

RSA-2268-2000 (O&M)

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

RSA-2268-2000 (O&M)
Reserved on:- 29.11.2023
Pronounced on:- 19.12.2023

The Haryana State through its Commissioner and Secretary to Govt. of
Haryana, Health Department, Chandigarh and others

...Appellants

Versus

Dr. Akhlaq Ahmad

...Respondent

CORAM:- HON'BLE MS. JUSTICE AMARJOT BHATTI

Present:- Mr. Narender Singh Behgal, AAG Haryana
for the appellants.

Mr. Amit Jain, Advocate
for the respondent.

AMARJOT BHATTI, J.

1. The appellants/defendants have filed the present Regular Second Appeal against impugned judgment and decree dated 10.03.2000 passed by learned Additional District Judge, Gurgaon vide which the appeal preferred by the defendants was dismissed by upholding the judgment and decree dated 02.09.1999 passed by the learned Additional Civil Judge (Senior Division), Gurgaon vide which the suit filed by the plaintiff Dr. Akhlaq Ahmad was decreed.

2. The facts of the case are that plaintiff Dr. Akhlaq Ahmad has filed suit for declaration to the effect that he be treated on deputation to the Medical College, Rohtak against one of the posts earmarked for one year training for HCMS Doctors for doing Post-Graduate Diploma course

during the year 1980-81, with consequential benefits of pay, allowances

etc. along with interest @18% from the date when the benefits had become due till the date of its payment to the plaintiff. The plaintiff was posted as Medical Officer in Civil Hospital, Gurgaon in the year 1980 when he was selected for undergoing diploma course in Orthopedics at Medical College, Rohtak during the session 1980-81. Dr. K.L. Sachdeva, Medical Officer, General Hospital, Karnal along with other doctors including the plaintiff were selected to undergo the diploma course. The plaintiff alongwith other doctors had joined the said diploma course after getting No Objection Certificate from the Government. The plaintiff along with other doctors made representation to defendant No. 1 Haryana Government that during the session 1980-81, the posts reserved for HCMS Doctors were lying vacant and they may be treated on deputation by utilizing those ten posts meant for training of HCMS doctors. Even though the said representation was recommended by the defendant No. 2 to defendant No. 1, no fruitful result came out. Thereafter, Dr. Ashwani Kumar filed Civil Writ Petition No. 2622 of 1987 in the Punjab and Haryana High Court, which was decided in his favour, directing the Government to grant ex-post facto sanction for treating Dr. Ashwani Kumar on deputation to Medical College, Rohtak during the period of his training. Later on another doctor namely Dr. Renu Verma was also granted ex-post facto sanction treating her on deputation against one of the ten posts ear-marked for one year training for HCMS Doctors during the session 1980-81. Though the relief was granted to above said two doctors, no decision was taken on the representation given by Dr. K.L. Sachdev and the plaintiff. Thereafter, Dr. K.L. Sachdeva filed a civil suit at Karnal which was decreed vide judgment and decree dated 16.05.1992 and he was also granted the same benefit. The plaintiff also submitted all the relevant papers pertaining to

the service record and NOC regarding undergoing the said diploma course, yet the plaintiff was not granted aforementioned benefit. Despite reminding the defendants and requesting the Principal, Medical College, Rohtak, no positive result came out and the plaintiff was not granted any benefit. Ultimately, the present suit was filed.

3. Notice of the suit was given to the defendants. The defendants No. 1 to 3 filed joint written statement taking preliminary objections regarding maintainability; locus standi; time barred; cause of action etc. It was admitted that the plaintiff was selected for diploma in Orthopedics at Medical College, Rohtak in the session 1980-81 and No Objection Certificate for open seat was issued on the condition that he will be granted leave of the kind due. The leave of the kind due was sanctioned vide letter No. 15/1/84-2HBI dated 06.02.1986. It was further alleged that during the year 1980-81, the following seats were ear-marked for the training at Medical College, Rohtak :-

Sr. No.	Name of the Specialty	Number of Seats
1.	Radiology	2
2.	Anesthesiology	2
3.	Pathology	2
4.	Diploma in OBST & Gynae	1
5.	Diploma in Orthopedic	1
6.	DLO (ENT)	1
7.	M.D. Medicine	1

