
(2005) 02 RAJ CK 0027

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 310 of 2004

Deepak Goyal (Dr.)

APPELLANT

Vs

University of Rajasthan and Others

RESPONDENT

Date of Decision : 28-02-2005

Acts Referred:

Citation : (2005) 2 RLW 1043 : (2005) 2 WLC 584

Hon'ble Judges : Shiv Kumar Sharma, J; Dalip Singh, J

Bench : Division Bench

Advocate : J.K. Yadav, R.N. Mathur, R.K. Goyal, Umesh Saraswat and Manish Bhandari, for the Appellant; M. Rafiq, A.A.G., R.A. Katta, B.L. Sharma, assisted by Raj Sharma and Ashok Gaur, for the Respondent

Final Decision : Dismissed

Judgement

Dalip Singh, J.—These special appeals through filed against separate judgments in (i) S.B. Civil Writ Petition No. 1676/2004 Dr. Mukesh Garg and Ors. v. State of Rajasthan and Ors. decided on 16.06.2004 and (ii) S.B. Civil Writ Petition No. 881/2004 Dr. Deepak Goyal v. University of Rajasthan decided on 25.02.2004 raise a common question, inasmuch as, a challenge has been made to the provisions contained in the Instructions issued for the Pre-P.G. Medical Examination, 2004 in so far as in the category of "in-service Doctors" who have rendered 2/3 years rural service the State Government has permitted by way of said Instructions in the eligibility clause in Annexure-1 in the writ petition of Dr. Deepak Goyal. The candidates who have worked in the rural areas continuously for three years in the service of State in the category of ad hoc/temporary appointees or on consolidated pay to be eligible as "in-service" category along with such candidates who are duly selected by the Rajasthan Public Service Commission (hereinafter referred to as "the R.P.S.C.") and holding the appointments under Rajasthan Medical and Health Service Rules, 1963 (hereinafter referred to as "the Rules of 1963") in pursuance of their selection by the R.P.S.C.

2. In nutshell, the case of the appellants is that they are in- service candidates who have been duly selected by the R.P.S.C. and are members of Rajasthan Medical and Health Service under the Rules of 1963, whereas, the candidates who are working on ad hoc/temporary basis or on consolidated pay are not such candidates who are duly selected by the R.P.S.C. and are not members of Rajasthan Medical and Health Service under the Rules of 1963. Irrespective of the fact that such candidates have rendered three years of service in rural area and they are ad hoc/temporary appointees or appointees on contract basis or on consolidated pay they could not be made eligible for the seats reserved under the Clause (b) for "in-service candidates of the Rajasthan State Medical Services."

3. The submission of the learned counsel for the appellants- petitioners is that while the State has made a reservation for in-service candidates of the Rajasthan State Medical Services, the clause providing for reservation does not postulate the inclusion of ad hoc/temporary appointees or persons appointed on consolidated pay who are not members of the Rajasthan State Medical Services and who have not been duly selected by the R.P.S.C. under the Rules of 1963, as such, in the subsequent portion of the Instructions under the eligibility clause, the inclusion of such candidates run counter to the very spirit of the former provisions in the Instructions which provides for reservation and creates the category of in-service candidates and hence, the eligibility clause referring such ad hoc/temporary appointees or persons on consolidated pay to be eligible is liable to be struck down being contrary to the main provision.

