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**(1997) 09 RAJ CK 0021**

**In the Rajasthan High Court**

**Case No :** Civil Writ Petition No. 4407, 4576, 4526 and 4408 of 1997

Dr. Jagdish Saini

APPELLANT

Vs

University of Rajasthan and Others

RESPONDENT

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**Date of Decision :** 11-09-1997

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** AIR 1998 Raj 349 : (1998) 3 WLC 740

**Hon'ble Judges :** Gyan Sudha Misra, J

**Bench :** Single Bench

**Advocate :** D.V. Tholia, Alok Sharma and Ajay Gupta, for the Appellant; Ajeet Kumar Sharma, Paras Kuhad and N.K. Jain, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Gyan Sudha Mishra, J.—All the petitioners herein in the petitions referred to hereinabove, are Doctors holding a Bachelor's degree in medicine and Surgery and have put in more than five years of service in the State of Rajasthan as Civil Assistant Surgeon which has since been redesignated as medical Officer as per the Rajasthan Medical & Health Service Rules, 1963 (hereinafter referred to as the Rules of 1963). They have all sought a direction from this Court to the respondents to consider them for admission into the post-graduate course of Medicine/Surgery/Diploma course against the vacancies reserved for in-service candidates in accordance with their comparative merit without subjecting them to attain the minimum qualifying marks for admission into the said courses, which has been fixed at 50% for all categories of candidates and have further sought a direction to restrain the respondents from filling up the seats reserved for in-service candidates by allowing the seats of MS/MD/ Diploma courses by fresh candidates who may have attained the minimum qualifying marks of 50%.

2. The admission to the post graduate course for medicine and surgery commonly understood as MD/MS examinations are governed by the provisions contained in Ordinance 278-E framed by the University of Rajasthan and it is an

admitted position that 25% of the total seats available in the State of Rajasthan for the post graduate course in MS/MD which are required to be filled on the basis of the results of the All India competitive entrance/MD examination are reserved for in-service candidates of Rajasthan State Medical Service for the various specialities as determined and fixed from time to time by the State Government, out of which 8% seats are reserved for in-service candidates naturally born scheduled caste candidates and 6% for naturally born scheduled tribes candidates as per the roster system notified by the State Government from time to time. The essential qualifications prescribed for such test governed by Ordinance 278-E of the University of Rajasthan further lays down that the candidates must have served in the State of Rajasthan continuously for more than five years and should be below 45 years and should have completed three years in the rural area of the State of Rajasthan.

3. However, in the year 1997 before the commencement of Pre-PG Entrance Examination, 1997 which were held from 13th to 15th April, 1997, the Principal and Controller of SMS Medical College and attached hospitals, Jaipur who happens to be the dean of the faculty of medicine, issued a letter dated 1-4-97, bearing No. 13618 addressed to the Vice Chancellor of the University of Rajasthan and drew his attention to a decision of the Supreme Court delivered in the case of Dr. Sadhna Devi and others Vs. State of U.P. and others, as well as to the information published for the All India Entrance Examination and pointed out that it was mandatory for the University of Rajasthan also to prepare merit list of Pre-PG Examination in accordance with the Supreme Court decision and the guidelines provided for the All India Entrance Examination which directed that the candidates securing less than 50% marks in the competitive examination ought not to be included in the merit list. After seeking the legal opinion in this regard, the Vice Chancellor by order dated 23-5-97 advised the University that the merit list of the Pre-PG Examination held in April, 1997 be prepared in accordance with the decision of the Supreme Court irrespective of the fact whether the examinees/candidates were given any notice for preparation of the merit list in accordance with the decision of the Supreme Court, which opinion was ordered to be implemented by order of the Vice Chancellor dated 24-5-1997.

4. In view of the decision of the Vice Chancellor, the merit list of in-service candidates has been prepared on the basis of Pre-PG Entrance Examination, 1997 for including only those candidates in the merit list who have secured not less than 50% marks in the said examination as a result of which the petitioners who failed to secure the minimum qualifying marks of 50% have moved this Court challenging the decision of the University of Rajasthan by which even the in service candidates have been subjected to the condition to secure a minimum of 50% marks in the said examination.

