

(2006) 03 MP CK 0058

In the Madhya Pradesh High Court

Case No : Writ Petition No. 28832 of 2003

Dr. Banshpati Prasad

APPELLANT

Vs

Principal, Government Ayurvedic College and Others

RESPONDENT

Date of Decision : 02-03-2006

Acts Referred:

Citation : (2006) 4 MPLJ 358

Hon'ble Judges : A.K. Mishra, J

Bench : Single Bench

Advocate : Atulanand Awasthy, for the Appellant; G.P. Singh, Dy. GA, for the Respondent

Final Decision : Allowed

Judgement

Arun Mishra, J.

In this writ petition, petitioner has prayed for the relief for quashment of the order (P/14) cancelling the admission in MD Ayurvedic on the ground that he has not passed Pre-Ayurvedic examination in first attempt. Petitioner has also prayed for other consequential reliefs.

It is averred in the petition that petitioner was admitted in Bachelor of Ayurvedic Medicine and Surgery (BAMS) course in the year 1984 and passed it without any break in first attempt in the year 1988. This a five years degree course as apparent from mark-sheets (P/1 to P/5). The course is prescribed by the Central Council of Indian Medicine as per the provision laid down in Bhartiya Chikitsa Kendriya Parishad Adhiniyam, 1970. Graduation course prescribed for BAMS is of five years commencing from 1st year and ending in final BAMS as prescribed by the Central Council of Indian Medicine, the petitioner has undergone that course. Pre-Ayurvedic course is not a part of graduation course of BAMS, but, is a qualifying criteria for admission to degree course. He has passed graduation course in first attempt which is the requirement of admission in MD course. Petitioner did his schooling in the old pattern of Class XI. There was no 10+2

system at the relevant time. Consequently, he was required to go additional one year of Pre-Ayurvedic course which was not part of graduation course of five years. Petitioner has relied upon the rules of PET & PMT for admission in BAMS in Ayurvedic Colleges which prescribes the duration of BAMS degree course to be five years.

An advertisement (P/7) was published in which it was mentioned that the person applying for MP Course in Ayurvedic has to pass his BAMS examination in single attempt. Petitioner filed an application, he was given admission in MD Ayurvedic as per his merits in March/ 2003 and deposited the requisite admission fee of Rs. 20,935/- and started attending college. Shri Dinesh Pathak was also admitted, though he had passed BAMS in more than one attempt. Similarly Dr. Rajesh Kumar Malviya was admitted in MD course, he had also passed his BAMS in more than one attempt, but, that has been condoned by the order of the State Government which is evident from the return submitted by the State Government in W.P. No. 5971/2002 in the case of Dr. Raghvendra Prasad Tiwari v. State of M.P. and Ors. Prag-Ayurvedic i.e Pre-BAMS Examination was passed by the petitioner in supplementary examination, it was just a formal, course, not a degree course. After completing nine months, the Petitioner was told that he had not passed BAMS course in single attempt. Owing to the aforesaid reason treating Prag-Ayurvedic as part of BAMS Course, an order (P/14) was passed. Hence, this petition was, preferred.

A return has been filed by the respondents contending that the petitioner has not passed degree course in first attempt. It was necessary that the candidate must have passed degree course in single attempt. Petitioner was admitted in BAMS course in the year 1982. He has first appeared in Prag-Ayurvedic Main Examination in July 1983. He had passed it in supplementary examination, as such he has not passed the degree course in single attempt. A.P.S.. University, Rewa has also framed Ordinance (R/4) regarding the post graduate degree course of Ayurvedic Vachaspathi M.D. Ayurvedic by an ordinance No. 126 in which the eligibility criteria has been prescribed for M.D. Course that only those candidates who have passed all the examination at degree level in first attempt shall be eligible for admission. The course at the relevant time was 6 1/2 years. As apparent from curriculum (R/5) issued; by the Central Council of Indian System of Medicine, petitioner failed to pass Pre-Ayurvedic examination in first attempt, as such he was not entitled for admission in MD Ayurvedic, course. Hence, there is no merit in this writ petition. No case for interference is made out.

An interim order was passed on 16.12.2005 to allow the petitioner to conclude the studies and it is apparent from the order dt. 16.12.2005 that - the petitioner appeared in MD Previous and he was declared pass. He was studying the final year course. Direction was issued to accept the thesis in case petitioner presents it within the time prescribed for it.

Shri Atulanand Awasthy, learned Counsel appealing on behalf of the petitioner has submitted that the degree course of BAMS is of five years as apparent from

rules for conduct of PET & PMT Examination 1984 for admission in course of BAMS. Pre-Ayurvedic Course is only eligibility criteria for admission in degree course, that does not form part of degree course, as such action taken by the respondents treating the Prag-Ayurvedic i.e. Pre-Ayurvedic Course as part of degree course is illegal. Hence, the impugned order be quashed.

