

(1993) 10 MP CK 0002

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 1700 of 1993

Dr. Kumari Aparna Singh

APPELLANT

Vs

State of M.P. and Another

RESPONDENT

Date of Decision : 17-10-1993

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1994 MP 42

Hon'ble Judges : M.W. Deo, J;A.G. Qureshi, J

Bench : Division Bench

Advocate : T.N. Singh, for the Appellant; V.K. Dubey, R. Saboo and H.S. Oberoi, for the Respondent

Final Decision : Allowed

Judgement

1. Dr. Kumari Aparna Singh is a doctor who has taken her education at Indore and passed her M.B.B.S. in the year 1991 from the M.G.M. Medical College, Indore. She has also completed her internship in October, 1992. She appeared at the postgraduate entrance examination for admission to Medical M.D./M.S. course conducted by the Professional Examination Board of M.P. and finally was selected to be admitted in subjects Obstetrics & Gynaecology at G.R. Medical College, Gwalior. She had, however, given her first choice for being admitted in M.G.M. Medical College at Indore, but at the time of the admission according to the P.G. Admission Rules she could not be admitted at Indore in view of the more meritorious candidates being available at Indore.

2. After coming to know that a seat was lying vacant in M.G.M. Medical College, Indore because Dr. Miss Priti Mittal had not joined the course, she applied on 2-7-1993 to the Director Medical Education for admission to Indore on the ground that except her father there is no other male member in her family, her father and mother are both Government servants serving at Indore and her mother is shortly to undergo a major gynaec surgery requiring her presence at Indore. But despite her representation she was not transferred from Gwalior to

Indore. Therefore, she has filed this petition seeking her transfer from Gwalior to Indore.

3. The State has in its return averred that there are no Rules for transferring a student from one college to another. There is one seat of Dr. Miss Priti Mittal vacant due to her non-joining the course, but for want of any rules for transferring a student from one college to another, the prayer of the petitioner was not considered. It has also been averred that as per P.G. 1992 Rules a College once allotted to a candidate cannot be changed. Therefore, on the basis of the Rules of Admission the petitioner was not given the admission.

4. Two interveners have also intervened in the petition. One Dr. Anita Gupta, resident of Bhopal has sought admission against the vacant seat and has challenged the claim of the petitioner on the ground that according to Admission Rules she cannot change her college and, therefore, against the vacant seat she should be given the admission. Another intervener Dr. Ku. Nikita Choudhury has filed the intervention petition on the ground that she is higher in merit. Therefore, on the basis of the merit she should be transferred to Indore from Bhopal where she is at present studying. She has also made a representation to the Director, Medical Education on 21-7-1993 for her transfer to Indore and has also pleaded ill-health of her mother as the additional ground of transfer. She has further stated that this application for intervention be also treated as a petition on her behalf.

5. As regards the transfer of a candidate from one college to another it is a common ground that no rules have been framed by the State Govt. in that behalf and although transfers are effected from one college to another, but they are not based on any rules. As to the intervener Dr. Miss Anita Gupta it is undisputed that her case is not that of transfer but of seeking fresh admission in the vacancy at M.G.M. College, Indore. The question in hand is one of considering the case of transfer of candidates and not of fresh admission. The petitioner and the second intervener Dr. Miss Choudhury are both candidates who have already been admitted. The petitioner is in the Medical College at Gwalior and the intervener is in Medical College at Bhopal. The question, therefore, is to be confined to choosing one of these two for the purpose of transfer from one Medical College to M.G.M. College at Indore.

6. It was argued on behalf of Dr. Miss Nikita Choudhury that apart from illness of her mother she also has higher marks in pre-P.G. test. In the matter of transfers merit alone cannot be the decisive factor. It is decisive at the time of admission of a candidate to pre-P.G. Once both the candidates are admitted the question of transfer has to be decided looking to the totality of the circumstances for grant of the relief of transfer. Now, the petitioner has no other male member in the family except her father, who is a Government servant and a mother who has to undergo a major surgery as is evident from the certificates produced by her and she has to attend to her during the ailment and post-operative period also. Dr. Kumari Nikita Choudhury has claimed the illness of her mother and produced

certificates of the year 1988 to show that she is suffering with an ailment. As such there does not appear to be any such urgency. Furthermore she has not stated that there is no one else to look after her family if she stays back at Bhopal. Therefore, taking the comparative circumstances of the two candidates in consideration we find that the petitioner is more deserving than the intervenor Dr. Miss Nikita Choudhury for being considered for transfer to Indore and, therefore, she deserves to be transferred to Indore from Gwalior on humanitarian grounds.

7. It has also been argued that a candidate once admitted to an Institution cannot seek admission to another Institution after admission. But it has been stated at the Bar that many transfers have been effected although there are no Rules in existence. Therefore, it cannot be said that when the circumstances are compelling and a vacant seat is available, the just claim of a candidate can be denied on this ground.

8. As regards the other intervener we have already said that her case is not that of transfer. If she is entitled to an admission she can always apply for the admission to Post-Graduate Studies as a result of the vacancy which shall be caused because of the transfer of the petitioner from Gwalior.

9. It has also been brought to our notice by all concerned that according to the Indian Medical Council Rules the ratio of the teacher and taught is 1 : 1 and two extra teachers for the Post-Graduate teaching are available at M.G.M. College, Indore and, therefore, two additional seats for the post-graduate studies in the relevant subject have to be created. A recommendation has already been sent by the Medical College Authorities on that behalf but the Government have not taken any decision. In the instant case we cannot direct the Government to take a decision to create additional seats because Indian Medical Council is not a party before us. However, according to the Indian Medical Council norms, two additional seats should have been created at Indore in view of the teacher taught ratio and it will be in the fitness of things that two more seats are created by the State Government. It should be remembered that in our country when already the seats for higher studies in medical discipline are limited then the availability of extra teachers should not be ignored and the Indian Medical Council Norms of keeping the ratio of teacher and taught should be maintained by the State. As such the creation of two more seats would not cause such an extra financial burden on the State. Therefore, we strongly recommend that the proposals of the Medical College Authorities of Indore should be processed expeditiously by the State Government and a decision may be taken in that behalf at their earliest. If this is done the problems of the interveners can also be solved who are keen to get admission and transfer at Indore itself, if eligible.

10. With the aforesaid observation the petition of the petitioner is allowed. The State is directed to transfer the petitioner from G.R. Medical College, Gwalior to M.G.M. College at Indore in the same subject i.e. Obstetrics & Gynaecology. In the facts and circumstances of the case there shall be no order as to costs.

Security cost, if deposited, shall be returned to the petitioner after due verification.