

(2007) 04 KL CK 0005

In the High Court Of Kerala

Case No : Writ Petition (C) No. 3176 of 2007

Dr. Jose Thomas and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 04-04-2007

Acts Referred:

Citation : AIR 2007 Ker 217

Hon'ble Judges : C.N. Ramachandran Nair, J

Bench : Single Bench

Advocate : K.I. Mayankutty Mather and S. Lakshmi, for the Appellant; Hood, for Respondent Nos. 1 to 4, Alexander Thomas, SC, MCI for Respondent No. 5, Binoy Vasudevan, SC, DCI for Respondent No. 6, M.V. Amaresan and V.N. Ramesan Nambisan for Respondent No. 8, V. Giri and A. Rashid for Respondent No. 7, K. Ramakumar, for Respondent Nos. 9 and 10, S. Amina, for Respondent Nos. 11 and 12 and Shanker V., for the Respondent

Judgement

C.N. Ramachandran Nair, J.—The connected writ petitions are filed by some of the applicants for admission to various Post Graduate Dental courses in the State for the academic year 2007-2008. While petitioners in W.P. No. 3176/2007 are candidates for admission in the open quota, petitioners in all the three other cases are from service quota claiming admission to seats reserved for service quota. Admissions to Post Graduate Dental courses from service quota were made without conducting entrance examination until the academic year 2005-2006. However, this Court vide judgment in W.P. 3847/2004 produced as Ext. PI (a) in W.P. 3176/2007, following the judgment of the Supreme Court observed that entrance examination is required for selection of in-service candidates also for admission to Post Graduate Dental courses. Obviously following this judgment admissions were made for Post Graduate Dental courses after conducting entrance examination for in-service candidates also for 2005 and 2006 based on Exts. P2 and P3 prospectus produced in W.P. 3176/2007. It is seen from the said prospectus that minimum eligibility for admission for all candidates including in-service candidates is 50% marks in the entrance

examination. Relaxation is made only for SC/ST candidates. However, deviating from the two preceding years" practice, respondents have published Ext. P4 prospectus (produced in W.P. 3176/ 2007) dispensing with entrance test and providing for admission to candidates from service quota based on seniority in service. It is this prospectus that is under challenge and the prayer of the petitioners in W.P. 3176/2007 is for direction for selection of in-service candidates also based on entrance examination thereby disqualifying in-service candidates who do not secure minimum marks. Even though W.P. 2563/2007 is filed by a candidate from service quota, she is also pressing for same relief as in W.P. 3176/ 2007 i.e. for a declaration that Post Graduate admissions for service candidates also should be based on entrance examination. W.P. 4772/2007 is filed by a candidate from the service quota challenging Ext. P6 produced in the said W.P. by which Commissioner of Entrance Examination has notified entrance examination for in-service candidates for admission to Post Graduate Dental course for the year 2007-2008 pursuant to interim order of this Court in W.P. 3176/ 2007 dated 30-1-2007. The case of the petitioner in W.P. 4772/2007 is that admission for the current year should be based on the prospectus published by the Directorate of Medical Education which provides for admission to in-service candidates based on seniority in service in the speciality. W.P. 11969/2007, though filed by a candidate from service quota, the petitioner therein supports the case of the petitioners in W.P. 3176/2007 i.e. for admission to in-service candidates also based on entrance examination. In fact, in the entrance examination conducted for in-service candidates pursuant to the notification issued by the Commissioner of Entrance Examination, the said petitioner participated but she failed.

2. I heard counsel appearing for petitioners, contesting respondents and also the Government Pleader. The first question to be considered is whether the prospectus published for admission produced as Ext. P4 in W.P. 3176/2007 dispensing with entrance examination for in-service candidates for admission to Post Graduate Dental course in deviation from the practice of the two preceding years is arbitrary and illegal as claimed by petitioners in that W.P. and petitioners in W.Ps. 2563 & 11969/2007. It is conceded that Exts. P2 and P3 produced in W.P. 3176/2007 were the prospectus for admission to Post Graduate Dental course for the immediately two preceding years i.e. 2005 and 2006 which specifically provide for admission to in-service candidates also based on entrance examination. Even though the Government Pleader and the petitioner in W.P. 4772/2007 contended that the entrance examination introduced for in-service candidates for these two years was under a mistake, I am unable to accept the said contention. In fact, the position is well settled through several decisions of the Supreme Court, particularly in the case of *The State of Madhya Pradesh and Others Vs. Gopal D. Tirthani and Others*, where the Supreme Court has held that it is unsafe to rely on degree examination results when students for Post Graduate admissions are drawn from different Universities because the academic standards at graduate level will not be the same for all. The Supreme Court

