



**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

O.A. No.060/517/2020

Chandigarh, this the 04th June of 2021

HON'BLE MR. ASHISH KALIA, MEMBER (J)
HON'BLE MR. RAKESH KUMAR GUPTA, MEMBER (A)

Mohini Sachdeva D/o Rakesh Kumar Sachdeva R/o G-605, Indian Oil Apartment, C-58/23, Sector-62, Noida, having completed post graduate course of Masters of Surgery (Obstetrics & Gynaecology) at Vardhman Mahavir Medical College & Safdarjung Hospital of Guru Gobind Singh Indraprastha University.

....Applicant

(BY: Mr. Milind Garg, Advocate)

Versus

POSTGRADUATE INSTITUTE OF MEDICAL EDUCATION AND RESEARCH (PGIMER), CHANDIGARH THROUGH ITS DIRECTOR, ADDRESS AT: MADHYA MARG, SECTOR 12, CHANDIGARH-160012.

... Respondents

(BY: Mr. Alok Kumar Jain, Senior Advocate
with Mr. Pratik Gupta, Advocate &
Mr. Mahinder Singh, Administrative Officer)

O R D E R(Oral)

ASHISH KALIA, MEMBER (J):

By way of the present O.A., the applicant has sought the following relief.

"Direct the Respondent to offer the Appointment Letter to the Applicant with immediate effect ensuring the effect of Regulation 34 of Postgraduate Institute of



Medical Education and Research, Chandigarh, Regulations, 1967 in supplement to the order dated 25.07.2020 having reference no. F11199/EI(3)-PGI-2020/SR passed by the Respondent."

2. The brief facts of the case are that an advertisement was issued by the PGI on 01.04.2020 for filling up 102 posts of Senior Residents, 04 posts of Senior Medical Officers (Casualty in Emergency) and 12 posts of Jr/Sr. Demonstrators in different specialities in PGIMER Chandigarh; 14 posts of Senior Residents, 07 posts of Demonstrators in different specialities in All India Institute of Medical Sciences (AIIMS), Bathinda, Punjab and 13 posts of Senior Residents, 07 posts of Demonstrators in different specialities in All India Institute of Medical Sciences (AIIMS) Bilaspur, Himachal Pradesh for a maximum period up to 03 years. The opening date for online registration was fixed by the respondents as 04.04.2020, closing date as 26.04.2020 and the Computer Based Test (CBT) for 75 marks was scheduled for 29.05.2020. The eligibility criteria was as follows: -

- (i) Candidates who have completed three years tenure of Senior Residency and have done DM/M.Ch. are not eligible for the post of Senior Resident.



- (ii) Age will be counted as on the closing date of inviting online applications i.e. 26.04.2020. Overage candidates need not apply.
- (iii) A candidate applying for these posts should have a valid qualification (pass certificate) as on 30th June, 2020. However, candidates, who are to appear for their final examination in the month of June, 2020 also eligible, subject to the condition that they should obtain their final qualifying degree (pass certificate) and submit the same before 30th June, 2020. However, the candidates whose result will be declared after 30th June, 2020 or who will fail to produce valid pass certificate in support of their 'Essential Qualification' degree as on 30th June, 2020 are 'Not Eligible' for this exam.

This examination was held on indicated date(s) in different cities of India.

3. The applicant was then the final year student of Master of Surgery (Obstetrics & Gynaecology) programme of three years duration at Vardhman Mahavir Medical College & Safdarjung Hospital of Guru Gobind Singh Indraprastha University, whose proposed theory and practical annual



examination was scheduled to be held in the month of April 2020 and May 2020 respectively, by virtue of notice published in the university website on 16.03.2020 for all the scheduled examinations (Theory & Practical) for MD/MS/Diploma programmes. The applicant had applied for this post of Senior Resident being eligible and he got first rank in the select list of AIIMS, Bathinda as per result dated 7.7.2020 (Annexure A-8).

4. The recruitment cell of the respondents, vide letter dated 09.05.2020 had postponed the last date of submission of online application to 03.05.2020 and then to 15.05.2020 due to country-wide vide Covid-19 situation. However, the computer based test scheduled for 29.05.2020 was also postponed till further orders.

