
(1997) 12 RAJ CK 0017

In the Rajasthan High Court

Case No : Civil Writ Petition No. 6241 of 1994

Dr. Achyut Sharma Guleri

APPELLANT

Vs

The State and Others

RESPONDENT

Date of Decision : 05-12-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1998 Raj 250 : (1998) 2 RLW 1328 : (1998) 1 WLN 597

Hon'ble Judges : Arun Madan, J

Bench : Single Bench

Advocate : Anant Kasliwal and S.B. Srivastava, for the Appellant; A.K. Sharma, for the Respondent

Final Decision : Allowed

Judgement

Arun Madan, J.—The petitioner who is a medical graduate from the University of Rajasthan, has filed this writ petition seeking a direction to the respondent-university to compute the period of registration of the petitioner for M.D. (Microbiology) course which is of the duration for a period of three years which, according to him, should be computed w.e.f. 5-10-1991 instead of 14-11-1992 pursuant to the resolution dated 17-2-1992 of the Faculty of Medicine and Pharmaceutical University of Rajasthan, Jaipur which took the decision that a candidate who is registered as senior Demonstrator shall be granted exemption for taking entrance test for Pre P.O. study. This decision was taken by the University in larger academic interest of the candidates with a view to permit them automatic registration, after taking into consideration various communications/representations of the said candidates made to the University and also after taking into consideration the past practice prevalent in this regard. Thereafter the said decision of the Faculty of Medicine and

Pharmaceutical was also approved by the Vice-Chancellor of the Rajasthan University and also had the concurrence and approval of the Academic Council, University's Senate and syndicate respectively which is borne out from the

relevant documents placed on the record by the petitioner.

2. The facts which are relevant for deciding the controversy between the parties germane to the case, briefly stated are that the petitioner passed his MBBS examination conducted by the University of Rajasthan in the year 1988 and also completed one year rotating internship and thus became eligible for appointment to the post of senior demonstrator for the subjects i.e. Physiology/Biochemistry/ Pharmacology Anatomy/Pathology/ Microbiology/Community Medicine/ Forensic Medicine in accordance with Rajasthan Medical Service (Collegiate Branch) Rules, 1962 and as per the qualifications laid down by the University of Rajasthan for the teaching staff in the Medical Colleges under the University Ordinance 65 (VI).

3. It has been contended in the writ petition that the petitioner who was fully eligible and qualified for appointment on the post of senior demonstrator applied for regular appointment as demonstrator in Microbiology in pursuance to the advertisement published by the Rajasthan Public-Service Commission, Ajmer (for short "the RPSC") and got appointment on the said post vide order, dated 3-10-1991 on the basis of the recommendations of the RPSC and joined on the said post in the forenoon of 5-10-1991. The copy of the appointment order, dated 3-10-1991 and the joining report dated 5-10-1991. (Annexures 1 and 2 respectively), have been perused on the record.

4. The petitioner has further contended that in the department of Microbiology the lowest post in the teaching cadre is of the demonstrator and the next promotional post is of Lecturer and the eligibility for the said post is only to be determined from the candidates who have all acquired Post-graduate qualification in their subject.

5. For the sake of convenience and ready reference it will be relevant to refer to Ordinance 65 (VI)(A) which reads as under :--

"For Teachers in Medical Colleges for M.B.B.S., B.D.S. and Post Graduate Courses.

Requirement of special academic qualifications and teaching research experience.

Post

Academic qualification

Teaching/Research experience.

1

2

3

MICRO-BIOLOGY

(a) Professor

MD (Bacteriology)/MD (Micro-biology)MD (Bacteriology with Pathology) MD

(Pathology) and Bacteriology), MBBS with M.Sc. (Med.) Pathology and Bacteriology /M.Sc. (Med.) Microbiology/Ph. D. (Medical Bacteriology)/Phd. (Medical Microbiology) D.Sc. Medical Bacteriology)/D. Sc. (Medical Microbiology).

(a) as Reader Microbiology for 5 years, in a Medical College.

(b) Reader

....do?..

(b) as Lecturer in Microbiology for 4 yrs. in a Medical College.

(c) Lecturer

....do.....

Requisite recognised post-graduate qualification in the subject

(d) Demonstrator

MBBS, M.Sc. (Med.) Microbiology for non-medical persons.

.....

6. From the perusal of the advertisement dated 3-10-1991 (Annexure 1) which was published in pursuance of the Medical and Health Department of the State on the recommendation of the RPSC, Ajmer seven candidates were recommended for being given appointment on the post of senior demonstrator Microbiology in the pay-scale of Rs.2200-75-2800-100-4000. The said facility for automatic registration as demonstrator for doing post-graduate study in the speciality in which they were appointed as demonstrator on being selected by the RPSC were being made available for the reason that since only few medical graduates had opted to join paraclinical department because of unattractive service conditions in the said department having microscopic promotional avenues.

