Govt. Dental Colleges and Hospital.

5. The writ petitioners anticipating their transfer, approached the Court by way of filing CWP No.8480 of 2011 titled '*Dr. Sangeeta Aggarwal and others vs. State of Punjab and others*' and vide interim order dated 27.04.2011 relieving of the petitioners from the college was stayed as an interim measure. Other persons had also filed petitions and as such a batch of five writ petitions came to be heard together. The above noticed interim order merged in the final order dated 29.08.2011 (Annexure P-16), whereby the aforesaid writ petition was disposed of by a common order with the following directions:-

- “i) The State Government shall address the grievances of the petitioners and other similarly placed medical officers who have spent sufficient number of years as members of the Teaching Faculty in Medical Dental College(s) and see as to how many of them can be adjusted in public interest as a part of teaching faculty. The adjustment can be made keeping in view that no stagnation is caused to the directly recruited members of the teaching faculty.
- ii) The adjustment in the Medical/Dental Colleges would necessarily follow the consequential service benefits including promotion as was decided earlier and thereafter only the orders like dated 23.7.2008 (Annexure P-9) can be given effect.
- iii) The State Government shall constitute a Committee of five experts including (i) the Director, Health and Family Welfare and (ii) the Director, Medical Education and

Research as its members and the appropriate decision on directions (i) and (ii) above shall be taken only after considering the view point of the Expert Committee.

- iv) The Committee shall submit its report to the State Government within three months from the date of receipt of a certified copy of this order.
- v) Till then, the petitioner or other similarly placed medical officers shall not be repatriated, however, their promotion shall also be kept in abeyance.

Dasti.”

6. It is also the pleaded case that in pursuance to the aforesaid directions, the writ petitioners submitted detailed representation, which was followed by a reminder dated 16.02.2012. A perusal of the communication dated 16.02.2012 (Annexure P-17) reveals that in compliance to the order dated 29.08.2011, the State Govt. had constituted an Expert Committee vide order dated 17.10.2011 and the said Committee had also commenced its work and the affected officers working in the Govt. Dental Colleges in Patiala and Amritsar were called for personal hearing. The Medical Officers (Dental) had also submitted some documents in support of their case before the said committee. It is averred that no orders were communicated to the petitioners much less the decision of the said committee. The respondents fixed a meeting of the Departmental Promotion Committee on 10.07.2013, wherein against 13 posts of Assistant Professors, the names of 10 recommended persons for promotion was to be considered without deciding the fate of the writ petitioners. Vide order dated 08.07.2013 (Annexure P-22), the promotion orders made earlier vide order dated 23.07.2008 (Annexure P-9) were cancelled/rejected.

7. A perusal of the order dated 08.07.2013 would reveal that it was passed in compliance to the directions contained in the order dated

29.08.2011 (Annexure P-16), which has been noticed above, while disposing of a bunch of the writ petitions filed by the affected doctors being CWP No.7200 of 2011 (*Dr. Jagan Jyot vs. State of Punjab and others*), CWP No.8219 of 2011 (*Dr. Parul Gupta and another vs. State of Punjab and others*), CWP No.8480 of 2013 (*Dr. Sangeeta Aggarwal and others vs. State of Punjab and others*), CWP No.7668 of 2011 (*Dr. Sheetal Kumar vs. State of Punjab and others*) and CWP No.13053 of 2011(*Dr. Nitin Verma and another vs. State of Punjab and others*).

8. The writ petitioners have also urged that since no order was conveyed, an application dated 14.08.2013 was submitted for seeking information under the Right to Information Act but the Public Information Officer had only supplied copy of order dated 08/09.07.2013. The appeal preferred against non-furnishing of information also did not bear any fruit.

