

can it be deduced that mere pendency of civil suit constitutes a bar to criminal proceedings being continued against the person accused even though the cause of action may be the same.

(12) As mentioned earlier, all these precedents are distinguishable from the facts of the present case and cannot, therefore, advance the case of the respondent.

(13) There can, thus, be no escape from the conclusion that the trial Court clearly fell in error in staying the criminal proceedings against Leena Rani and Kailash Rani. The impugned order is, consequently, hereby set aside with the direction that the proceedings in the criminal case against these two respondents be taken up forthwith and be finalised as expeditiously as possible.

(14) Let a copy of this order be sent to the Senior Superintendent of Police, Ludhiana, for information and necessary action.

J.S.T.

Before : N. K. Sodhi, J.

DR. SATISH KUMAR GUPTA AND OTHERS,—*Petitioners.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ petition No. 822 of 1988

17th September, 1991.

Constitution of India, 1950—Art. 14 and 226—Salary admissible to P.C.M.S. Class II doctors for the duration of Post-Graduate Courses—Change in Government Policy—Doctors with five years or more service to their credit granted full salary—However, doctors having 3 to 5 years service entitled to fixed stipend of Rs. 1,200 P.M. for duration of Post-Graduate course—Classification of pay on the basis of length of service is discriminatory and violative of Art. 14—Both categories of doctors form a single class—Petitioner held entitled to full salary.

Held, that all the P.C.M.S. Class II officers who are selected for the Post-Graduate Courses come to form a class by themselves and it is not open to the State Government to further classify them on the basis of the length of their service for the purpose of allowing full salary to those who had five years or more service to their credit

and deny the same to those with lesser service. This further classification has in my opinion no rationale behind it and is not founded on any intelligible differentia which could distinguish the doctors with five years or more service from those having less than five years service. When all relevant considerations are the same as in the instant case, persons holding identical posts of P.C.M.S. Class II and having been admitted to the Post Graduate Courses for the purpose of improving their educational qualifications cannot be treated differently in the matter of pay for the duration of the Course solely on the ground of their length of service in P.C.M.S. Class II service. The length of service in the P.C.M.S. Class II service is to my mind wholly irrelevant so far as the Post Graduate Courses are concerned. (Para 4)

Civil Writ Petition under Articles 226/227 of the Constitution of India praying that this Hon'ble Court may be pleased to send for the records of the case and after perusal be pleased to :—

- (a) *issue a Writ or any other suitable order :*
 - (i) *setting aside the impugned order, Annexure P/4 so far as it deprives the petitioners to claim salary is concerned.*
 - (ii) *directing the respondents to allow the transfer of posts held by the petitioners or any other posts to enable them to draw their salary and perks during the period of study in M.D./M.S. Course make payment of salary by creating other posts for the period of study course.*
 - (b) *issue any other suitable Writ, Order or Direction which this Hon'ble Court may deem fit in the circumstances of the case;*
 - (c) *dispense with the services of advance notices on the respondents.*
 - (d) *dispense with filing of certified copies of Annexures; And*
 - (e) *award costs of the petition in favour of the petitioners.*
- S. S. Brar, Advocate, for the Petitioners.
S. S. Saron, D.A.G. Punjab. for the Respondents.

JUDGMENT

N. K. Sodhi, J.

This judgment will dispose of a bunch of twenty-nine writ petitions as common questions of law and fact arise in them. For the sake of convenience, facts are being taken from Civil Writ Petition No. 822 of 1988.

(2) The Petitioners after passing their M.B.B.S. examination were recruited through the Punjab Public Service Commission as doctors in the Punjab Medical Service Class II and by the time the present writ petition was filed, they had about 3 to 5 years of service to their credit. While they were serving as P.C.M.S. Class II officers, the Principal, Government Medical College, Amritsar through an admission notice published in the press invited applications for joint admission to Post Graduate Medical Degree/Diploma Courses in the Punjab State Medical Colleges at Amritsar and Patiala. As per this admission notice, 60 per cent of the seats available were to be first filled up from amongst the Registrars/Demonstrators and the remaining seats if available, were to be offered to P.C.M.S. Class II officers. The other 40 per cent seats, according to the notice, were required to be filled up strictly on merit from fresh candidates, P.C.M.S. Class II officers and Registrars/Demonstrators. The P.C.M.S. Class II officers who had served the State for a minimum period of three years with rural/regular service alone were eligible for admission to the Post Graduate Medical Degree/Diploma Courses. The P.C.M.S. Class II doctors who were selected against the 40 per cent quota and who had not served the State for a minimum period of three years in rural/regular service were required to resign from their service to join the Post Graduate Courses. All those who were selected and were in government service were required to produce a 'No Objection Certificate' from the Director, Health & Family Welfare, Punjab, Chandigarh. The petitioners who were working as P.C.M.S. Class II doctors applied for the admission to the Post-Graduate Courses and were selected on July 31, 1987. According to the policy of the State Government then prevalent as is discernible from the letter dated March 21, 1985 from the Under Secretary, Health Government of Punjab, Department of Health & Family Welfare to the Director, Research & Medical Education, Punjab (Annexure P. 2 with the writ petition), the P.C.M.S. Class II posts were being transferred to the Medical Colleges in the State to the extent of the doctors who were selected for doing their Post Graduate Courses to enable them to draw their full salary as P.C.M.S. Class II officers for the period of the duration of the Course i.e. for one year for those doctors who did their Diploma and for two years for those who did their Master of Medicines/Master of Surgery. This policy took effect from 1st April, 1985. Soon after the petitioners got selected for the Post Graduate Courses, the State Government changed its policy and this changed policy was communicated,—*vide* letter dated August 3, 1987 (Annexure P4 with the writ petition) by the State Government to the Director, Research & Medical Education, Punjab and Director,