5. Mr. Alok Sharma representing the petitioners' case advanced argument touching upon the legal as well as practical fall out of the respondent-University's decision requiring the in-service doctors also to attain the minimum

qualifying marks of 50% for entrance into the P.O. Course for M.S./M.D. At the threshold it was submitted that the Ordinance 278-E does not prescribe any minimum qualifying marks for admission into the P.G. Course of MS/MD and the only requirement laid down in the Ordinance 278-E (2) is that the candidate must have worked in the State of Rajasthan for a minimum period of 5 years out of which he must have served 3 years in rural area and should be below the age of 45 years and nothing has been mentioned that the candidate must secure minimum qualifying marks before seeking admission into the P.G. Course as has been sought to be introduced now by the respondent-University. The main thrust of the argument advanced on behalf of the petitioners, therefore, is that the University of Rajasthan cannot be allowed to introduce additional criterion into the method of selection without issuing a fresh ordinance or amending the relevant Ordinance 278-E in this regard.

6. Countering the submission raised on behalf of the petitioners, it is submitted by Shri Ajeet K. Sharma on behalf of the University that the University is fully competent to prescribe the minimum qualifying marks for admission into the P.G. Course even for in-service candidates and no amendment is required to be introduced into the Ordinance 278-E since the method of selection of candidates for the P.G. Course squarely lies within the domain of the University. In this connection he has relied on the provision enumerated in the Ordinance 278-E itself which lays down as follows :-

"For seats mentioned at sub-clause (a) of Clause II, the selection shall be made as per allocations made by the Director General of Health Services, Govt. of India, New Delhi, on the basis of result of All India Competitive Entrance Examination for admission to the Post-Graduate Courses of M.D. and M.S. on open merit. The selection of the remaining seats for Post- Graduate courses of MD and MS shall be done on merit judged on the basis of Pre-P.G. entrance test,"

7. Relying on this provision Shri Ajeet K. Sharma has submitted that since the selection of the seats allocated in the quota of the Rajasthan State for P.O. Course of MD/MS is required to be done on merit judged on the basis of Pre-P.G. Entrance Test, it is implied that what should be the specific merit in this regard will have to be left to the Government of Rajasthan meaning thereby that the opinion of the University of Rajasthan in consultation with the Director of Health Services of the State of Rajasthan laying down a minimum of 50% qualifying marks even for the in-service candidates is well within its powers. Learned counsel for the University Shri Sharma as also Shri Kuhad appearing on behalf of the impleaded respondents who are the candidates in the waiting list belonging to the general category having acquired 50% qualifying marks have relied on a judgment of the Supreme Court reported in Dr. Sadhna Devi and others Vs. State of U.P. and others, in the matter of Dr. Sadhana Devi v. State of U.P. wherein the learned Judges of the Apex Court while dealing with a question as to whether any minimum qualifying marks are required for the reserved category candidates or not, were pleased to hold that no Government having laid down system for

holding admission tests is entitled to do away with the requirement of attaining minimum qualifying marks for special category candidates. It was further held therein that if they fail to secure even minimum marks for the seats reserved for them it should be made available to the candidates belonging to the general category so that there is no national loss and this judgment further referred to the decision in the matter of Mohan Bir Singh Chawla Vs. Punjab University, Chandigarh and another, wherein also it was held that reservation be less in higher P.G. Classes and merit be the criterion, and therefore had disapproved of all the circulars issued by the State Government in the said case which had dispensed with the requirement of obtaining even at least 35% marks in the written examination held for admission to P.G. Degree and Diploma Courses in so far as the reserved category of OBC candidates was concerned. Thus after full deliberation in this case, the learned Judge had been pleased to observe that the importance of merit being the only criterion for admission to P. G. Medical Courses viz. MD/MS, the requirement of attaining minimum qualifying marks cannot be given a go-bye. It was also emphasized that in the case of Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, even the reserved category candidates who were SC and ST candidates in the said case were also required to secure the minimum qualifying marks in the admission tests in order to give admission to P.G. Medical Courses and if they fail to secure even the minimum qualifying marks then it was ordered that the seats reserved for them should not be allowed to go waste, but should be made available to the candidates belonging to the general category.

