
(1985) 10 DEL CK 0003
In the Delhi High Court
Case No : C.W. No. 2268 of 1985

Anita Mahajan and Others	Vs	APPELLANT
Delhi Administration and Others		RESPONDENT

Date of Decision : 11-10-1985

Acts Referred:

Citation : AIR 1986 Delhi 214 : (1986) 29 DLT 113

Hon'ble Judges : R.N. Aggarwal, J;M. Sharief-ud-din, J

Bench : Division Bench

Advocate : A.S. Ahluwalia and Rajiv Chauhan, for the Appellant; H.K. Puri and P.P. Singh, for the Respondent

Final Decision : Allowed

Judgement

Malik Sharief-Ud-Din, J.—This petition raises a very short issue though of fundamental importance to the petitioners. It is not disputed that respondent No. 4, Central Council of Homoeopathy is a statutory authority competent to frame regulations about the courses and period of practical training to be undertaking the subjects of examinations and the standards of proficiency therein to be obtained etc. and as such had issued notifications No. 7-1/83/CCH dated 11th May 1983 incorporating the Homoeopathy (Degree Course) Regulations, 1983 published in the Government of India Gazette, Extra Ordinary, part III, Section 4, of 11th May 1983.

2. The petitioners are undergoing the Bachelor of Homoeopathy Medicine and Surgery (hereinafter referred as "BHMS") Degree course at the College, respondent No. 2, Nehru Homoeopathic Medical College and Hospital (hereinafter to be called NHMC). Four examinations are held for passions BHMS-first after 18 months course of study and the second, third and fourth after 12 months course of study in each. The fourth is the (sic) Degree Examination. this is followed by 12 months of compulsory inter-ship.

3. Common case of the parties is that in order to pass respective BHMS

examinations a student must pass in all subjects of each examination in terms and according to the pass marks stated in regulations as mentioned below:

1st BHMS Examination:

"Pass marks in all subjects both Homeopathic and allied medical subjects shall be 50% in each part (written, oral and practical)."

IIInd BHMS Examination:

"Pass marks in all subjects, Homeopathic and allied medical subjects shall be 50% in each part (written, oral and practical)."

IIIrd BHMS Examination:

"Pass marks in all subjects both Homeopathic and allied medical subjects shall be 50% in each part (written, oral and practical)."

IVth (Final) BHMS Examination:

"Pass marks in all subjects, both Homeopathic and allied medical subjects shall be 50% in each subject."

4. The case of the petitioners is that from the regulation it is clear that for the first three examinations the requirements of 50% marks is in each part of the subject i.e., written, oral and practical. According to them the regulations, however, provide that last year (4th and final year) the pass marks required shall be 50% in each subject. Their case further is that until the completion of the 4th BHMS examination held in June 1985, and including the last 4th BHMS examination held in June 1984, and its Supplementary Examination held in October 1984, the pass marks were 50% in each subject, although the mark-sheet showed separate marks under written, oral/practical. Respondent No. 3 irrespective of the marks obtained by the student in each part declaring the student as having passed, if an aggregate of 50% marks were obtained in each subject. In this connection the respondents have placed on record Annexure A-1 to Annexures A-7 indicating that this was the interpretation placed on the regulations by respondent No. 3 for passing the 4th BHMS examination.

5. The petitioners appeared in the 4th BHMS examination in June 1985 and after completing it and before the results were declared, the Board (respondent No. 3) illegally, arbitrarily, unfairly and inequitably declared to pass only such students who obtained 50% marks in each part of the subject, and not in the subject as a whole, and this action on the part of the Board has resulted in the petitioners having been declared failed in the 4th (final) BHMS examination held in June 1985, despite the fact that they did obtain 50% marks in each subject and they should have been declared passed as per regulations.