Health & Family Welfare, Punjab. The changed policy of the State Government was as under :—

- (a) All P.C.M.S.-II Doctors who have served the State for a period of 5 years including three years as rural service on selection for admission to P.G. Courses be given full pay during the permissible period of the course.
 - (b) All P.C.M.S.-II Doctors admitted against 40 per cent quota or nominated by the Punjab Government will be entitled to full pay and allowances if they fulfil the condition as in para-I, above. The P.C.M.S.-II Doctors who have got less than 5 years service or have not done rural service of 3 years, and admitted against 40 per cent quota will be entitled to leave without pay and will be eligible to receive Rs. 1,200 P.M. (fixed) as stipend.
 - (c) Any P.C.M.S.-II Doctors who has done more than 5 years service but has not done rural service for 3 years, admitted in any category will be entitled to study leave as per rules.
 - (d) The Medical Officers who are granted full pay or given leave without pay plus stipend will have to execute the bond to serve the State Government as per previous practice.
 - (e) The Medical Officers who are to be paid full pay and allowances are to be adjusted against leave reserve and training seats in respective Medical Colleges and if the same are not available they will be entitled to study leave.
 - (f) Doctors selected for P. G. Courses in the Session January, 1987 with two years rural service will also be given full pay during the period of the course.
2. It was also decided that these decisions excepting (f) will take effect from the Session July, 1987. You are, therefore, requested to kindly take immediate necessary action in the matter accordingly.”

(3) It is this changed policy that has been challenged in the present writ petitions.

(4) The common grievance of the petitioners in all these petitions is that the changed policy of the State Government is discriminatory and violative of Article 14 of the Constitution. I find force in this submission. It will be seen that by the changed policy, the State Government has decided that all those P.C.M.S. Class II doctors who had 3 years or more service but less than 5 years service would be entitled to receive only a fixed stipend of Rs. 1,200 per month, whereas those having 5 years or more service to their credit as P.C.M.S. Class II officers would alone be entitled to full pay for the duration of the Post Graduate Course. It is an established fundamental rule that Article 14 of the Constitution forbids class legislation but permits only reasonable classification which must satisfy the twin tests of classification being founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and that differential must have a rational nexus to the object sought to be achieved by the Statute or State action in question. Legislative and executive action could accordingly be sustained if they satisfy the twin tests of reasonable classification and rational principle co-relates to the object sought to be achieved. The State will, therefore, have to affirmatively satisfy this Court that the twin tests are satisfied in the present case. The tests can only be satisfied if the State establishes not only the rational principles on which the classification is founded but co-relates it to the object sought to be achieved. The object of allowing the P.C.M.S. Class II doctors to seek admission in the Post Graduate Course is to enable them to improve their educational qualifications so that they are able to serve the State and the Public in general as better qualified doctors in the Primary Health Centres, Rural Dispensaries and other hospitals where they are posted. To ensure that the P.C.M.S. Class II officers after improving their qualifications do not leave the service of the State Government, each one of them irrespective of his length of service is required to execute a bond whereby he undertakes to serve the State Government for a fixed period which is not less than five years after completion of his Post Graduate Course. All the P.C.M.S. Class II officers who are selected for the Post Graduate Courses come to form a class by themselves and it is not open to the State Government to further classify them on the basis of the length of their service for the purpose of allowing full salary to those who had five years or more service to their credit and deny the same to those with lesser service. This further classification has in my opinion no rationale behind it and is not founded on any intelligible differentia which could distinguish the doctors with five years or more service from those having less than five years service. When all relevant considerations are the same as in

the instant case, persons holding identical posts of P.C.M.S. Class II and having been admitted to the Post Graduate Courses for the purpose of improving their educational qualifications cannot be treated differently in the matter of pay for the duration of the Course solely on the ground of their length of service in P.C.M.S. Class II service. The length of service in the P.C.M.S. Class II service is to my mind wholly irrelevant so far as the Post Graduate Courses are concerned. Against, the doctors who were selected for the Post Graduate Courses in January, 1987 Session and have two years of rural service to their credit have also been given full pay during the period of the Course whereas it is denied to the doctors who joined in any subsequent session. There is no rationale behind this either. The Changed policy of the State Government is, therefore, discriminatory, violative of Article 14 of the Constitution and cannot be sustained.

Before concluding, it may be mentioned that counsel for the petitioners raised some other contentions as well which were peculiar to their cases but in view of the fact that my finding is that the changed policy of the State Government is discriminatory, it is not necessary to refer to those contentions.

In the result, the writ petitions are allowed and the decision of the State Government contained in Annexure P4 with the writ petition is quashed to the extent to which it denies to the P.C.M.S. Class II doctors with less than five years service their full pay during the period of the Post Graduate Course. The State Government is, thus, directed to pay to all the P.C.M.S. Class II officers their full pay for the duration of the Post Graduate Course, if not already paid. The petitioners shall have their costs which are assessed at Rs. 500 in each petition.

J.S.T.

Before : J. S. Sekhon, J.

HAKAM SINGH AND OTHERS.—Petitioner.

versus

THE STATE OF PUNJAB.—Respondent.

Criminal Misc. 8261-M of 1992.

Criminal Procedure Code (II of 1974)—Ss. 204 and 438(3)—Anticipatory bail—Magistrate can issue under section 204 either bailable