It was submitted that Sh. Ramesh Chander Bhutani was recommended against seat of Diploma in Orthopedic. During the year 1980, the Doctors who were having five years regular service with one year rural service were recommended against seats reserved for HCMS. The plaintiff, though, fulfilled the condition of five years service but he failed to fulfill the condition of one year's rural service. As such, he was not recommended against the reserved seat. It was further submitted that

Dr. P.L. Jindal who was also issued No Objection Certificate against the open seats like the plaintiff for the same course in the year 1980-81 had filed civil writ petition in the Punjab and Haryana High Court, which is still pending. The plaintiff applied for and completed Diploma in Orthopedic on the conditions mentioned in Govt. letter No. 10/19/80-IHBI dated 14.08.1980. It was further alleged that the plaintiff was issued No Objection Certificate for open seat on the condition that he will go on training at his own criteria and as per condition No. 4, the plaintiff was sent for training after getting leave of the kind due. The terms and conditions mentioned in Annexure D/1 cannot be altered or changed as per provisions of Contract Act and the terms and conditions were settled with the plaintiff individually, therefore, his case had no relevancy with the cases of other Doctors. The case of the plaintiff is based on different terms and conditions and leave of the kind due had also been granted to him in the year 1986. He cannot be granted any pay or allowance for the leave granted in his favour under Rule 4.9(b)(ii) of Punjab CSR Volume I Part I. It was further submitted that the representation of the plaintiff was rejected after due consideration. The plaintiff had filed the present suit after a long gap of fifteen years without any valid cause of action. Therefore, it was prayed by the defendants that suit filed by the plaintiff may kindly be dismissed with costs.

4. In replication, the plaintiff denied the facts stated in the written statement and reiterated his claim in the plaint. From the pleadings of the parties, following issues were framed by the trial Court on 19.05.1998 :-

(1) Whether the defendants had ear-marked 10 posts for HCMS Doctors for doing post graduate diploma during the year/sessions 1980-81?

OPP

(2) *Whether the plaintiff was/is entitled to be treated on deputation during the period of his training for post graduate diploma against one of the ten posts as alleged?* *OPP*

(3) *Whether the plaintiff is entitled to the benefits of pay etc. during the period of his training?* *OPP*

(4) *Whether the suit of the plaintiff is not maintainable in the present form?* *OPD*

(5) *Whether the plaintiff has no locus standi to file the present suit?* *OPD*

(6) *Whether the suit is barred by time?* *OPD*

(7) *Whether the suit is not properly valued for Court & jurisdiction fee?* *OPD*

(8) *Relief.*

5. In order to prove the suit, the plaintiff Dr. Akhlaq Ahmad himself stepped into the witness box as PW5. He further examined Dr. K.L. Sachdeva, Ex Medical Officer, presently practicing at Karnal as PW1, Parvinder Singh, Steno, Medical College, Rohtak as PW2, Subhash Chinder, Clerk, Civil Hospital, Gurgaon as PW3 and Sanjiv Malik, Clerk, Director Health, Chandigarh, Haryana as PW4. Thereafter, learned counsel for the plaintiff tendered document Ex.PX and Ex.PY and closed the evidence.

6. In order to rebut the case, the defendants examined Sanjiv Malik, Clerk, Director of Health Services, Haryana Chandigarh as DW1 and closed the evidence.

7. After hearing the arguments advanced by learned counsel for both the parties, the suit filed by the plaintiff was decreed vide judgment and decree dated 02.09.1999. Feeling aggrieved of this judgment and decree, the defendants filed Civil Appeal No. 124 of 28.09.1999 which was dismissed vide judgment and decree dated 10.03.2000. Feeling aggrieved of this judgment and decree, the present Regular Second Appeal

