(2009) 04 MP CK 0029

In the Madhya Pradesh High Court

Dr. Ashutosh Mishra — APPELLANT

Vs

The State of M.P. and Others — RESPONDENT

Date of Decision : 29-04-2009

Acts Referred:
Constitution of India, 1950 — Article 309

Citation : AIR 2009 MP 222 : (2009) ILR (MP) 2547 : (2009) 2 JLJ 155 : (2009) 3 MPJR 113

Hon'ble Judges : R.K. Gupta, J;Dipak Misra, J

Bench : Division Bench

Judgement

Dipak Misra, J.

The petitioner, a student of M.S. (General Surgery) of Netaji Subhash Chandra Bose Medical College which is an autonomous educational institution, had taken admission on 12-6-2006 by depositing the fee to the tune of Rs. 35.000/-. It is contended, that the State Government had framed a policy on 13-11-1989 laying a postulate that the children of the green card holders would be extended the benefit of exemption from fee in medical/engineering courses. The petitioner, as set forth, had applied for the benefit of exemption while prosecuting his study in the course of medical graduation. A circular, Ahnexure-P/5, dated 30-5-2003 was issued laying down the stipulation that the children of green card holders, who fall below the poverty line, prosecuting their studies in medical/engineering colleges, both Government and autonomous would be exempted from the tuition fee., The said circular was modified by the circular dated 28-10-2005 which deleted the prescription pertaining to entitlement on the foundation of below poverty line. On the aforesaid base it has been claimed by the petitioner that he is entitled to refund pf the fee which had been deposited at the time of admission and also to get the exemption from depositing the tuition fee for the academic year 2007-08.

A counter-affidavit has been filed by the respondents contending, inter alia, that the petitioner is a son of green card holder and he had availed the benefit of exemption of tuition fee while prosecuting MBBS course. Reliance has been placed on circular dated 17-10-2007 as contained in Annexure R-2 to highlight that the benefit of exemption of tuition fee has to be given for once and for one degree and the petitioner had already availed the same for the MBBS course and hence, cannot claim it for the MS course. Additionally, it is put forth that the petitioner has been paid stiped amounting Rs. 4,07,474/- as is evincible from Annexure R-4 and, therefore, he cannot avail the benefit of exemption of tuition fee on the foundation of being a son of green card holder.

We have heard Mr. Akash Choudhary, learned Counsel for the petitioner and Mr. Deepak Awasthy. learned Government Advocate for the State.

It is submitted by Mr. Choudhary that the petitioner had taken admission in Post Graduate course on 12-6-2006 and, therefore, he is entitled to the benefit of circular dated 28-10-2005 contained in Annexure P-5 as the said circular was in vogue at the time of his taking the admission. The learned Counsel for the petitioner further submitted that the circular dated 17-10-2007 would not be applicable to his case inasmuch as that protects the benefit of the children of green card holders who had undergone requisite operation prior to 13-5-2003 and it is not in dispute that his father had undergone the vasectomy operation on 23-2-2002. It is further urged by him that the stipend paid to the petitioner has nothing to do with the benefit of exemption of tuition fee as the stipend is paid for the work rendered while prosecuting the P.G. course.

Mr. Deepak Awasthy, learned Government Advocate resisting the aforesaid submissions, has contended that the circular dated 17-10-2007 would apply in all fours to the case of the petitioner and he cannot avail the benefit because there is stipulation that the benefit of exemption of tuition fee would be given only one time for only one degree/course. It is canvassed by him that the said circular is clarificatory in nature and would cover the case of the petitioner. The learned Government Advocate has placed reliance on the decision rendered in Writ Petition No. 12402/2008 (decided on 4-2-2009).

The circulars issued time to time are not disputed. It is also not disputed that student who is prosecuting his studies in an autonomous college can be extended the benefit. Circular dated 28-10-2006 had deleted the concept of below poverty line. The petitioner had taken admission on 12-6-2006. In this context we may profitably refer to the Circular dated 17-10-2007. A free translation of the relevant portion of the circular dated 17-10-2007 reads as under:

(1) The children of the green card holders would be entitled to exemption from the payment of fee only in Government and autonomous Medical Colleges. Engineering College/Polytechnic Colleges/Industrial Training Institutes.

(2) The children of the green card holders shall not be entitled to exemption from the payment of fee who are prosecuting their studies in Medical College, Engineering College/Polytechnic Colleges/Industrial Training Institutes established by the private sectors.

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(3) The benefit with regard to tuition fee shall be granted only one time and only for one degree/course in Government, autonomous medical college, Engineering college/Polytechnic colleges/Industrial Training Institutes.