9. Reliance has been placed on the Expert Committee's report (Annexure P-24), perusal of which reveals that the said Committee had unanimously recommended to adjust the Medical Officers in Dental Colleges under the promotion quota of above 75% posts of Senior Lecturer amongst the Demonstrators, keeping in view the fact that they have been working for a number of years and further there is provision of recruitment by transfer. However, the Secretary to Govt. of Punjab, Department of Medical Education and Research did not accept the report of the said Committee vide order dated 28.02.2013 (Annexure P-25) and as a matter of material fact took serious note of the factum that it had not included remarks of the representatives of the Personnel Department while considering the matter. It has also been noticed by the learned Single Judge that the impugned order dated 28.02.2013 (Annexure P-25) has been challenged by way of CWP No.15605 of 2013 titled as '*Jagan Jyot and others vs. State of*

Punjab and others', by a few similarly situated affected persons and vide the interim order dated 23.07.2013 repatriation of the petitioners therein was stayed.

10. The basic grievance raised by the writ petitioners is that action of the respondents in not recognizing the teaching experience gained by them while working on the post of Demonstrator/Assistant Professor and discharging the duties as Medical Officers-cum-Lecturers is wholly illegal, arbitrary, discriminatory and deserves to be quashed by issuing an appropriate writ owing to the shortage of teaching staff in Dental Colleges. Moreover, rejection of the Committee's report is also irrational and does not have sound logic. The post of Demonstrator and Senior Lecturer is governed by the 1977 Service Rules and essential qualifications for appointment to the post of Demonstrator have been provided in Appendix-B to the said Rules as noticed above. The writ petitioners emphatically urged that they have the requisite qualification for being adjusted in Medical/Dental Colleges for imparting education to the students seeking medical degrees and rest their case.

11. The learned Single Judge while dismissing the writ petition, categorically noticed that the writ petitioners never challenged the order dated 28.02.2013 within a reasonable time and the same had been challenged by them for the first time in the year 2017. No explanation had been given for not challenging the aforesaid order despite the information having been sought under the RTI Act. It was thus held that it cannot be believed that the affected persons had filed writ petitions and obtained interim stay and the writ petitioners claiming to be similarly effected were not aware of the same. It has also been noticed that interim stay order was not applicable to the writ petitioners. Secondly, it was held that the writ petitioners basically had been

adjusted on deputation basis till the posts were filled up and that the selection process and qualification for the post of Demonstrator is totally different. The selection process for the post of Senior Lecturer is also different. Medical Officer (Dental) comes under the Health Department as per the Punjab Dental Service Rules and its criteria is also different, as well as the seniority maintained in the respective cadre. It was concluded that the petitioners could not have a lien on such posts by raking up the issue at a much delayed stage. The writ petitioners not having taken the necessary steps at appropriate stage cannot be allowed to raise a challenge at their own sweet will and they were aware of the consequences of such inaction.

12. We have heard learned counsel for the parties and with their assistance perused the available record.

13. Learned counsel for the petitioners has contended that the petitioners have been officiating against the posts of Demonstrator/Senior Lecturer for teaching B.D.S. students for a long time and have thus acquired valuable experience, which would satisfy the qualification required for the said posts. While referring to the directions passed in the earlier petition filed by the writ petitioners along with a batch of other writ petitions, wherein directions dated 29.08.2011 were issued pursuant to which the order dated 08.07.2013 came to be passed, strenuous effort has been made to impress upon this Court that the said order was never communicated to the writ petitioners. Thus, the delay is sought to be covered up in this manner without addressing it directly. It is also contended that the writ petitioners obtained information under RTI and being threatened of being relieved/transferred from their respective posts to non-teaching posts, by repatriating them to Health and Family Welfare Department after issuance of communications dated 30.05.2017, Annexures P-26 and P-27, they sought to

invoke the extra ordinary jurisdiction.

14. Per contra, the State counsel has defended the order passed by the learned Single Judge. It has been submitted that even in appeal before this Court, the writ petitioners have not offered any explanation as to why they did not raise challenge to the order dated 28.02.2013 (Annexure P-25) within a reasonable time, whereas the affected persons who were vigilant had approached the Court and were also protected by the interim orders in their favour. It is, thus, submitted that after having initially approached the Writ Court in the year 2011, the writ petitioners chose to sit in the gallery and watch as to how turn of events take place. It is, thus, contended that the writ petitioners having chosen not to challenge the order dated 28.02.2013 (Annexure P-25) at the appropriate time and having accepted the same as such, cannot be now permitted to catch the once missed train at this belated stage, to now jump on the bandwagon. The delay of about four years is thus stated to be on account of acquiescence and as such fatal to the case of the petitioners.

