
(2003) 05 J&K CK 0021
In the Jammu And Kashmir High Court
Case No : LPA (SWP) No. 39 of 2003

Dr. Harbaksh Singh

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 20-05-2003

Acts Referred:

Citation : (2003) 3 JKJ 440

Hon'ble Judges : Sudesh Kumar Gupta, J; Muzaffar Jan, J

Bench : Division Bench

Advocate : M.K. Bhardwaj and Ajay Abrol, for the Appellant; K.S. Johal, A.A.G and D.S. Thakur, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Gupta, J.—We have heard Mr. M.K. Bhardwaj, learned senior Advocate, along with Mr. Ajay Abrol, Advocate representing the appellant, as well as Mr. K.S. Johal, learned Additional Advocate General and Mr. D.S. Thakur, Advocate, appearing for the respondents, in extenso.

2. This appeal is directed against the judgement and order dated 27.2.2003 propounded by learned Single Judge in SWP No. 433/2002, entitled

Dr. Harbaksh Singh & others Versus State of J & K and others. By the aforesaid judgment and order, the learned Single Judge held that the

admission of the petitioner to the MD Anaesthesia was fraudulent and he was a party to the fraud, so cannot be permitted to say that he was

entitled to hearing before his admission came to be cancelled and, therefore, not entitled to any relief, and dismissed the writ petition with costs.

3. Facts relevant for the disposal of this Letters Patent Appeal in resume may be

noticed. After the issuance of the select list of the Entrance Examination for admission to various courses in the State of Jammu and Kashmir held on 31st December, 1995 and 1st January, 1996, unsuccessful candidates including the petitioner filed various writ petitions to press their claim for admission to various courses. The appellant/petitioner also approached the Court Through writ petition being SWP No. 1742/1999 in alleging that no seat has been allotted under Sports category by the competent Authority. The Court, in disposing of the writ petition, issued a direction to the Competent Authority to fill up the seat in Sports category, of course, considering the merits of the candidates, who appeared in the Entrance Examination. Dr. Vipin Mangotra, on account of his merit in Sports category being at Serial No. 1, was given admission in MD Anaesthesia, whereas seat in Diploma in Anaesthesia was allotted to the writ petitioner/appellant, who was at Serial No. 2 in the merit. Subsequently, Dr. Vipin Mangotra was granted admission in Post - Graduation in Radio Diagnosis in pursuance to a direction of the Supreme Court in SLP filed by Dr. Vipin Mangotra. In a Civil Appeal No. 4935 of 2000 filed by Dr. Vikrant Parihar, the Apex Court in taking note that no Post - Graduation Entrance Examination was held after 1995-96 and the candidates, who participated and passed MBBS in the said Entrance Examination, continued to get admission in various disciplines year after year and left no chance for the candidates, who passed the MBBS Examination after 1996 to compete and Pursue Post - Graduate Courses in Various disciplines of medicine, issued the following direction:

(i) The Competent authority shall conduct an entrance examination for selection of Doctors for admission to Post Graduate Degree and Diploma Courses in different disciplines in the Medical Colleges in the State of Jammu and Kashmir on the basis of their merit.

(ii) All eligible candidates whether in the earlier selection list or not shall be entitled to take part in the said entrance examination.

(iii) Rules relating to reservation of seats to the extent permission in law and applicable, shall be respected by the authorities at the time of making selections and admission.

4. The Apex Court, however, did not disturb the admission already granted to the candidates and continuing with their Post - Graduate courses in

pursuance of the orders made by High Court or the Supreme Court, but directed the Entrance Examination to be held for filling up the determined

vacancies for the Post - Graduate courses for 1999 - 2000 Academic Session. In pursuance of the direction of the Supreme Court, the Entrance

Examination was to be conducted within two months from the date of the order. Another writ petition came to be filed by the petitioner, being

SWP No. 2219/2000, after the decision of the Supreme Court dated 6-9-2000 in case of Dr. Vikrant Parihar and urged that the seat in MD

Anaesthesia vacated by Dr. Vipin Mangotra, who after having been allotted seat in Radio Diagnosis in Sports category, be given to him, being next

in order of merit. This writ petition was, however, dismissed in view of the judgment of the Supreme Court in Dr. Vikrant Parihar's case. In that