(4) As per the circular dated 13-5-2005 issued by the Public Health and Family Welfare Department the benefits of green card shall be given only to the persons belonging to below poverty line.

Such green card holders who have undergone operation before 13-5-2003 they will get the benefits as per the provisions which were prevalent prior to this order. Those persons who have undergone operation after 13-5-2005 shall be given the aforesaid benefits if they belong to below poverty line.

On a perusal of the said circular it is clear that the benefit with regard to the tuition fee has been restricted to one time and only one degree/course, in Government as well as autonomous medical colleges. The language employed in the said circular unambiguously conveys that it would have prospective application. The petitioner, as is manifest, was entitled to the benefit of circular of 28-2-2006 wherein the entitlement limiting to the candidates who fall below poverty line was deleted. Therefore, entitlement of the petitioner would be governed by the earlier circular whereas there was construction or restriction with regard to eligibility on the basis of parent who is green card holder and fall within the concept of below poverty line. The petitioner has been representing to have the said benefit. The same, though due, was not extended to him on the foundation, as manifest from the counter-affidavit, that he was given the stipend. Such a stance cannot be entertained. The payment of stipend is given during the prosecution of their studies and the work done. It has nothing to do with the exemption of tuition fee. So the right had accrued in favour of the petitioner once the clause pertaining to below poverty line stood deleted. The circular dated 17-10-20087 restricted the rights. Submission of Mr. Awasthy, learned Government Advocate is that even if the petitioner is entitled to get the benefit it has to be restricted till 17-10-2007 as he had already availed the benefit for the M.B.B.S. course. The aforesaid submission in our considered opinion has no force. The circular in its very nature is prospective. In this context, we may refer with profit to the decision rendered in R.S. Ajara and Others Vs. State of Gujarat and Others, wherein it has been held as under:

16. The resolution dated 31-1-1992 has been assailed by the promotee officers on the ground that it is retrospective in operation and affects their rights. The law in this field is well settled by the decisions of this Court. A benefit that has accrued under the existing rules cannot be taken away by an amendment with retrospective effect and no statutory rule or administrative order can whittle down or destroy any right which has become crystallized and no rule can be framed under the proviso to Article 309 of the Constitution which affects or impairs the vested rights.

Be it noted, to arrive at the said conclusion their Lordships have placed reliance

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on the decisions rendered in the cases of State of Gujarat and Another Vs. Raman Lal Keshav Lal Soni and Others, , Ex-Capt. K.C. Arora and Another Vs. State of Haryana and Others, . T.R. Kapur and Others Vs. State of Haryana and Others, and Uday Pratap Singh v. State of Bihar 1984 Supp (3) SCC 451.

Yet in another decision Chairman, Railway Board and others Vs. C.R. Rangadhamaiah and others, their Lordships were dealing with a case where retrospective amendment was done which affected the accrued rights of a Government employee, ruled thus:

Pension was payable to the respondents after their retirement. They were no longer in service on the date when the impugned notifications were issued. The amendments in the rules are not restricted in their applications in future but apply to employees who had already retired and were no longer in service on the date the impugned notifications were issued. Pension is determined on the basis of emoluments payable at the time of retirement (Rule 2301). The impugned amendment take away the right of the employees to have their pension computed on the basis of their average emoluments in accordance with the provisions applicable at the time of their retirement. The amount of pension payable to the respondents in accordance with the rules which were in force at the time of their retirement has been reduced.

(quoted from the placitum)

We are absolutely conscious that the said decision was rendered in the context of pension but we have referred to the same solely for the purpose of appreciating the concept of curtailment of a right accrued or the benefit already made available. In the case at hand, under the policy decision the student who was entitled to the benefit of exemption of tuition fee cannot be put in the compartment of the restricted clause as that is not the import of the circular.

In the case at hand, the right had accrued on the existing circular in favour of the petitioner. The language employed in the latter circular restricts the right. As we understand the circular only conveys the meaning that the candidates who take admission in second course after the circular had come into existence cannot be entitled to the benefit of exemption of tuition fee as the said circular is categorical and unequivocal to the extent that the exemption would not be applicable to the second course. But a significant one, it cannot curtail the right of a student who had already taken admission as that is the right conferred on him on the basis of earlier circular. Therefore, we repel the submission of Mr. Awsathy, learned Government Advocate and come to hold that the petitioner shall be entitled to the exemption of tuition fee from 12-10-2006 the date on which rigor of below poverty line stood deleted.

Resultantly, the writ petition is allowed to the extent indicated above. There shall be no order as to costs.

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