8. I have heard the arguments advanced by learned counsel for both the parties. The learned State Counsel argued that judgment and decree dated 10.03.2000 passed by learned Additional District Judge, Gurgaon and the judgment and decree dated 02.09.1999 passed by learned Additional Civil Judge (Senior Division), Gurgaon are against the law and the facts of the case. The Courts below failed to appreciate the evidence led by the appellants/defendants. The documents were not rightly considered. The department had given No Objection Certificate to the respondent/plaintiff for doing diploma in Post-Graduate course for the open seat on the condition that he will do the same at his own expenditure and he will not claim anything from the department. There was specific condition No. 4 of Government Letter No. 10/19/80-1HB1 dated 14.08.1980. Accordingly, the respondent/plaintiff had applied for leave which was duly sanctioned for the purpose of doing the said course. The respondent/plaintiff did not fulfill one of the condition i.e. rural service for one year and for this reason he was not recommended against the reserved seat. Both the Courts below have failed to appreciate these facts and wrongly decreed the suit filed by the respondent/plaintiff. He cannot be granted any pay or allowance for the leave granted in his favour under Rule 4.9(b)(ii) of Punjab CSR Volume I Part I. The case of respondent/plaintiff has to be considered individually and he cannot be granted any relief on the basis of relief granted to the other Doctors, if any. Therefore, the findings given by the Courts below are not on sound footing and the same are liable to be reversed. The learned Courts below failed to consider that the respondent/plaintiff had filed the suit seeking declaration after a long gap of more than 15 years. Therefore, the suit filed by him was also time barred. It was prayed that the judgment and decree passed by the

Courts below may kindly be set aside by accepting the present appeal and the suit filed by the respondent/plaintiff may kindly be dismissed.

9. On the other hand, the learned counsel for the respondent/plaintiff has based his entire claim on the basis of letter dated 10.04.1980 Ex.DW1/C by Director Health Services, where it was specifically mentioned that in the case of plaintiff, there was shortage of 11 days in completing one year rural service which was negligible and it was accordingly condoned and it was further held that the respondent/plaintiff fulfill the conditions required by the Government. Subsequently the appellants/defendants could not take a stand that the respondent/plaintiff did not fulfill the requisite condition and for that reason his case was not recommended for the reserved seat. It was further pointed out that as per the policy, there were 10 posts earmarked for one year training for HCMS Doctors for doing Post-Graduate diploma course during the year 1980-81. Some of the posts were still lying vacant, therefore, the name of respondent/plaintiff could have been considered against the said vacant seat. Dr. K.L. Sachdeva had filed Civil Suit No. 458/1991 which was decreed in his favour vide judgment and decree dated 16.05.1992 which is Ex.PX and Ex.PY. On the basis of this judgment, he was treated as on deputation to Medical College, Rohtak against one of the 10 posts earmarked for one year training for HCMS Doctors. The learned counsel for the respondent/plaintiff pointed out that Dr. Ashwani Kumar, Dr. K.L. Sachdeva and Dr. Renu Verma all were granted ex-post facto sanction, treating them on deputation during the said period and they were granted all the benefits. The plaintiff also gave representation to the appellants/defendants for giving him all the benefits on the same analogy.

The respondent/plaintiff gave several representations and also served

notice under Section 80 CPC. When no favourable action was taken by the appellants/defendants, the suit was filed. The facts of the case were rightly considered by the learned Additional Civil Judge (Senior Division), Gurgaon and his suit was rightly decreed vide judgment and decree dated 02.09.1999 and civil appeal preferred by the appellants/defendants was also dismissed vide impugned judgment and decree dated 10.03.2000. It is prayed that the appeal preferred by the appellants/defendants is without merits and the same may kindly be dismissed.

10. I have considered the arguments advanced before me. I have also gone through the record carefully. Some of the facts are admitted. The present respondent/plaintiff had filed suit for declaration that he shall be treated on deputation to Medical College, Rohtak against one of 10 posts ear-marked for one year training for HCMS Doctors for doing Post-Graduate diploma course for the session 1980-81. The said suit filed by the plaintiff was decreed vide judgment and decree dated 02.09.1999 and the appeal preferred by the appellants/defendants was also dismissed vide judgment and decree dated 10.03.2000. Admittedly, Dr. Akhlaq Ahmad was working as Medical Officer in Civil Hospital, Gurgaon in the year 1980. he applied for undergoing diploma course in Orthopedic at Medical College, Rohtak for the session 1980-81. Admittedly there were 10 posts ear-marked for one year training course for HCMS Doctors. The letter in this regard is Ex.DW1/E, according to which two seats were reserved for Radiology, two seats for Anesthesiology, two seats for Pathology, one seat for Diploma in OBST & Gynae, one seat for Diploma in Orthopedic, one seat for DLO(ENT) and one seat reserved for M.D. Medicine. It is further not disputed that for doing the aforesaid Post-Graduate diploma course, the Doctor required to have five years service and one year rural service. The

appellants/defendants have placed on record one order recommending the names of various Doctors against 10 permanent posts of HCMS II and posted at Medical College, Rohtak for undergoing training of one year which is Ex.DW1/D. In this order there are names of doctors who were recommend for the aforesaid course. Against one seat of Diploma in Orthopedic, name of Dr. Ramesh Chander Bhutani was recommended, which is mentioned at serial No. 10.