8. Having anxiously deliberated on the arguments and counter arguments advanced in support of the respective cases of the parties, I find sufficient force in the arguments advanced on behalf of the respondents as it far outweighs the arguments advanced in support of the case of the petitioners. In my considered opinion, the prescribed 50% qualifying marks even for the in-service candidates who have been working in the State of Rajasthan as Medical Officer for the last 5 years cannot be said to be arbitrary and unjust or contrary to the rules regarding admission into the P. G. Admission Course of MS/MD as it is quite apparent that merely because seats have been reserved for in-service candidates, it cannot be said that by virtue of the reservation they should also be exempted from attaining the minimum qualifying marks in order to be eligible to seek admission into the P.G. Course of medicine or surgery as the reasons laid down in Sadhana Devi's case (supra) can surely be held to be governing the case of in-service candidates also, since the logical and the legal proposition which emerges is that even if the reserved category candidates belonging to the SC and ST Class who are socially and educationally at a disadvantageous position by virtue of the fact that they were deprived of adequate opportunities of education, training due to social barriers have been subjected to the condition to secure at least minimum qualifying marks, may be a lower percentage than the general candidates, then I find no sufficient and substantial reason to exempt the in-service candidates from securing the minimum qualifying marks for M.S. and M.D. Courses, as they

are surely expected to be at a more advantageous position by virtue of 5 years training as in-service candidates than the fresh medical graduates. It is further unreasonable in my opinion to keep the in-service qualified doctors on par with such reserved category candidates for whom benefit of reservation is bestowed due to disadvantageous social position, in order to claim the exemption from attaining the minimum qualifying marks. On the contrary the in-service doctors can certainly be said to be at an advantage due to practice and training of their theoretical knowledge which they acquire as a medical graduate. At this stage it may be interesting to mention a passing reference of an argument advanced while pressing the case of the petitioners which was, that it may be one thing for a professional to put his knowledge into practice, but entirely different when it comes to appearing and passing an examination is concerned and hence it was submitted that it is too much to expect from doctors who passed out MBBS 5 years ago to attain the minimum qualifying marks of 50%. If this argument were to be accepted, then perhaps the petitioners might as well be allowed to raise a plea that honorary P.G. Degree should be awarded to them by virtue of the experience as an in-service candidate for it is quite obvious that even if they are not required to attain the minimum qualifying marks, they still would be required to attain the minimum pass marks for obtaining M.S./M.D. Degree. Thus if an examination is a pre condition for obtaining a degree, it is absolutely without substance to contend that the candidates should be exempted from obtaining the minimum qualifying marks. Mr. Alok Sharma learned counsel for the petitioners had further drawn a comparison between the petitioners' case with the candidates of Indian Civil Services and submitted that as there are no qualifying marks fixed for such competitive examination and the seats are filled on the basis of assessment of comparative merit, so also for in-service doctors, the seats which are reserved for them should be filled by assessing their comparative merit without fixing the minimum qualifying marks. This argument in my opinion is again fallacious for the competitive examinations which are held for reason of appointment has an altogether different purpose and hence have a different method of assessment as it is not an examination for specialisation or super specialisation and the candidates once selected does not have to go in for further examination for appointment, whereas doctors who are going in for specialised degree has to further obtain the minimum pass marks in order to qualify for the P.O. Degree in M.D./M.S. and as long as method of conferment of the P.G. Degree is on the basis of examination, it is difficult to do away with the requirement of fixing the minimum qualifying marks for entrance into the course at least till the time when there are more seekers than the seats available.

9. Thus examining the plea and counter plea raised on behalf of the petitioners from all aspects, I find that the exemption sought by the petitioners from the embargo of securing minimum qualifying marks of 50% is absolutely devoid of substance and hence I refrain from interfering with the impugned decision of the University of Rajasthan which decision was taken in consultation with the Director of Health Services who in turn adopted this method in consonance with

the decision of the Supreme Court delivered in Sadhana Devi's case.

10. For all these reasons I find no merit in the plea of the petitioners claiming exemption from attaining the minimum qualifying marks and hence the respondents will be at liberty to fill in the left over seats earmarked for the in-service candidates on account of the fact that sufficient number of candidates are not available who may have obtained a minimum of 50% marks. The left over reserved seats may therefore, be filled in by selecting candidates from the general category who may have obtained the minimum qualifying marks of 50% for I find no reason why the seats should be kept vacant in the specialised course of medicine and surgery if sufficient number of in-service candidates with the required qualifying marks are not available.

11. The writ petitions accordingly stand dismissed without cost.