7. In order to establish his case for being registered as a post-graduate student under the disciplines in which he was appointed after regular selection through RPSC, the petitioner submitted his joining report of one Doctor Rajesh Pathak dated 3-1-1985 and the copy of the University's letter regarding registration of the said candidate in MD course from the date of joining as demonstrator, by way of analogy and with a view to claim parity.

8. It was brought to the notice of this court at the time of hearing of this petition by the learned counsel for the petitioner that in the year 1990-91, mistakenly and contrary to the earlier provision of the Rules in regard to the registration of the demonstrators in the disciplines against which they have been given regular appointment, the University added a new Clause (d) under the Heading II -- Reservation in Ordinance 278-E which is reproduced as under:--

"(d) Supernumerary Seat up to a maximum of 10 seats shall be created each year enabling such in-service teachers to prosecute post-graduate student in the subjects in which they have been appointed after due selection by RPSC."

2. Para 3 under the heading-III selection of candidates in 0-278-E be amended as under :--

"Separate merit list shall be prepared for (ii-b), (ii-c) and (ii-d) and the seats of the general category".

9. The petitioner has contended that after the aforesaid vague and ambiguous amendment, the Convenor, Admission Board and Principal SMS Medical College and Controller of the attached hospitals, Jaipur conducted a meeting and communicated the decision to the Vice-Chancellor, University of Rajasthan, Jaipur on 10-8-1991 that for the purpose of selection to the Post-graduate course for such in-service teachers, a fresh entrance examination may be conducted to prepare a merit list so that their selection could be considered under the new category (2-D) to the extent of 10 P.G. seats under the supernumerary quota of 1991.

10. It was further contended by the petitioner that the State Government as a result of non-application of mind also issued sanction of creation of 10 supernumerary post for teachers to prosecute post-graduate studies with a further direction to hold special tests for the purpose of selection of existing teachers for 10 seats vide, communication, dated 19-11-1991. Thereafter a circular was also issued by the University on 10-1-1992 to all Principals of the Medical Colleges affiliated to the University and who had rendered atleast five years of continuous service will also be deemed eligible to appear at the Pre-PG MD/ MS examination to be held by the University on 16-3-1992. The selection in the speciality in which the demonstrator had been working was to be made purely on the basis of merit against the supernumerary 10 seats to be created each respective year. Those candidates who were desirous to appear in the entrance examination were required to fill in the pro forma under the category "senior demonstrator" in red ink and the last date for receipt of the forms was 25-11-1992. Since the demand for the appointment of demonstrators was quite genuine, reasonable and justified in accordance with the rules, hence the Rajasthan Medical Teachers Association took up the issue with the Dean, Faculty of Medicine, Rajasthan University, Jaipur through communication dated 25-1-1992 to consider the matter in accordance with Ordinance 278-E (b).

11. The eligibility criteria for admission to MD and MS course has been provided under the heading "Ordinance relating to MD and MS examination Order 278-E (IV) "Eligibility for admission" as under:--

"All candidates seeking admission to MD and MS courses should have obtained registration i.e., they must have completed satisfactorily one year's compulsory rotating internship after passing the Final MBBS examination and must have registration with the Rajasthan Medical Council. Further,

(i) For seats referred at sub-clause (a) of Clause " II -- the Eligibility shall be as laid down by the Government of India from time to time.

(ii) For seats reserved for in-service candidates as referred at Clause (II-C) the candidates must have served the State i.e. The Government of Rajasthan continuously for more than 5 years after regular appointment under Rajasthan Medical and Health Services, Rules, 1963 and should be below the age of 45 years and should have completed at least 3 years of service in the rural area of the State of Rajasthan. Rural area is defined as a Rural area where Rural allowance is admissible to the doctors and should have actually served in the rural area.

(iii) For seats not reserved in the sub-clauses (a), (b) and (c) of Clause-II candidates must have passed Final M.B.B.S. Examination from the University of Rajasthan or the candidates should have been nominee of the Rajasthan Govt. and were admitted to the M.B.B.S. course as State Nominee in a Medical College outside the State of Rajasthan, or the candidate if bona fide resident of Rajasthan and has obtained the M.B.B.S. Degree from a medical college from outside the State of Rajasthan where they secured admission on All India Competitive basis."