The respondent/plaintiff has based his claim on letter dated 10.04.1980 Ex.DW1/C. I have carefully gone through the contents of said letter vide which the shortfall of 11 days in rural service was considered as negligible and it was presumed that he fulfill the condition of rural service of one year. As per clause 4, four conditions were imposed for undergoing Post-Graduate diploma course that in case the said candidate was selected for the course then he will serve the department for a minimum period of three years or he will deposit Rs. 10,000/- with the treasury. As per the second condition, during the period of said course he will not claim any salary, allowance etc. without the prior approval of the Government. Thirdly, that after doing the said course he will not claim any preference for promotion out of the way and lastly, the candidate will apply for leave for doing the said course. The letter issued by the Director Health Services, Haryana, Chandigarh dated 14.05.1980 is Ex.DW1/E. As per these conditions, the respondent/plaintiff applied for leave. The leave application is Ex.DW1/A. The said leave was accordingly recommended and the letter in this regard is Ex.DW1/B. The leave was sanctioned as per letter Ex.DW2/A. After completion of course, the joining letter dated 14.07.1981 is Ex.PW5/4.

The aforesaid record clearly indicates that the

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respondent/plaintiff was given no objection for doing the Post-Graduate diploma course for the session 1980-81 on an open seat by applying leave from the department as per the rules. The conditions which were imposed by the Government on the respondent/plaintiff were duly acceptable to him. He accordingly applied for leave for doing the course and thereafter, joined his duty. It cannot be ignored that there was only one seat earmarked for doing Diploma in Orthopedic, for which the name of Dr. Ramesh Chander Bhutani was recommended. Therefore, against said one post for Diploma in Orthopedic, the names of two doctors could not have been recommended. He was permitted for doing the said course on open seat which he candidly accepted.

The respondent/plaintiff started giving representations claiming benefits for doing the Post-Graduate diploma course for the session 1980-81 in the year 1995. Thereafter, he served legal notice dated 15.07.1996 under Section 80 CPC which is Ex.PW5/1 and ultimately filed the civil suit on 19.02.1997. The record indicates that the Government afforded opportunity to the respondent/plaintiff by permitting him to do the said Post-Graduate diploma course against open seat by applying leave as per the Government rules. After availing the said facility, he remained silent for years together and after a lapse of about 15 years, he started giving representations to the Department seeking consequential benefits. The respondent/plaintiff did not institute any case within a reasonable time challenging the conditions which were imposed upon him by the department. Therefore, he is estopped from challenging the conditions which were imposed upon him for doing the said course by his own act and conduct after the lapse of so many years. He cannot derive any benefit from the judgment or any order which is in favour of other Doctors. As

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referred above, name of Dr. Ramesh Chander Bhutani was recommended against the seat of Diploma for Orthopedic. Therefore, it cannot be expected that the name of present respondent/plaintiff will also be considered against the same seat. The suit filed by the respondent/plaintiff after a period of more than 15 years is hopelessly barred by limitation. The findings of the Courts below on Issues No. 1 to 3 and 6 are not justified and the same are reversed. The aforesaid facts were not considered by the learned First Appellate Court while passing the impugned judgment and decree dated 10.03.2000 vide which the appeal was declined and the judgment and decree dated 02.09.1999 passed by the learned Additional Civil Judge (Senior Division), Gurgaon was upheld.

Considering the aforesaid factual position, I find merits in the appeal preferred by the appellants/defendants No. 1 to 3 and the judgment and decree passed by the two Courts below are accordingly, set aside and the suit filed by the respondent/plaintiff seeking declaration is dismissed and resultantly, the Regular Second Appeal preferred by the appellants/defendants is accordingly, allowed.

Pending application(s) if any, shall stand(s) disposed of.

The photocopy of record received from the Courts below be sent back to the concerned quarters.

19.12.2023

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(AMARJOT BHATTI)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes
Yes/No