accordingly upheld the Medical Council Regulations providing for minimum marks of 50% in entrance examination for Post Graduate medical admissions. In fact keeping in mind this decision of the Supreme Court this Court rendered Ext. P1 (a) judgment (produced in W.P. 3176/2007) wherein it was specifically mentioned that even for in-service candidates minimum qualification cannot be dispensed with and entrance examination will be the means to achieve it. Obviously prospectus for admission to Post Graduate Dental courses for the two subsequent academic years were prepared based on the several decisions of the Supreme Court and particularly that of this Court above referred and I find no justification for the respondents to deviate from the same for the year 2007-2008. Even though the Government Pleader and counsel for the petitioner in W.P. 4772/2007 pointed out that Dental Council Regulations do not provide for entrance examination for admission to MDS course, I do not think holding of entrance examination for admission to Post Graduate course even for in-service candidates based on decisions of the Supreme Court and of this Court goes against the Dental Council Regulations. Criteria for admission for MDS course under the Dental Council Regulation is academic merit at BDS level. The Supreme Court in Tirthani's case above referred took the view that when University standards are varying, it is unsafe to rely on graduate examination results for admission to Post Graduate courses. BDS course is conducted by several Universities in Kerala itself and therefore, in order to achieve uniform standard for selection, entrance examination is the only solution and it makes no difference whether the candidates are from open quota or from service quota. It was held by the Supreme Court in Dr Preeti Srivastava and Another Vs. State of M.P. and Others, that there is no justification to dispense with minimum qualification for admission to Post Graduate courses. In the circumstances, I am of the view that the entrance examination provided for in-service candidates for admission to Post Graduate Dental Courses was the right decision taken by the respondents for admissions 2005 and 2006 and there was no justification to deviate from the same for the current academic year. Therefore, in principle, the challenge against Ext. P4 in W.P. (C) No. 3176/2097 is upheld.

3. The next question to be considered is whether selection based on entrance examination should be insisted for in-service candidates for admission to Post Graduate Dental course for the current academic year i.e. 2007-2008. Even though W.P. 3176 & 2563/ 2007 were filed in time, the interim order passed by this Court was not to the effect that entrance examination should be held for in-service candidates for admission to Post Graduate Dental course for current year. In fact, the examination was held by the Commissioner of Entrance Examination assuming that this Court through interim order expected to hold the entrance examination for in-service candidates also. It is seen that the Commissioner of Entrance Examination conducted the examination for in-service candidates without altering the prospectus and without giving proper publicity or time for all the candidates to prepare and write the examination. It is to be noted that prospectus was not amended and this Court also did not issue any specific

direction to hold entrance examination for in-service candidates. This obviously disabled many in-service candidates from appearing for the entrance examination as they were waiting for admission based on prospectus which was not stayed by this Court during the pendency of W.Ps. Therefore, the only course is to order fresh entrance examination for in-service candidates, which will cause inordinate delay for commencement of P.G. courses for the current academic year. So far as individual grievance of the petitioners are concerned, I find that candidate from service quota who filed W.P. 2563/2007 though wrote the entrance examination, did not qualify. Therefore, she cannot have any grievance in the admission being given to in-service candidates based on seniority. Even though petitioner in W.P. 11069/2007 is also a candidate from the service quota who wrote the entrance examination and is said to have qualified, she is a late comer to this Court as the W.P. was filed only yesterday and is coming up for admission today. Counsel for the petitioner in W.P. 4772/2007 produced a consent letter from petitioner in W.P. 11969/2007 wherein she has expressed her no objection for giving admission to seniors in service based on prospectus. So far as the petitioners in W.P. 3176/ 2007 are concerned, they will have any benefit only if in the entrance examination candidates from service quota do not qualify by securing the minimum marks for admission, leading to dereservation of seats reserved for them to merit quota as held by Supreme Court in Dr. Sadhna Devi and others Vs. State of U.P. and others, . Since entrance examination was neither provided under Ext. P4 prospectus nor ordered by this Court for service candidates, the petitioners in W.P. 3176/2007 cannot have a case that seats reserved for service quota candidates to be filled up based on seniority will be available to them. In the circumstances and to avoid delay in commencement of current year's PG courses, I feel admission of service candidates can be made in terms of Ext. P4 prospectus produced in W.P. No. 3176/2007. The Writ Petitions are accordingly disposed of with the following directions:

(1) The Director of Medical Education is directed to make selection of service candidates also for admission to Post Graduate Dental courses from next academic year onwards by conducting entrance examination as was done during the academic years 2005 and 2006.

(2) For the current academic year, admission to Post Graduate Dental course can be made based on prospectus issued which is produced as Ext. P4 in W.P. No. 3176/2007. However, reservation to in-service candidates shall not exceed one third of the total seats and reservation should be provided subject-wise. In other words, two out of every three seats in each subject should be allotted to candidates from open merit quota and allotment under reservation quota should be made to in-service candidates only in subjects where there are minimum three seats.

3A. The entrance examination conducted by the Commissioner of Entrance Examination apparently under interim orders of this Court, will stand cancelled.