

(2012) 02 AHC CK 0336

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 3277 of 2001

Dr. Manish and Others

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 22-02-2012

Acts Referred:

Citation : (2012) 3 ADJ 575

Hon'ble Judges : Uma Nath Singh, J;Ritu Raj Awasthi, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. We have heard learned counsel for parties and perused the pleadings of writ petition. It appears that petitioners-Doctors were declared successful in Post Graduate Medical Entrance Examination, 1998. At that time, the minimum qualifying mark for general category candidates was 45% and for reserved category, it was not specified. However, due to non availability of candidates belonging to reserved category, their vacancies stood surrendered to general category and were thus filled by general category candidates.

2. Post Graduate Medical Entrance Examination, 1998, was conducted by the then King George Medical College, Lucknow (now Chhatrapati Shahuji Maharaj Medical University) and as per brochure brought out, the minimum qualifying mark was set out as 45%. First counseling of successful candidates was held on 15, 16 and 17.4.1998 and criterion of 45% marks for general category candidates remained intact. However, in the first counseling, it was made 35% for reserved category candidates. On the basis of first counseling, the petitioners were allotted various P.G. Courses. However, these admissions were given provisionally, being subject to the decision in pending litigation, if any.

3. It also appears that the first counseling itself was conducted under an interim order passed by this Court in Writ Petition No. 868 (MS) of 1998. The Court also clarified that candidates of reserved category who had obtained less than 35%

marks would not be permitted to appear in the counseling, and thus, if already permitted to participate in counseling, were not to be given admission. The courses started in the first week of May, 1998 for general category seats. But during the pendency of writ petition, the U.P. Government came with Ordinance No. 15 of 1998 which later became the Act No. 14 of 1997 and made applicable to U.P. Post Graduate Medical Entrance Examination, 1998 also. Subsequently, U.P. Ordinance No. 15 of 1998 was also promulgated by another Act, namely, the Act No. 9 of 1998 whereby the earlier Act No. 14 of 1997 was made applicable also to Post Graduate Medical Entrance Examination, 1999 and the minimum qualifying mark prescribed for reserved category was reduced to 20%. Thereafter, the second counseling started with 45% mark for general category and 20% mark for reserved category. That arrangement under the Act was however made provisional, subject to the outcome of writ petition. Later, a third counseling was also conducted on 23.8.1999 under an interim order of this Court, passed in a bunch of writ petitions, wherein the Court reiterated the criteria determined by the Medical Council of India that the minimum qualifying mark for general category candidates would be 50% and for reserved category candidates, 40%. It was also clarified that the students who were pursuing other courses would also be made entitled to claim better option on the basis of their merit and, thus, would be entitled to participate in the third counseling. Finally, the bunch of writ petitions vide a judgment dated 30.11.1999 in the lead Writ Petition No. 3801(MB) of 1998, was disposed of, and the Court reiterated the criteria as laid down by the Medical Council of India which were to be adopted in the third counseling. In the event of seats remaining unfilled, the criteria of 45% minimum qualifying mark for general category candidates and 35% mark for reserved category candidates had to be adopted. The bar imposed upon the candidates admitted earlier, was lifted because of the faulty implementation of reservation policy. Besides, the residual seats were also permitted to be filled on the basis of subsequent counseling and thus, the candidates were again permitted to participate in the count selling in the order of their merit. As per final judgment, the petitioners were thus allotted fresh courses which were to continue for a period of three years so far as the degree courses were concerned, and two years in the case of diploma courses. It appears that petitioner Nos. 1 to 6 were admitted to degree courses and petitioner No. 7 to diploma course. The students pursuing post graduate courses and also working as Junior Residents were held entitled to receive stipend for the entire period of residency. There was also a restriction on private practice like the one applicable to the scheme of State Government. However, that stipend, which the petitioners were made entitled to get, was stopped with effect from May, 2001, on the ground that the payments made earlier during pursuing of other courses were to be adjusted by deduction during the continuance of present courses, which the petitioners were pursuing. In this background, Shri A.R. Masoodi, learned counsel for petitioners, submitted that the petitioners were illegitimately denied the stipend, which, later, in the case of similarly situated other candidates, was paid in terms of a Division Bench Judgment of this Court dated 8.4.1997 passed in Writ Petition No. 4 (SB)

of 1997 and a bunch of similar other writ petitions. The operative portion of judgment, on reproduction, would read as:

In view of the discussions held above, all the above noted writ petitions are allowed and the opposite parties are directed to pay the stipend to the petitioners as Junior Residents during the period of three years of course of study of M.D.M.S. reckoning it from the date they have been allotted the correct subjects of courses of study without adjusting the period of course they had undergone in different subjects wrongly allocated due to wrong implementation of reservation policy. So far petitioners in writ petition No. 84 of 1997 (SB), writ petition No. 202 of 1997 (SB) and writ petition No. 132 (SB) of 1997 are concerned whose course of study has come to an end and examinations have been held. If necessary, they would be allowed to complete the period of three years as Junior Resident but would not be entitled for any stipend if the courses are over and the examinations were held. It is further provided that the opposite parties shall clear off the arrears of amount of stipend which may not have been paid to the petitioners or may have been stopped being paid during the currency of the Post Graduate Courses, within a period of two months from today. Writ Petition No. 326 (SB) of 1997 (Dr. Manoj Rajani and Another) and writ petition No. 329 (SB) of 1997 (Dr. Pramod Kumar Jain) which have been filed fresh and have come before us today out of which writ petition No. 326 (SB) of 1997 relates to Kanpur Medical College and writ petition No. 329 (SB) of 1997 which relates to Agra Medical College they also stand finally disposed of in the same manner as indicated above.

4. We are also informed that the said judgment has been implemented, and thus, the petitioners would also be entitled to get the same benefits irrespective of undertakings, if any, obtained from them that they would not claim payment of stipends during the pursuance of present P.G. Courses allotted in subsequent counselings in order of merit. It appears that the undertakings have been given under some compulsion which otherwise ought not to have been asked for.

5. There is no dispute from the State over the assertion made by learned counsel for petitioners. Thus, we dispose of the writ petition in terms of the aforesaid operative portion of the judgment.