4. It would be relevant to notice some of the relevant facts before adverting to the main case itself. These cases relate to the Pre-P.G. Medical Examination, 2004 for which the Instructions or guidelines to the candidates (Annexure-1) were issued in February, 2004. The last date for the submission of forms was 10.02.2004. The Entrance Examination was conducted on 27.02.2004 and the result of the examination was declared on 28.02.2004. As per the merit list, the candidates were required to appear for counselling commencing from 27.03.2004. The appellant, Dr. Deepak Goyal (in D.B. Civil Special Appeal (Writ) No. 310/2004) filed the writ with the aforesaid challenge on 13.02.2004. The said writ petition was dismissed by the learned Single Judge by the impugned judgment dated 25.02.2004. The other appellants Dr. Mukesh Garg and six Others (in D.B. Civil Special Appeal (Writ) No. 417/2004) filed their writ petition (S.B. Civil Writ Petition No. 1676/2004) on 05.03.2004 and the appellants Dr. Rajesh Jain and Dr. Rakesh Bhatnagar (in D.B. Civil Special Appeal (Writ) No. 429/2004) filed their writ petition (S.B. Civil Writ Petition No. 1805/2004) on 23.03.2004 after declaration of the result on 28.02.2004. These writ petitions were heard together by the learned Single Judge who by the impugned judgment dated 16.06.2004 dismissed the same. Since all the writ petitions raise a common question, these appeal arising from the aforesaid two judgment dated 25.02.2004 and 16.06.2004 have been heard together with the consent of the parties.

5. We have heard learned counsel for the appellants, learned Additional Advocate General for the State, learned counsel for the University and learned counsel for the intervenors who are the candidates who have been successful on account of their being higher in merit than the appellants-petitioners and who have been granted admission to the Post Graduate courses but they belong to the category of ad hoc/temporary/appointees on the consolidated pay and who have not been selected by the R.P.S.C. in accordance with the provisions of the Rules of 1963. Since, these candidates apprehended that the judgment given by the court on the writ petitions filed by the petitioners or in their appeals could affect their rights and continuance in the course, they approached to this court by means of applications and were permitted to address the court on the point at issue.

6. Learned Additional Advocate General also apprised the court during the course of hearing that for the year 2005, the Notification inviting applications from desirous candidates seeking admission to the Post Graduate Courses in M.D./ M.S. has already been issued and the selected and successful candidates who were admitted in the course in the year 2004 have put in one years' study, therefore, it is the submission of the learned Additional Advocate General that at this late juncture, neither it would be appropriate to permit the appellants to be admitted to be courses of study and take examination along with regular batches nor it would be possible for the medical colleges to run separate classes for these candidates if they are admitted now to pursue their study and nor it would not be possible for the University to conduct a separate set of examination for such candidates. Learned Additional Advocate General has at the outset submitted that on account of the judgment of their Lordships of the Hon'ble Supreme Court given in the case of Medical Council of India Vs. Madhu Singh and Others, which requires the Medical council of India, respective State Government and the concerned Universities which are the three bodies who are concerned with the norms for admission, maintenance of the academic standard, eligibility for admission, curricula, examination, conferment of degrees and recognition of such degrees adhere to a time table/time schedule from time of inviting of applications to the holding of entrance examination, declaration of its result, consequent admission and completion of courses and in view of the directions issued by the Hon'ble Supreme Court, Medical Council of India has also written a letter on 19.11.2003 wherein the Medical Council of India has specified the last date for admission to the Post Graduate Courses from Academic Year 2004 onwards as 31st of May. This was again reiterated in the letter of Medical Council of India dated 03.01.2004 addressed to all Chief Secretaries of the State and the Universities having medical faculties that in view of the judgment of the Hon'ble Supreme Court no request for extension of last date for admissions shall be entertained. On the basis of the aforesaid, it was contended by the learned Additional Advocate General that in the present scenario when the examinations for the year 2005 have already been announced, it would not be in consonance with the directions of their Lordships of the Supreme Court contained in Madhu Singh's case (supra), to give any direction regarding the admission of appellants

in case the writ petitions and appeals were to be allowed.

7. In reply to the aforesaid, learned counsel appearing for the appellants-petitioners drew our attention to the judgment of their Lordships of the Supreme Court in *Harish Verma and Ors. v. Ajay Srivastava and Anr.* Civil Appeal No. 1807 of 2003, decided on 16.09.2003, decided on 16.09.2003 where while allowing the appeal their Lordships while setting aside the admissions given to ineligible candidates took into consideration that some delay in commencement of post-graduation studies would result into the overlapping of batches and directed that State Government should take necessary steps in consultation with the Medical Council of India to overcome the aforesaid difficulty.