Shri G.P. Singh, learned Dy. GA, appearing on behalf of the respondents has submitted that Prag-Ayurvedic Course forms part of BAMS Course, as such action taken is proper. No case for Interference is made out.

It is apparent from rules for conduct of PET & PMT for admission to Ayurvedic College and other colleges framed in 1984 that Ayurvedic Course of BAMS is of five years duration. Following is the description of the Ayurvedic Course :

AYU 1st Year of 5-Year BAMS Course in State Ayurvedic Colleges at Burhanpur, Gwalior, Indore, Jabalpur, Raipur, Rewa & Ujjain.

Petitioner was admitted in the Course in the year 1984, has not been disputed on facts. Advertisement (P/7) which was issued for admission to MD course which provides that the "degree course" should have been completed by applicant in the first attempt. The degree course of BAMS was of five years duration. The minimum qualification has been laid down for the MD course by the Central Council of Indian System of Medicine in exercise of powers under Indian System of Medicine Central Council Act, 1970. It is provided that the degree course should have been completed in the first attempt for admission in MD course. It has not been mentioned that the degree course includes Prag-Ayurvedic i.e. Pre-Ayurvedic Course. When the consider the Ordinance No. 126 (4) relating to the Degree of Ayurvedic Vachaspsat-M. D. Ayurvedic (Sammita) also provides eligibility as degree equivalent thereto and only those who have passed all the examination at degree level in first attempt shall be eligible for admission.

The Central Council of Indian System of Medicine had issued a Curriculum (R/5) for Ayurvedic Degree courses, in paragraph No. 2 Admission Qualification has been prescribed, thus :

a. Purvamadyama or S.S.L.C./ Matriculation preferably with Sanskrit or an examination equivalent thereto. They are eligible to appear for Pre-Ayurvedic examination after a period of two years.

Or

b. Uttarmadyama or Higher Secondary/P.U.C. Preferably with Sanskrit or on examination equivalent thereto. They are eligible to appear for Pre-Ayurvedic Examination after a period of one year.

Or

c. Uttarmadyama/Intermediate (Ayurvedic groups) of any University/Statutory Board which conforms to the specifications approved by the Council will be eligible for direct admission.

However, Universities/Statutory Boards may be given period of grace of three years from the date of enforcement of these regulations to adopt their syllabus so as to bring it at par with the Pre-Ayurvedic course prescribed by the Council.

It is apparent from paragraph 2.b. that if qualification is Higher Secondary i.e. 11th from they are eligible to appear for Pre-Ayurvedic Examination after a period of one year. Minimum age for admission is 15 years as on 1st October in the year of admission for first year of Pre-Ayurvedic course. It appears that those who have passed only Higher Secondary Class-XI Examination, they were required to undergo one year Ayurvedic Course to bring them at par with the Class-XII intermediate students. The pre-Ayurvedic course duration was 2 or 1 years as the case may be depending upon educational qualification held.

The main course was of five years, internship was for six months. Duration of the course as given in R/5 in paragraph 4 is quoted below:

4 . DURATION OF COURSE

a. Pre-Ayurvedic Course - 2/1 years b. Main Course - 5 years. c. Internship - 6 months.

Thus, the main course is a degree course of five years and Pre-Ayurvedic course may be one year or two years. It is two years, is a case of qualification of Purvamadhya examination. Thus the Pre-Ayurvedic course is a course to take care of rest of the period before the degree course commenced as in degree course admission is for intermediate or other equivalent exam. Pre-Ayurvedic course provides eligibility for admission in BAMS degree course. It does not form the part of degree course itself, which is of five years duration. Degree which has to be awarded after completion of five years course is that of BAMS. The curriculum (R/3) separately prescribes the main Ayurvedic course and Pre-Ayurvedic courses, it clearly makes out a difference between the pre-degree course and the degree course.

In view of above discussion, it is clear that the requirement for admission in MD degree course is that all the subjects at degree level course should have been completed in first attempt which fact has not been disputed as the petitioner has passed five years degree course of BAMS in first attempt, thus, it is clear that merely due to not passing Pre-Ayurvedic course in first attempt, petitioner could not have been held disqualified for post-graduation degree course of MD. The impugned order (P/14) is bad in law. Same is liable to be quashed. The respondents have wrongly treated the Pre-Ayurvedic Course of one year as part of degree Course which of five years duration only, it is not a part of degree course of five years.

Resultantly, the writ petition is allowed. The impugned order (P/14) is quashed. It is held that the petitioner was rightly admitted in Post-graduation course of MD Ayurvedic and we hold that he is entitled to complete the course. Parties to bear their own costs as incurred in this writ petition.