

(2001) 07 GUJ CK 0144
In the Gujarat High Court

Case No : Letters Patent Appeal No. 325 of 2001 in Special Civil Application No. 12067 of 2000

Dr. Rahul Kapur

APPELLANT

Vs

Dean Faculty

RESPONDENT

Date of Decision : 17-07-2001

Acts Referred:

Government Medical Colleges and attached Medical Institutes Recruitment Rules, 1992
— Rule 6

Citation : (2001) 07 GUJ CK 0144

Hon'ble Judges : D.M. Dharmadhikari, C.J;K.R. Vyas, J

Bench : Division Bench

Advocate : Y.N. Oza and B.P. Gupta, for the Appellant; S.N. Shelat, General for Respondent Nos. 1, 2, 3-4 and Mitul K. Shelat, for the Respondent

Final Decision : Dismissed

Judgement

K.R. Vyas, J.—The appellant (original petitioner No. 2) in this Letters Patent Appeal has challenged the order of the Learned Single Judge dated 29.3.2001 passed in Special Civil Application No. 12067 of 2000. The appellant as well as the present respondent No. 4 & 5 filed the said petition challenging the order dated 23.10.2000 passed by the Registrar, M.S. University - second respondent herein, rejecting their applications for registration in Post Graduation Course in Radiology.

2. The original petitioners were appointed by the Government by order dated 5.4.2000 on the Post of Tutor in the Radiology Department of Baroda Medical College. Under the said order, they were to undertake Post Graduate Registration from the University in the concerned subject. The petitioners had applied to the Dean (Faculty), Medical College, Vadodara - first respondent herein for registration in Post Graduate degree in Radiology within three months from the date of their appointment in the prescribed form. It appears that Dr.Chandwani of Vadodara University refused to forward the same to the University. The

petitioner approached this Court by filing a petition being Special Civil Application No. 8172 of 2000. This Court by its order dated 21.3.2000 directed the respondents to consider the application of the petitioner and to take decision in accordance with the rules within a period of 3 weeks from the date of receipt of the order. In pursuance of the aforesaid direction, a meeting was held by the members of the Committee of the second respondent to consider admission of the petitioners in Post Graduate Course in Radiology, wherein a decision was taken not to admit the petitioners. The first respondent was accordingly informed by the second respondent about the order dated 23.10.2000. The reasons to refuse admission are on the ground that the applications are not as per the existing rules and norms and are incomplete, improper and not submitted with proper documents to the proper authority. They are at liberty to apply again at the next Selection Meeting with proper documents to the Dean. Their selection will be made as per the rules only considering (1) availability of teacher, (2) merit, (3) M.C.I. recommendations and (4) category as classified. The petitioners challenged the said decision by filing petition being Special Civil Application No. 12067 of 2000 as stated above.

3. After hearing the parties, the Learned Single Judge was of the view that as the petitioners did not apply within the prescribed time and when they applied for the course, the admissions were closed long back, the University cannot be directed to consider the applications of the petitioners for admission in Post Graduate Course in Radiology for academic session 2000-2001. The Learned Single Judge was also of the view that the action of the respondents are not arbitrary or contrary to the rules of the University or in violation of the rules and regulations for admission of candidates in Post Graduate degree course and as there is no merit in the petition and therefore it was dismissed. Hence the present appeal.

4. We have heard Mr. Y.N. Oza, Sr. Counsel appearing with Mr. B.P. Gupta for the appellant. Mr. Oza, Learned Counsel invited our attention to the rules and more particularly, Rule 6 (a) & (b) of the Rules called as Tutor, G.S.S. Class-II in Government Medical Colleges and attached Medical Institutes Recruitment Rules, 1992. The said Rule 6(a) & 6(b) which are relevant for our purpose read as follows:-

6(a) A medical candidate who is appointed as Tutor shall have to obtain registration for post-graduate degree in the subject in which he or she as the case may be, has been given appointment unless he or she already possesses such post graduate degree. The candidate so appointed shall have to obtain such registration within three months from the date of joining the post of Tutor. This period may be extended if registration is not available for want of qualified teachers in such subject or for any other sufficient cause.

(b) The services of a Tutor who fails to comply with the requirements laid down in Clause (a) above shall be liable to be terminated.