12. The requisite period of registration of three years of the petitioner for pursuing the aforesaid course of study if reckoned w.e.f. 5-10-1991 instead of 14-11-92 had come to an end on 4-10-1994. Since the petitioner fulfilled the eligibility criteria as stipulated under the rules for the purposes of registration as senior demonstrator, this court vide its interim order dated 17-2-95 after hearing learned counsel for the parties, on prima facie view of the matter, had arrived at the conclusion that the objection raised by the University regarding non-compliance of requirement of three years of registration appeared to be unsustainable. Under the circumstances and also having regard to the fact that the petitioner fulfilled the criteria of eligibility under the rules and with a view to enable the petitioner to take examination in MD Microbiology in pursuance of the resolution of the University dated 17-2-1992 decision was taken by the Syndicate of the University that senior administrators shall be granted exemption from taking entrance test for pre-PG study for permitting them automatic registration after taking into consideration the various communications/representations of the respective candidates and also after taking into consideration the practice prevalent in the past. The said decision of the Faculty of Medicine and Pharmaceuticals was also endorsed by the Vice Chancellor of the Rajasthan University and was also approved by the Academic Council, Senate and Syndicate of the Rajasthan University.

13. After giving detailed hearing to the learned counsel for the parties as regards the non-compliance of the requirement of three years of registration from which the petitioner was exempted under the Rules in view of the aforesaid position, this court had consequently taken a prima-facie view of the matter in favour of the petitioner and directed the University to permit him to appear in the MD

(Microbiology) examination which was scheduled to commence some times in March. 1995. However, it was made clear in the order, dated 17-2-1995 passed by this court that the result of examination taken by the petitioner shall be treated as provisional which will how ever, be subject to any objection which may be raised by the University at the time of final hearing of the writ petition with a further direction that the result shall be published only after final disposal of the writ petition. Thereafter the matter was heard at length on 4-9-1996, 10-9-1996 and finally on 11-4-1997 when the arguments as advanced by the learned counsel for the parties stood concluded.

14. The petitioner had appeared in the afore said examination pursuant to the direction of this Court dated 17-2-1995 but his result had not so far been declared and in order that the academic career of the petitioner may not suffer it was thought proper to modify the earlier direction of this court by directing the respondent-university to communicate the result of the petitioner to this court in a scaled cover by 10-9-1996 and accordingly the same was conveyed to this Court in a sealed cover and on its perusal during the course of hearing on 10-9-1996 it was revealed that the the petitioner had qualified the said examination successfully.

15. During the course of hearing learned counsel for the respondent argued that notwithstanding the petitioner having qualified the said examination, he cannot be given retrospective registration for the aforesaid course w.e.f. 5-10-1991 as the same would be contrary to Rules. The respondent University was further directed to make available the relevant record for perusal of the court.

16. I have heard learned counsel for the parties, examined their rival claims and contentions as well as the legal position on the subject with reference to the Rules as referred to above. Prima facie I am of the view that since the petitioner fulfilled the eligibility criteria as stipulated under the Rules for seeking registration for the post of senior administrator(demonstrator) w.e.f. 5-10-1991, i.e., the date on which he had joined the department of Microbiology as demonstrator for the purpose of pursuing his three years" regular course of study for MD in Microbiology in the examination which was held in March, 1995 and the petitioner having qualified the same, there is no reason as to why the respondent-university should have denied and not permitted the petitioner to join the University on the said post. I am further of the view that there is no embargo under the Rules with regard to the registration of the petitioner as a senior demonstrator in any of the Medical Colleges of Rajasthan for the purpose of registration to do the Post-graduation discipline in the speciality of Microbiology as per the practice prevalent in the past and in pursuance of the recommendations of the University's Senate and Syndicate respectively. I am further of the view that the respondents should have taken into consideration the various representations which the petitioner had made in the past. Since the petitioner was already working in the capacity of demonstrator in the department of Microbiology since 5-10-1991 after being duly selected by the RPSC and since

the University had taken a positive decision with regard to the registration of demonstrators in the Faculty of Medicine in its meeting dated 17-2-1992 (Anaex 11), Academic Council's Resolution dated 20th/25th August, 1992 (Annex. 12) and the Syndicate's approval in its meeting dated 14-11 -1992 that all the teachers who had been duly selected by the RPSC should be permitted the automatic registration in PG course in the same discipline in which they were selected by the RPSC, there was no reason as to why the petitioner should not have been permitted to join as senior demonstrator in the discipline of Microbiology pursuant to his selection in the examination which was held for the same in March, 1995.

17. As a result of the above discussion the writ petition is consequently allowed. The respondent-university is directed to provide registration to the petitioner as senior demonstrator in the discipline of MD (Microbiology) with effect from the date when he passed the said examination, i.e, March, 1995. Under due intimation to him and subject to the fulfillment of other requirements and payment of fees etc. as stipulated under the Rules. He shall be entitled to all consequential benefits as may be admissible to him in accordance with the Rules. The summoned record, if any, be sent back to the concerned department.