8. We have considered the aforesaid submissions made at the Bar by the learned Additional Advocate General and the learned counsel appearing for the appellants-petitioners. It is no doubt true that their Lordships of Supreme Court have laid great stress while deciding *Madhu Singh's* case on the maintenance of time schedule in the matters of medical education. This has again been reiterated by their Lordships of the Supreme Court in a recent decision in the case of *Mridul Dhar (Minor) and Anr. v. Union of India and Ors.* AIR 2005 SCW 471 wherein their Lordships of the Supreme Court taking note of the fact that in spite of previous directions issued by the Hon'ble Supreme Court relating to the time schedule to the maintained for completion of admission process, the same had not been adhere by the various authorities, their Lordships have held that observance of time schedule is paramount and once again their Lordships in the aforesaid judgment have laid down the time schedule which is required to be adhere to by all the authorities.

9. It was submitted by the learned counsel for the appellants- petitioners that in *Madhu Singh's* case, their Lordships were concerned with the admission to the MBBS/BDS courses and the present one is the case of admission to the Post Graduate Courses and, as such, it is submitted by the learned counsel for the appellants-petitioners that directions in the said judgment do not apply on the case at hand. So far as this submission is concerned, the authorities viz., Medical Council of India having taken note of the said directions have taken steps by issuing the circulars of 19.11.2003 and 03.01.2004 of which a reference has been made above requiring all the State Government and the Universities to comply with the directions in terms of the judgment of their Lordships of the Supreme Court in *Madhu Singh's* case even in respect of the Post Graduate Courses and have fixed the last date of admission. The legislature has enjoined upon the medical Council of India by the Medical Council of India Act to perform certain function and issue necessary Instructions and guidelines to the respective bodies in the matters relating to the admissions to various courses and, therefore, it would not be correct to undermine the necessity for adhering to the requirement of maintaining the time schedule in this regard. So far as the judgment of their Lordships of the Supreme Court in the case of *Harish Verma* is concerned, the aforesaid case relates to the wholesale reduction of the minimum

eligibility for the admission which was contrary to the provisions contained under the Indian Medical Council Act, 1956 and the Regulations framed thereunder. It was held by their Lordships that lowering of the standards of minimum marks was beyond the scope of the State Government and the State Government could not take a decision in this behalf contrary to the guidelines laid down in the Regulations by the Medical Council of India. In the peculiar facts and circumstances of the case, as a consequence of the said judgment, the counselling was required to be done afresh and admissions were to follow thereafter. Even then their Lordships directed that State Government would be required to overcome its difficulties that it may face in consultation with the Medical Council of India.

10. In the instant case, however, it is not a case of outright flagrant violation of the norms or Regulations framed by the Medical Council of India by State Government, even if assuming that the persons holding the ad hoc/temporary appointment or appointment on consolidated pay were not duly selected by the Public Service Commission, in spite of the fact that they have rendered three years rural service are not eligible. It cannot be denied even assuming that such candidates who are not duly selected by the Public Service Commission do not strictly speaking come within the scope of in-service candidates but the fact remains that they have secured higher marks than the appellants-petitioners and stood higher in merit as so as to entitle themselves to be admitted to the Post Graduate course whereas conversely in the case of Harish Verma, candidates who did not qualify as per the standards laid down by the Medical Council of India in their case the State Government lowered the academic qualifications holding that it had the power to prescribe lower percentage of marks for in-service candidates contrary to the Regulations framed by the Medical Council of India. In the instant case, there is no such violation of any Rule or Regulation or Instruction issued by the Medical Council of India. All that has been done is to include within the category of in-service candidates persons who are serving in the State on ad hoc/temporary appointment and on consolidated pay within the eligibility clause of the Instructions. All other standards and norms which had been laid down by the Medical Council of India stand fulfilled and had not been relaxed in any manner. On the contrary, these candidates have competed with the appellants-petitioners who through have been selected by the R.P.S.C. and are members of the Rajasthan State Medical Services as per the Rules of 1963. They have appeared at the same combined competitive entrance examination but the appellants-petitioners stood lower in merit to those ad hoc/temporary employees or persons appointed on consolidated pay. In that view of the matter, in our view the judgment in Harish Verma's case does not help the appellants-petitioners as it does not apply in the facts and circumstances of the present case.