Learned Counsel submitted that as per the condition of the appointment, the appellant has to obtain registration for Post Graduate degree in the subject of Radiology within 3 months from the date of joining the post of Tutor. Mr.Oza, Ld. Counsel also submitted that the service of Tutor who fails to comply with the requirements laid down in 6(a) shall be liable to be terminated. Learned Counsel wanted us to construe the provisions of Rule 6(a) to the effect that it is mandatory upon the College to give registration to Post Graduate degree in the subject. The aforesaid submission of the appellant is required to be considered in light of the reply filed by the respondents.

5. Dr. Sangita Chandwani, Dean, Faculty of Medicine has filed the affidavit in the main petition. It has been pointed out in the said reply that the representation and applications preferred for admission were considered in compliance with the order dated 27.9.2000 passed by this Court in Special Civil Application No. 8172 of 2000. It has been pointed out that the petitioner cannot be offered registration solely on the basis of their occupying the post of Tutor nor they can be considered for registration to Post Graduate Degree for want of qualified Post Graduate teachers in light of the regulations of Medical Council of India. It is also pointed out that presently in the department of Radiology, there are only 2 recognised Post Graduate Teachers, one Dr.Prof.M.K. Vadel and Dr.S.D. Shah. On the basis of the present strength of the recognised teachers as per the M.C.I. recommendations, only 2 students can be admitted in the Department of Radiology for Post Graduate Degree. According to the deponent, admissions have already been granted to 4 candidates for PG degree in Radiology selected as residents by the College Council. The students are to be granted admission to basis courses on merit basis as per selection by the College Council in accordance with residential rules of Government of Gujarat. This Council is a body appointed by the Government of Gujarat for selection of candidates for residency and P.G. diplomas in various medical subjects. M.S. University gives P.G. degree registration to all the candidates thus selected by the College Council for residency.

6. The Deputy Registrar of M.S. University has filed affidavit on behalf of respondent No. 2 and 3 in the present appeal making the stand of the University very clear by interalia stating that under the regulations of the Medical Council of India, a number of seats in each department is fixed by the Medical Council of India on the basis of availability of recognised Post Graduate teachers and other infrastructure facilities. Having regard to the existing strength of qualified teachers, it is not possible to offer admission to the present appellant. It is specifically averred that as per the rules and regulations of the Medical Council of India and as per the rules and regulations governing admission to Post Graduate Course in Medicine, the admission in Post Graduate in Medicine is to be granted solely on the basis of merit. Every year the seats are advertised and applications are invited from the prospective student. The merit list of the applicants students is prepared and the admissions are granted in accordance with the merit list.

7. From the above pleadings, it is clear that a student who is offered the post of Tutor cannot claim by way of right a registration in the Post Graduate course. Rule 6(a) of the Recruitment Rules requires a tutor to obtain registration in PG degree within three months from the date of joining the post of Tutor. The said rule provides that if registration to PG course is not done then the appointment as a Tutor itself ceases. The said rule framed by the State Government is required to be read with the Regulations of the Medical Council of India. The Medical Council of India is authorised under the regulations to fix number of seats in each department on the basis of the availability of recognised post graduate teachers and other infrastructure facilities. In the Department of Radiology as can be seen from the affidavits of the respondents, there are only 2 recognised teachers, on the basis of the present strength of recognised teachers and as per the recommendations of the Medical Council of India, admissions have already been granted to 5 students on their merits, as per selection by the College Council in accordance with residency rules of the Government of Gujarat. Once the College Council is appointed by the Government of Gujarat for selection of candidates for residency and P.G. Diploma in various medical subjects, the University gives registration to all the candidates selected by the Medical Council for residency. Thus, the selection of the candidates is on merits. Every year, seats are advertised and applications are invited from prospective students and merit list of the students is prepared and the admissions are granted in accordance with the merit list. This Court (Coram: D.C. Srivastava, J) in *Jasmin S. Shah v. Post Graduation Director, Special Civil Application No. 4787 of 1998* dated 25.6.99 in a petition for declaration that petitioner is entitled to P.G. Registration in Radiology observed as under:-

"However, mere application for registration is not enough. There are two bodies, one is the State Government and the other is University. The State Government may be laying down certain norms and conditions but the admission is to be given by the University according to prevalent rules. The rules for admission clearly lay down that the admission has to be given only in accordance with merit. A person having lower merit cannot be given preference over the candidate having higher merit. There can be no registration or admission to the Post Graduate Course unless vacant seat is available."