15. It is a matter of fact that the writ petitioners along with others had earlier approached the Writ Court in the year 2011 and had also been protected vide interim order dated 27.04.2011 from being relieved from the medical college(s). The said writ petitions were finally disposed of by issuing directions to the State Government on 29.08.2011. It is also not disputed that the writ petitioners along with similarly situated Medical Officers (Dental) had submitted documents in support of the case before the Committee constituted in compliance to the directions dated 29.08.2011. The matter was considered by the Government and finally concluded vide order dated 08.07.2013. It is also a matter of fact that some of the affected Medical Officers (Dental) had raised challenge to the order dated 28.02.2013

by way of filing CWP No. 15605 of 2013 (*Jagat Jyot and others vs. State of Punjab and others*) and their repatriation had been stayed as an interim measure vide order dated 29.03.2013. We are informed that the said writ petition is pending adjudication before another learned Single Judge and three other writ petitions are also tagged with the said case.

16. A perusal of the information furnished vide communication dated 23.12.2013 (Annexure P-23), with reference to the writ petitioners' representation dated 14.08.2013 under RTI, copy of order dated 08.07.2013 endorsed on 09.07.2013 (Annexure P-22) had been supplied to the petitioners along with the opinion of Advocate General, Punjab dated 20.12.2012. A perusal of the said order (Annexure P-22) reveals that the complete case history from the very beginning has been noticed in detail and the speaking order dated 28.02.2013 vide which the report of the expert Committee had been rejected, was specifically referred to while cancelling the promotion orders dated 23.07.2008 and 25.07.2008. The concluding portion of the said order reads as under:-

“6. In the light of the advice of the Learned Advocate General, Punjab A and as per the speaking order issued by the Govt. vide No. 13/79/2011 3GE3/1073-78 dated 28.02.2013 vide which the report of the expert Committee has been cancelled/rejected, the order No. 1/25/2006 2GE3/4553-62 dated 23.07.2008 vide which the Medical Officer PCMS were promoted from the post of Demonstrator to the post Senior Lecturer and order order No. 1/25/2007-2GE3/4653-62 dated 25.07.2008 holding the order in abeyance, both two orders dated 23.07.2008 & 25.07.2008 are hereby cancelled.

This order shall be implemented immediately.”

17. Despite the aforesaid information admittedly having been furnished, the writ petitioners chose to rest their oars and at that stage chose of their own volition not to further agitate their grievance, if any. Thus, we

are of the *prima facie* view that there was acquiescence on the part of the writ petitioners to passing of the orders dated 28.02.2013 (Annexure P-25) and 08.07.2013 (Annexure P-22). It is apparent from the record that the appellants had chosen not to further question the decision of the State Government and as such they became fence-sitters. The said situation continued in the following years as well, till the communications dated 30.05.2017 (Annexures P-26 and P-27) were issued, when the writ petitioners woke up from their slumber and sought to make an attempt to seek interim protection. In light of the above factual matrix, the writ petition came to be instituted in the year 2017, from which the present intra-court appeal has arisen.

18. It is well settled that the law helps those who help themselves and does not come to the rescue of the persons who choose to sleep over their rights. The writ petitioners also cannot seek complete parity with the vigilant litigants, who had timely approached the Writ Court in the year 2013. Acquiescence, delay and laches would be well recognised exceptions to dismiss the claim sought to be raised at a belated stage. In service jurisprudence, applicability of the said principle would also depend on the factum whether the subject matter of the decision impugned touches upon policy matters i.e. affecting a class of persons or is a judgment in personam. Reliance in that regard can be placed upon the judgment of the Apex Court in *State of Uttar Pradesh and others vs. Arvind Kumar Srivastava and others*, (2015) 1 SCC 347, wherein the afore-noticed exception has been discussed and it was held as under:-

“22. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under.

22.1. The normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

22.2. However, this principle is subject to well-recognised exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

22.3. However, this exception may not apply in those cases where the judgment pronounced by the court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons. Such a situation can occur when the subject-matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see *K.C. Sharma v. Union of India* [(1997) 6 SCC 721 : 1998 SCC (L&S) 226]). On the other hand, if the judgment of the court was in personam holding that benefit of the said judgment shall accrue to the parties before the court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their

petition does not suffer from either laches and delays or acquiescence.”

