
(2010) 04 MP CK 0026
In the Madhya Pradesh High Court
Case No : Writ Petition No. 4964 of 2010

Ashish Raj (Dr.)

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 28-04-2010

Acts Referred:

Constitution of India, 1950 — Article 14 , 51A

Medical and Dental Post Graduate Entrance Examination Rules, 2010 — Rule 1.9(1)

Citation : (2010) ILR (MP) 2061

Hon'ble Judges : Sushma Shrivastava, J;A.K. Mishra, J

Bench : Division Bench

Advocate : Arpan Pawar, for the Appellant; Purushendra Kaurav, Dy. A.G., for the Respondent

Final Decision : Dismissed

Judgement

Arun Mishra, J.—The writ petition has been filed by the Petitioner assailing the constitutional validity of Rule 19(1)(c) of M.P. Medical and Dental Post Graduate Entrance Examination Rules, 2010 {hereinafter referred to as the Rules of 2010}. The rule provides that in service candidates who have done post graduation in one subject {degree/diploma} will not be eligible for admission in another subject. It is submitted in the petition that the Petitioner completed the MBBS course in the year 1999; thereafter he joined the course of diploma in Obstetrics and Gynecology in the year 2004. He has been appointed as Assistant Surgeon through PSC on 24.9.2003. He joined the services on 28.5.2004. He has served in the rural area. The Petitioner was shown to be qualified in post graduate entrance test 2010, counseling started from 3.4.2010. The State Government has issued a sponsorship certificate dated 3.4.2010 which restricted the Petitioner to opt for only Obstetrics and Gynecology on the ground that the Petitioner is holding diploma in the same subject. The Petitioner has submitted that restriction imposed is unreasonable and arbitrary. Rule 19(1)(c) of the Rules of 2010 is unreasonable, arbitrary and discriminatory. There is no logic behind it. In cases of other candidates, the rule has been relaxed on earlier occasions. The

said rule deserves to be struck down.

2. Shri Arpan Pawar, learned Counsel for the Petitioner has submitted that Rule 19(1)(c) of the Rules of 2010 imposes unreasonable restriction by restricting the post graduation in the same subject in which diploma or degree is held. The rule illegally interferes in right to obtain education in the subject of the choice of the Petitioner hence, the same is ultra virus. He has also submitted that on earlier occasions, the rule has been relaxed and permission has been given to certain incumbents to undertake different course than the diploma or degree which was held by them. The Petitioner has been discriminated with.

3. After hearing learned Counsel for the Petitioner, we are of the opinion that there is no merit in the petition. Rule 19(1)(c) of the Rules of 2010 is quoted below:

(c) The in-service candidates, who have done Post Graduation in one subject (degree/diploma) will not be eligible for admission in another subject.

4. Admittedly, the Petitioner holds the diploma in Obstetrics and Gynecology. Thus, as per the aforesaid rule, he can undertake the MS course in Obstetrics and: Gynecology. He cannot opt for other stream of post graduation course. The rule contains reasonable restriction and cannot be said to be volatile of Article 14 of the Constitution of India, it cannot be said to be arbitrary or unreasonable provision. In case a person is having degree or diploma in a particular subject, he becomes the expert of that subject and he is known for that expertise. One cannot be expected to be expert of several subjects. A person of medicine cannot claim that he should be permitted to undertake post graduation course in surgery or vice versa. Similar is the case with other subjects. The restriction which has been imposed is considering the expertise gained while obtaining degree/diploma. It is open for the Petitioner to undertake the degree course in the same subject in which he holds the diploma. The restriction imposed is in consonance with the requirement of the medical field which requires expert of a particular field. It is unknown to the medical science that a person is having the post graduation degree of medicine and surgery or that of Obstetrics and Gynecology at the same time. It would defeat the very concept of expertise to be obtained while doing degree/diploma course in a particular subject. The rule intends that a person should become the expert of the subject which is known to him for which he has already acquired the skill by pursuing degree/diploma course.

5. Thus, the restriction which has been imposed cannot be said to be unconstitutional in any manner. Striving towards the excellence in a particular field is the fundamental duty of incumbent which has found expression under Article 51-A of the Constitution of India which is the underlying idea of Rule 19(1) (c) of the Rules of 2010. Thus, the rule cannot be said to be volatile of any of the right of the Petitioner.

6. Coming to the submission raised by the Petitioner's Counsel that the rule has been relaxed in certain other cases, however, the Counsel was unable to point

out any rule providing the relaxation to the extent claimed by the Petitioner. In case there was any violation of the rule earlier, the Petitioner cannot claim that he has been discriminated with. The plea of discrimination is available in cases of equality before law not for violating the rule and the provisions of law. Equality cannot be claimed so as to met out illegal treatment which is not permissible under the provisions of law.

7. In view of the aforesaid discussion, we find no merit in the writ petition. The same is hereby dismissed.