It is, therefore, clear that admissions to P.G. Medicine Course in Radiology is on the basis of availability of teachers, merits and MCI recommendations. In compliance with the directions of this Court, the case of the petitioners including the present appellant was considered by the Committee. Once a decision is taken by the Committee consisting of Experts, there is hardly any ground for interference by the Court. We, therefore, see no substance in the first submission of the Learned Counsel appearing for the appellant.

8. Mr. Oza, Sr.Counsel during the course of hearing filed additional affidavit of the appellant and gave details of Tutors who have been given admission in P.G. Course i.e. M.D. Course and contended that as per the prevalent practise all of

them have been given admission to Post Graduate Course and even though their marks were below the cutoff marks applicable to the General Category. As per the said affidavit in the Department of Pathology, details of 3 Tutors whose names, marks, cut off marks and year of admission are given. In the Department of Pharmacology and Prevention of Social Medicines, it is stated that all tutors are given registration. Since those are the additional facts raised for the first time in appeal, we have asked the first respondent to file affidavit and to clarify the matter.

9. Dr. G.H. Shukla, Dean (Faculty), Medical College, Vadodara filed the affidavit wherein it is pointed out that for the academic year 2001-2002, in the batch of July 2001, the petitioners have been considered for admission and called for interview by College Council. However, they were not considered for registration on the basis of their merits. Dealing with the admission given to 3 Tutors of Pathology, it is pointed out that they have been offered the admission strictly on the basis of the merit list. It is indicated that they happened to be appointed as Tutors by the State Government. Their claim for admission has not been considered on the basis of their being appointed as Tutor. It is emphatically stated that no student has been granted admission on his being appointed as a tutor by the State Government and that admission has been granted strictly on the basis of merits. The above statement of the first respondent will leave no room for doubt that registration in Post Graduation Course is strictly on merits. Merely, because the tutor is appointed by the State Government, on that basis it cannot be contended that the tutor is entitled to get admission in P.G. Course as a matter of right. The State Government may put certain norms and conditions in appointment but the admission is to be given by the University according to the prevalent rules. The norms has stated above for admission to a candidate possessing merit and availability of vacancies are available. From the affidavit of the University, it is clear that as against 2 Professors and Head of the Department, 4 candidates have already been admitted according to Medical Council of India norms. At present, there is no quota to admit or register any additional candidate.

10. Mr. Oza, Ld. Counsel made a grievance that even though the petitioners applied in time within 3 months from their appointment, their applications were withheld on extraneous grounds with the result the admission for P.G. course in Radiology was closed. It is the submission of the Learned Counsel that the petitioners cannot be penalised for the inaction of the Head of the Department. Our attention is invited to the meeting of the Heads of Departments held on 1.9.92 wherein it was decided that P.G. degree registration has to be given to the tutors in the subject concerned within 3 months even if additional registration is required as it is required to be given as per tutors post. It was further decided to give registration to the tutors in the concerned subject as special case. It is true that the petitioner applied for registration within 3 months from the date of their appointment. It is also true that Dr.Chandwani refused to forward the same to the University with the result the petitioners were required to approach this

Court for a direction for forwarding their applications to the University for considering their applications for P.G. Course in Radiology. It is not necessary for us to go into the question as to why the applications of the petitioners were not forwarded immediately as in our opinion, the said question become redundant when this Court directed the respondents to consider admission of the petitioner in P.G. course in Radiology. The College Council as stated above infact considered the case of the petitioners for admission by calling them for interview. Since the petitioners were not found suitable, their claim for admission was rejected. In this view of the matter, it is not open for the petitioners to make grievance about not forwarding their applications in time with the result they lost opportunity. In this view of the matter, the registration to the appellant as a special case does not arise.

11. Mr. Oza, Ld. Counsel after inviting our attention to the resolutions passed by the Medical College held on 1.12.92, 29.1.94 and again on 13.7.1998 contended that admissions to P.G. course should be given within 3 months from the date of the appointment of Tutor. It is not possible for us to accept the said submissions. The said resolutions passed by the Medical Council are merely recommendatory in nature. The University is required to follow the recruitment rules and the norms laid down by the Medical Council of India.

12. In view of the above discussions, we see no merits in this appeal. The appeal accordingly stands dismissed. There will be no order as to costs.