Service Writ Petition No. 2219/2000, Chairman and Registrar, Competent Authority, Entrance Examination, were also respondents and had a

knowledge of dismissal of the writ petition. Despite direction of the Apex Court for holding Entrance Examination within two months of the order

made in Dr. Vikrant Parihar's case, the Competent Authority gave admission to the petitioner in MD Anaesthesia vacated by Dr. Vipin Mangotra,

merely because the petitioner had been pressing his claim for the said seat since the year 1999. This act of the Competent Authority being in clear

defiance of the order of the Supreme Court, led to initiate Contempt Petition, in which Competent Authority tendered an unconditional apology

and cancelled the admission of the petitioner in issuing a Notification No. 13 - CAEE of 2002 dated 12.2.2002 in withdrawing the earlier

Notification No. 14 - CAEE of 2001 dated 11.1.2001, by which admission was granted to the petitioner in MD Anaesthesia, which became the

subject matter of challenge in SWP No. 433/2002 filed by the petitioner on twin grounds; firstly, that he had not been heard by the competent

Authority before rescinding his admission in MD Anaesthesia and reverted back to Diploma in Anaesthesia. Another ground taken before the

learned single was that he could not be made a victim of the remissness of the Competent Authority by allotting him seat in MD Anaesthesia and

which, subsequently, could not be cancelled once he had started attending the classes. It may not be out of place to mention that the Supreme

Court in Dr. Vikrant Parihar's case protected the admission of only those candidates, who had already been granted admission and are pursuing

various Post - Graduate courses either under the orders of the High Court or the Apex Court. The petitioner was neither granted admission nor

undergoing Post - Graduate status on the date of the decision, so was not saved by the aforesaid judgment of the Apex Court. The petitioner,

therefore, cannot stake his claim to a seat in MD Anaesthesia vacated by Dr. Vipin Mangotra and entitled to relief merely on the ground that he

was next in merit in Sports category. It is, therefore, explicit that the admission by the Competent Authority to the petitioner was in contravention

to the judgment of this High Court passed in SWP No. 2219/2000. As a matter of fact, the admission was given by the Competent Authority,

Entrance Examination, to the petitioner in MD Anaesthesia despite the fact that he was a party before the Supreme Court and also in the writ

petition filed earlier by the writ petitioner, which stood dismissed in view of the judgment of the Apex Court and, therefore, had a full knowledge of

the direction of the Apex Court, but yet granted admission to the petitioner.

5. Mr. M.K. Bhardwaj, learned Senior Counsel appearing for the appellant, vehemently urged that the seat allotted to the petitioner was, in fact,

an up - gradation of Diploma to Degree course in Anaesthesia, as the said seat became vacant on admission/allotment of seat in Post Graduation

and Radio Diagnosis to Dr. Vipin Mangotra in pursuance of the judgment of the Supreme Court, When asked, he could not show any provision or

rule providing such up gradation, to support his contention. This contention of the learned counsel, therefore, cannot be accepted, as the

upgradation against the vacant seat contrary to the rules, even if allowed, would be to the detrimental of all the eligible candidates, who would

otherwise be eligible to the allotment of his seat. The learned Single Judge, however, found that the petitioner continued to pursue his studies in MD

Anaesthesia on the strength of an interim order dated 20.2.2000 secured by concealing the material facts that he had earlier filed SWP No.

2219/2000 on the same subject, which stood dismissed and also the direction given by the Apex Court in Vikrant Parihar's case. The learned

Single Judge further found that the petitioner, being a party to the fraud in granting the admission in MD Anaesthesia by the Competent Authority,

Entrance Examination, is not entitled to any hearing before his admission came to be rescinded in taking a stand that he continued his studies on the

basis of the interim order of the Court. In the facts and circumstances of the case, we are, therefore, of the considered opinion that no exception

can be taken to the view expressed by the learned Single Judge. We do not find my factual error or jurisdictional infirmity in the order impugned to

justify interference in appeal.

6. In view of the above, we do not find any merit in this appeal and is, accordingly, dismissed.