6. At this stage we find it necessary to refer to a chart given at page 28 of the petition, Annexure "B". This is in respect of the petitioners showing the marks obtained by them in each subject, both theory and practical and the aggregate

thereof. We may reproduce it below:

Chart showing marks obtained by the petitioners in the subject due to which they have been illegally failed:

Sl. Name Sub. Theory Pract./ Total No. I II Oral

1. Anita Mahajan M.M. 50 43(93) 60-65 208 2. Janki Rangaswamy M.M. 50 39(89) 60-50 199 3. Jyoti Deshpande M.M. 50 33(83) 55-60 198 4. Krishna Banerjee M.M. 54 42(96) 60-50 206 5. Neelu Sachdeva M.M. 51 46(97) 60-55 212 6. Parveen Narang M.M. 50 41(91) 60-50 201 Rep. 43 -- 30-35 108 7. Parminder Sachdeva M.M. 58 38(96) 65-55 216 8. Pradeep Kumar Gupta M.M. 48 41(89) 60-50 199 Med. 51 62(113) 50-40 203 9. Sangita Dani M.M. 50 42(92) 60-60 212 10. Sangeeta Chawla M.M. 51 22(73) 65-60 198 11. Sangeeta Mittal M.M. 50 43(93) 65-65 223 12. Sneha Chaudhary M.M. 50 39(89) 65-60 214 13. Sachindra Sachdeva M.M. 50 41(91) 65-55 211 14. Shyam Kumar Med. 32 55(87) 70-60 217 Rep. 42 -- 30-30 102 15. Rashmi Mehra M.M. 50 45(95) 60-58 213 Note: M.M. stands for Materla Medina

Rep. stands for Repertory

Med. stands for Medicine.

7. We have also seen Annexure A-1 to Annexures A-7 pertaining to results of 1984 including two annexures in respect of Roll No. 5018 and Roll No. 5023 pertaining to the Supplementary Examination of 1985. These annexures support the contention of the petitioners that the rule in respect of 4th BHMS examination was interpreted in the manner as indicated by the petitioners.

8. We would also like to notice at this stage that on behalf of respondent No. 3, Board of Homeopathic Systems of Medicine, a letter No. BHS/Deg/7/85/Delhi/1182 dated 13-8-85 seeking some clarification was addressed to respondent No. 4 and the Registrar of respondent No. 4 vide his letter No. 14-2/85-CCH dated 14th August 1985 while clarifying the issue wrote to respondent o. 3 as under:

"I am to say that a candidate should secure passing marks 50% in theory and 50% in aggregate in both oral and practical in the subjects of Ist, IInd, IIIrd and IVth BHMS examinations. The oral examination in part of practical examination and marks in both oral and practical shall be counted 50% jointly."

9. In their rejoinder at page 2 running page 47 the petitioners have alleged that even in 1985 examination one student Mrs. Suman Bajaj, Roll No. 6030 has been declared passed though she has not obtained 50% marks in each part. This being the position, petitioners have sought various reliefs and the most significant of them with which we are now mainly concerned being to declare the petitioners as having passed the 4th BHMS examination held in June 1985 since they have obtained 50% marks in each subject and to permit the petitioners to commence their internship period as from the due date, along with their

contemporaries who have already been declared passed.

10. After hearing the learned counsel for the parties at length we would like to make it clear that we are not interpreting regulations in respect of 4th BHMS examination. The learned counsel for respondent No. 3 has submitted that the regulation was wrongly interpreted and that is how the mistake of having declared some students having passed in the examination of 1984 as also the supplementary examination. We are of the view that regulations 10 and 11 for 4th BHMS examination have to be read together in order to get clear picture of what is actually meant by these regulations and in fact the chart appended to it does form a foundation for putting a real construction on the same. We are, however, not touching the matter on these aspects and we leave the same to respondent No. 3 to interpret it in letter and spirit if they so want. But this must be done right in the beginning of the session so that the students undergoing a training must have a clear picture in their minds as to the performance expected of them. In the present case of its own showing respondent No. 3 has put an interpretation on the regulation both in 1984 and 1985 according to which students were declared passed even though they had not obtained 50% marks in each part of the subject. This may be a mistake and we are not going into that question. We have already made it clear that respondent No. 3 is within its rights to rectify the mistakes right at the beginning of the session but petitioners cannot be allowed to suffer for the mistake committed by respondent No. 3 and since respondent No. 3 has construed this regulation in a particular manner both in 1984 and 1985 the petitioners who according to that interpretation of the rule have qualified in the 4th BHMS examination held in June 1985 cannot be allowed to suffer.

11. We, Therefore, allow this petition and direct that the petitioners be declared passed in the 4th BHMS examination held in 1985 after giving necessary grace marks to those who are entitled to these under rules and they be permitted to commence their internship period as from the due date. This order will not be applicable to petitioners 3 and 15 about whom it was conceded that they have yet to appear in the supplementary examination in one of the subjects.

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