5. Learned counsel for the applicant further submitted that the curriculum of April, 2020 and May 2020 has been changed due to covid situation. In the month of June –July, 2020 as per the date schedule, the examination was held at Guru Gobind Singh Indraprastha University. It is further submitted that the respondents had fixed the date for verification of the certificates as 10.07.2020. As per the recruitment guidelines, the applicant reported to the respondent at 9.30 am for verification of original certificates/testimonial. She sought leave of the respondent



to submit pass certificate of MS (Obstetrics & Gynaecology), which was to be issued by the University after declaration of result, on 16.07.2020 and passing of certificate which was to be issued on 20.07.2020. Despite this, the result was declared and two candidates Dr. Manika and Dr Saraswati Kushwah, whose result was declared on 14.07.2020, were offered appointment letters. Learned counsel has alleged discrimination against the applicant in offer of appointment. She seeks parity with the aforesaid two candidates.

6. Notices were issued to the respondents. The respondents have filed a detailed reply.

7. Mr. Alok Kumar Jain Sr. Advocate along with Mr. Prateek Gupta, Advocate and Mr. Mahinder Singh, Administrative Officer has put in appearance on behalf of the respondents. They have apprised this Tribunal about the various facts of the case and have drawn our attention to the detailed reply filed by the respondents. It is submitted in the written statement that the applicant has basically raised a grievance against the fixation of cut off date as 30.06.2020 by which the candidates should have had a valid qualification (pass certificate) in MD/MS for being eligible for the post in question. It is further stated that the grievance of the applicant is that since the date for submission of online application form, computer based test which is for 75 marks



and dates for short listing of the candidates and eligibility notice were extended, therefore, the cut off date fixed by them as 30.6.2020 should have also been extended.

8. It has been further submitted by the respondents in the written statement that due to outbreak of the Covid-19 and the accompanying restrictions in India, examination of various medical institutes were deferred due to which result could not be declared by the due date i.e. 30.06.2020. The respondents, being aware of such scenario, took the decision on 24.07.2020 to consider the eligibility of the candidates for the appointment of senior residents who had either appeared in their examinations before 30.06.2020 and/or their result had been declared till the date of verification of the certificate i.e. 10.07.2020. It is stated that despite the extension of the cut off date from 30.06.2020 to 10.07.2020, the applicant could not produce her pass certificate from Guru Gobind Singh Indraprasth University, New Delhi even by 10.7.2020. The applicant's result was declared on 20.07.2020 which is much after the extended cut-off date of 10.07.2020 and as such she has rightly not been declared eligible.

9. In the written statement, it is further stated that in order to maintain transparency and also to make the appointments in terms of the advertisement dated 01.04.2020, the respondents extended the cut-off date, in



the prevailing facts and circumstances of the case due to covid-19 situation upto 10.7.2020. However, the respondent cannot be expected to extend the cut-off date time and again as the same would create more confusion and uncertainty in the prevailing uncertain times. Moreover, it is settled position of law that cut-off date fixed for acquisition of qualifications on a given date have to be strictly adhered to in order to maintain transparency in the selection process.

10. It is submitted that the applicant herein has raised questions on the appointment of Dr. Monica and Dr. Saraswati Kushwah by contending that they have been granted appointment despite the facts that their result too was declared by Punjab University on 14.07.2020. In response to the same it is submitted that the result of the said two candidates was declared by Punjab University confidentially on 09.07.2020 as the confidential provisional pass certificate was issued by the Punjab University and duly conveyed to the respondents before the cut-off date of 10.07.2020. It is, therefore, erroneous for the applicant to contend that the said two candidates Dr. Monica and Dr. Saraswati Kushwah have been favoured for appointment in contravention of the terms and conditions.

11. The respondents have raised objection that the two selected candidates have not been impleaded as respondents



to the present O.A. and therefore, the same is bad for non-joinder of necessary parties. The applicant had also preferred Miscellaneous Application No. 775 of 2020 seeking interim directions for preserving a seat in her name. The applicant in the said application has stated at paragraph 6 that the issue of vires of the condition for submission of the MD/MS pass certificate declaring him/her passed on or before 30.06.2020 was pending before this Tribunal and offer of appointment to candidates whose result was declared on 14.7.2020 thereby construing as if date got extended. However, the issue of challenge to the vires of any rule, provision, and condition is a jurisdiction which can be exercised by Hon'ble Supreme Court under Article 32 and Hon'ble High Court under Article 226 of the Constitution of India. Even otherwise the issue of the validity of cut off date would not arise for consideration as the same already stands extended up to 10.07.2020 vide Annexure R-1.