19. In view of the above, we are of the considered opinion that the impugned order dated 28.02.2013 (Annexure P-25) is a policy matter, final decision of which would affect the entire class of persons, including those who were petitioners in the earlier writ petitions instituted in the year 2011, which were disposed of on 29.08.2011 by issuing the directions noticed earlier. The other issue that would arise for consideration in the present situation would be whether the appellants would still be entitled to interim protection against their proposed cancellation of deputation and reversion to the parent department, at this belated stage.

20. In *U.P. Jal Nigam and another vs. Jaswant Singh and another*, (2006) 11 SCC 464, the Apex Court had followed its earlier taken view that the Courts should be very slow in granting indulgence to litigants who do not rise to the occasion in time for seeking judicial redress, while posing the question as to should the Courts come to the rescue of persons guilty of waiver and acquiescence. The relevant portion of the said judgment reads as under:-

“13. In view of the statement of law as summarised above, the respondents are guilty since the respondents have acquiesced in accepting the retirement and did not challenge the same in time. If they would have been vigilant enough, they could have filed writ petitions as others did in the matter. Therefore, whenever it appears that the claimants lost time or whiled it away and did not rise to the occasion in time for filing the writ petitions, then in such cases, the court should be very slow in granting the relief to the incumbent. Secondly, it has also to be taken into consideration the question of acquiescence or waiver on the part of the incumbent whether other parties are going to be prejudiced if the relief is granted. In the present case, if the respondents

would have challenged their retirement being violative of the provisions of the Act, perhaps the Nigam could have taken appropriate steps to raise funds so as to meet the liability but by not asserting their rights the respondents have allowed time to pass and after a lapse of couple of years, they have filed writ petitions claiming the benefit for two years. That will definitely require the Nigam to raise funds which is going to have serious financial repercussions on the financial management of the Nigam. Why should the court come to the rescue of such persons when they themselves are guilty of waiver and acquiescence?”

21. It may be noticed at the cost of repetition that the appellants have not given any explanation even before this Court, as to what pre-empted them from seeking judicial review even after information under RTI was furnished, as had been done by few other similarly situated persons. It has been rightly held by the learned Single Judge that it cannot be believed that the appellants were not aware of those orders, as the effected party had already filed writ petition and obtained interim stay and the said stay order was not applicable to the writ petitioners/appellants herein.

22. There might be valid reasons not to grant interim protection to the appellants on account of their own conduct but it may not be appropriate to non-suit the writ petitioners, especially when the policy affecting their rights was under scrutiny of the writ Court being subject matter in writ petitions pending before another learned Single Judge. It was desirable that before passing of the impugned judgment the litigating parties would have made a mention and taken active steps for getting the matters clubbed, so that all cases could have been heard together and decided accordingly.

23. Needless to say, since the writ petition was dismissed *in limine* without calling for a response, we are not commenting on the merits of the controversy which is subject matter of challenge in *Jagat Jot* (supra), lest it

prejudices either of the parties. Nothing observed herein-above be taken as an expression of opinion and shall have no affect on the merits of the case.

24. In view of the above discussion, we are of the considered view that this intra-court appeal is liable to be allowed in part and it would be have been appropriate if the writ petition was heard along with *Jagan Jot* (supra), as the same impugned policy decision of the State is subject matter of that writ petition.

25. Accordingly, the Letters Patent Appeal is partly allowed and the impugned judgment dated 31.05.2017 dismissing the writ petition is set aside; the writ petition is restored to its original number and the same is ordered to be heard with CWP No. 15605 of 2013 titled '*Jagan Jot and others vs. State of Punjab and others*', stated to be posted for 03.11.2022. Needless to observe, it would be not open for the learned Single Judge to hear the writ petitioners on the prayer for interim relief now, but the case of appellants would be considered on merits regarding their absorption.

(G. S. SANDHAWALIA)
JUDGE

(VIKAS SURI)
JUDGE

June 02, 2022
Sachin M.

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No