11. There is yet another impediment in so far as the appeals which arise out of the writ petitions which were filed after the examination was conducted and the result was declared on 27.02.2004 and 28.02.2004 respectively. As these

appellant- petitioners knowing fully well the criteria for selection took a chance by participating in the said examination and on being unsuccessful or having secured lesser marks they are estopped by their conduct from assailing the Instructions. A Single Bench of this Court (Hon''ble Mr. Justice Shiv Kumar Sharma) while sitting singly in the case of Dr. Ramji Sharma and Others Vs. State of Rajasthan and Others, has held in para 18 of the judgment as under:-

"18. That takes me to the other arguments advanced in regard to maintainability of the writ petitions. Undisputedly the petitioners knowing fully well criteria for selection, themselves took a chance and participated in the selection process without any protest. The issue of estoppel was considered by their Lordships of the Supreme Court extensively in Suneeta Aggarwal Vs. State of Haryana and Others, Union of India and Another Vs. N. Chandrasekharan and Another, Madan Lal and Others Vs. State of Jammu and Kashmir and Others, and Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others, and it was held that the petitioner having appeared before the selection committee without any protest and having taken a chance is estopped by conduct from challenging the selection process. It is contended on behalf of the petitioners that very process of Entrance Examination has not been assailed but the challenge is made only to the limited extent of inviting the candidates who have secured less than 50% marks therefore principle of estoppel is not applicable in the the instant cases. I do not agree with this submission looking to the prayers made in the writ petitions. The writ petitions No. 2375/2001, 2363/2001 and 3172/2001 involve a challenge to the decision of holding candidates qualified on the basis of 33% minimum pass marks for qualifying Entrance Examination whereas in writ petition No. 2555/2001 condition providing for conversion of seats reserved in favour of in-service candidates is under challenge. Knowing fully well the criteria for selection, the petitioner took a chance and participated in selection process without any protest therefore they are estopped by their conduct from assailing the instructions for the Entrance Examination and the Ordinance 278-E and 278-G."

12. A look at the aforesaid judgment would show that while relying upon the judgment of their Lordships of the Supreme Court in Suneeta Aggarwal Vs. State of Haryana and Others, Union of India and Another Vs. N. Chandrasekharan and Another, Madan Lal and Others Vs. State of Jammu and Kashmir and Others, and Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others, it was held that candidates who appeared before the selection committee and participated in the selection committee and participated in the selection process having taken a chance are estopped therein by challenging the selection process.

13. In the view of the matter, the appellants of appeal in D.B. Civil Special Appeal (Writ) No. 417/2004. Dr. Mukesh Garg and Ors. v. State of Rajasthan and Ors. and D.B. Civil Special Appeal No. 429/2004, Dr. Rajesh Jain and Anr. v. State of Rajasthan and Ors. are liable to be dismissed on the aforesaid ground as their writ petitions were filed after participating in selection process being fully

conscious about the Instructions relating to the Entrance Examination for the post Graduate courses in medicine and Post Graduate Medical Course.

14. Since, we are of the view that at this late stage, no relief can be granted to the appellants-petitioners, in view of the fact that last date for admission having already passed and the Notification in respect of the Entrance Examination for the year 2005 having already been issued by the State Government for the Academic Session 2005-06 and the Examinations for Academic Session 2004-05 being about to be held by the University and particularly in view of the requirement of adhering to the time schedule and laid down by their Lordships of the Supreme Court in the case of Madhu Singh (supra), and subsequently in the case of Mridul Dhar (supra), these three appeals are devoid of merits.

15. For these reasons, the appeals stand dismissed without any order as to costs.