12. It is further stated that the applicant has selectively disclosed the corrigendum/notice dated 21.04.2020 (Annexure A-4) and corrigendum dated 09.05.2020 (Annexure A-5) without disclosing the subsequent corrigendum dated 30.05.2020 and 27.05.2020 with respect to extension of dates. It is submitted that the online CBT was thereafter fixed for 21.06.2020 (revised from earlier



date of 29.05.2020) The final result was declared on 27.06.2020. The eligibility notice was issued on 29.06.2020. The departmental interview and assessment were held on 01.07.2020 and 02.07.2020 in which the applicant had participated. Thereafter the result was declared on 07.07.2020 and the applicant was selected at AIIMS Bhatinda in Obst and Gynae subject to submission of MD/MS degree/pass certificate declaring her passed on or before 30.06.2020. It is reiterated that the cut off date of 30.06.2020 was extended upto 10.07.2020 as mentioned in Annexure R-1.

13. Heard learned counsel for the parties at length.

14. The points raised in this O.A. for consideration of this Bench are as follow:

- (i) Whether this case is not maintainable for non-joinder of necessary parties?
- (ii) Whether the cut-off date for submission of pass certificate as 30.06.2020 can be changed by the respondents?
- (iii) Whether there is any discrimination against the applicant by the respondents while offering appointment to other candidates, whose result was declared on 14.07.2020 and denying such



appointment to applicant whose result was declared on 16.06.2020?

(iv) Whether the applicant is entitled for consideration for appointment to the post of Sr. Resident or not?

15. In so far as issue no. (i) is concerned, the learned counsel for the applicant has cited a judgment of the Hon'ble Supreme Court in the case of **General Manager South Central Railways Secundrabad & Another Vs. A.V.R. Siddanti & others**, 1974 SCC (4) 355, in support of his submission that since the applicant is challenging the cut-off date fixed by the respondents as 30.06.2020 and the relief claimed is basically against the Department and not against any particular individual, therefore, the candidates selected for the post are not necessary parties to be impleaded in the present O.A. In view of this, point is decided in favour of the applicant. As such, the objection raised by the respondent regarding non-joinder of necessary parties is hereby rejected.

16. Now coming to issues no. (ii) and (iii) as both are inter-connected, whether the cut-off date can be changed or not and there is any discrimination against the applicant. In this regard Mr. Alok Jain, Sr. Advocate, for the respondents has deeply argued that this is not the job of the Court/Tribunal to interfere



with the cut-off dates fixed by the department. It is within the pure domain of the executive to fix the cut-off date for eligibility of candidates and they have only followed the past practice in extending the date once.

17. On the contrary, learned counsel for the applicant has controverted the stand taken by the respondents that two candidates have been considered and selected for the post whose result was declared on 14.07.2020 officially that is after the cut-off date and as such similar treatment cannot be denied to the applicant.

18. After considering the submissions of both sides on this issue, we are also of the view that ordinarily the Court/Tribunal cannot interfere with the cut off date fixed by the respondents, as per the settled law. However, in the present case, the cut-off date has been changed by the respondents themselves from 30.06.2020 to 10.07.2020 without giving any justification. All Universities have not declared the result by 30.06.2020 but they have not considered the case of the applicant because it was not declared on or before the cut off date of 30.06.2020, as mentioned by them in all the correspondence. Ideally they should have mentioned cut off date of 10.07.2020 in those communications, which they have not done. It is surprising that a new term has been used by them that Punjab University declared result on 9th July, 2020 confidentially/internally even



though formal result was declared after cut off date. This is unheard of and is sheer discrimination against applicant and other similar situated candidates and does not sound reasonable. In view of this, the changing the cut off date is not sustainable in the eyes of law and is liable to be set aside. Accordingly, we hold this issue against the respondents and in favour of the applicant and that she deserves the same treatment as given to other two candidates, whose results were declared after the cut off date and who have been considered and given appointment. Their final result was declared on 14.07.2020 and it was construed as if their pass certificates were issued before 10.07.2020 which is not the fact. Normally the cut off date should not be changed as held by the various Courts in numerous judgments that the "Rules of the game" cannot be changed after the game has been started. But, if respondents choose to change or extend the cut-off date, then some criteria has to be adopted so that a decision seems to be rational, logical and beyond the doubt of favouritism but the same has been missing here.

19. In the present case, the respondents have given the sole reason for changing the cut-off date is that in the present covid-19 situation country wide, various universities have not been able to declare the result because of shortage of sufficient manpower etc. Be that as it may, before non-consideration of



the result of the candidates, this matter has went into the Legal Department of the respondents and the legal departmental has given its opinion on 21.07.2020 and Id. Dean has taken a decision on 24.7.2020 in favour of those candidates whose results were notified after 10.6.2020 but were considered and cut off date is fixed 10.7.2020 confidentially result communicated to the respondents , as per Annexure R-2 with MA No. 1015/2020. The learned Dean of the PGI has opined as under:

“Due to covid pandemic and subsequent imposition of curfew/lockdown in the different parts of the country, resulting delay in conduct of examination of various courses, the Institute has also faced similar situation, through with the help of various govt authorities (especially Baba Farid Medical University) and wisdom of our administrative authorities/faculty, the Institute has been able to complete the examination in time.

In the first week of April 2020, the Institute has published the advertisement for filling up of various posts of Senior Residents in the Institute. The last date of filling the applications was 26.04.2020. In one of the clauses of the advertisement, the candidate

“Should have a valid qualification (pass certificate) as on 30th June 2020. However, candidates, who are to appear for their final examination in the month of June, 2020 are also eligible subject to the condition that they should obtain their final qualifying degree (pass certificate) and submit the same before 30th June 2020. However, the candidates whose result will be declared after 30th June 2020 or who will fail to produce valid pass certificate in support of their Essential Qualification’ degree as on 30th June 2020 are ‘NOT ELIGIBLE’



Further, it has been observed from the preceding note-sheets that in the past institute has been declaring/notifying the result of MD/MS and DM/MCh courses on 1st/2nd day of January and July i.e. after completion of MD/MS and DM/MCh courses on 30th June and 31st December respectively. This year also the competent authority has approved the result on 29-30.06.2020. However, the training branch notified the result on 02.07.2020 as per past practice.

As evident from the opinion of the Ld. Dean, because the medical institutions could not declare the result by the due date i.e. 30.06.2020, it would be in the fitness of things to consider the eligibility of the candidates in the extra ordinary situation for the appointment of Sr. Residents either who have appeared in their examination before 30th June, 2020 and/or their result has been declared till the date of verification of certificates I.e. 10.07.2020 so that the institute may get candidates on merit and bright students may not suffer."

20. During the course of this note, the learned Dean has taken a magnanimous view that the meritorious candidates, whose result was not declared because of covid-19 situation country wide, may be treated as eligible if they submit their pass- certificate by 10th July so that Institute may get bright and meritorious candidates. Unfortunately, it has escaped the notice of the learned Dean that the applicant is also meritorious one as she stood at rank no. 1 in the select list but she was not given the similar treatment as her result was declared on 16.7.2020 and for the reasons beyond her control i.e. the declaration of result after 10th July, she has not been able to produce the pass certificate on or before that date.



21. The learned counsel for the applicant has submitted that there is rationale behind the fixation of date as 10.07.2020 because some of the candidates of Punjab University were able to get their result confidentially. If we take note of this letter /noting dated 24.07.2020 which is back-dated decision, we are of the view that non consideration of the applicant is prima facie not only biased but also arbitrary and discriminatory and thus, bad in law. When the respondents have chosen to extend the cut off date as 10.07.2020 they should have fixed the date after taking into consideration at-least the candidates who were on top of the list as the intention was to have meritorious and bright candidates because of the extraordinary situation covid-19 was for everybody not only for the candidates of Punjab University.

22. Accordingly, we hereby decide both these issues (ii) and (iii) in favour of the applicant and against the respondents. We hold that the decision of the respondents to fix the cut off date as 10.07.2020 is arbitrary and not sustainable in the eyes of law and is hereby set aside. The inaction/ non consideration of the applicant for the post of Senior Resident is held to be discriminatory.



23. In view of our aforesaid findings in favour of the applicant, the issue at (iv) is also decided in favour of the applicant.

24. Accordingly, the respondents are directed to consider the candidature of the applicant immediately for selection to the post of Sr. Resident, if she is otherwise suitable for the said post. This exercise should be completed within a period of 30 days from the date of receipt of certified copy of this order.

25. With the above observations, the O.A. stands disposed of. However, there shall be no order as to costs.

26. All connected M.As shall also stand disposed of accordingly.


(RAKESH KUMAR GUPTA)
MEMBER (A)

(ASHISH KALIA)
MEMBER (J)

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