

(1985) 11 RAJ CK 0014
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2231 of 1985

Dr. Rajendra Vaishnav

APPELLANT

Vs

Principal S.N. Medical College

RESPONDENT

Date of Decision : 29-11-1985

Acts Referred:

Citation : (1985) WLN 353

Hon'ble Judges : A.K. Mathur, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ashok Kumar Mathur, J.—Petitioner by this writ petition has challenged the admission of respondent No. 4 Dr. (Miss) Indira Prabhakar to the post graduate course in medicine.

2. Petitioner is M.B.B.S. and sought admission to three years Residency System (for short the P.G. Course) devised for grant of post graduate degree and he was granted admission in M.S. Orthopaedic and was appointed as Resident House Officer. Nine seats in the various specialities in the post graduate were created and applications were invited by the notice dated 9-9-1985. Medicine was not included in the nine specialities which were invited by the notifications dated 2-9-1985. In the process of re-shuffling in pursuance of the nine specialities Dr. (Mrs.) Bela Ranka who initially was granted admission to post graduate course in Medicine got the speciality in Gynaecology thereby causing one vacancy in the Medicine. In place of this vacancy one Dr. (Miss) Indira Prabhakar who is said to have less marks in the M.B.B.S. than the petitioner was selected Aggrieved against this the petitioner has filed this writ petition.

3. A return has been filed by the State Government and it has been shown that Dr. (Miss) Indira Prabhakar applied when this notice dated 2-9-1985 was issued and in that she has given one of her preference as Medicine. Therefore, when the vacancy of Mrs. Bela Ranka was caused Dr. (Miss) Indira Prabhakar was adjusted

against that vacancy.

4. Mr. Mridul, learned counsel for the petitioner submitted that the vacancy of medicine was not specified in the notification dated 2-9-1985, therefore, petitioner had no occasion to apply for that vacancy. He further submits that in the original preference given by the petitioner he has given medicine as his first preference and he had obtained more marks in his M.B.B.S. examination than the respondent Dr. (Miss) Indira Prabhakar. Thus if at all the original preferences are to be considered, then the petitioner has a prior claim than the respondent. He has also submitted two affidavits of the persons who had higher marks in the M.B.B.S. than the petitioner, viz., Mr. Anil Kothari and Mr. Ish Dhammi who have submitted that they are not interested in the Medicine. Therefore, Mr. Mridul submits that the petitioner has a prior claim for admission for the post graduate classes in medicine than the respondent.

5. I have heard Mr. Mridul for the petitioner, Mr. Dave for the State and Mr. Bhansali for respondent No. 4 Dr. (Miss) Indira Prabhakar. I am of the view that when the vacancy in medicine has occurred, the only course open for the respondent was to advertise the vacancy properly and then to consider the candidate according to merit. But they allotted this speciality to Dr. (Miss) Indira Prabhakar because she had applied in pursuance of the notification dated 2-9-1985 is not correct. When the speciality of the medicine was not advertised that shows that at the time when the vacancies were advertised, the vacancy was not there and when the vacancy occurred on account of change of subject by some other candidate, then the vacancy should have been re-advertised or in the advertisement dated 9-9-1985 they could have mentioned that in case of change of speciality the candidates can apply afresh. But that was not done and because of the fact that some candidates have given their preference for other specialities though they were not advertised, yet respondent No. 4 has been admitted in Medicine. This is against the principles of natural justice. In the present case it is not disputed that the petitioner obtained more marks than the respondent and thereby he has lost his choice just because he could not apply and he could not have applied for the reason that the medicine was not advertised. This course was not fair, objective and in consonance with the principles of natural justice.

6. Thus in the result I allow the writ petition and quash the admission of respondent No. 4 in the speciality of medicine. It is directed that the respondent should advertise the post and thereafter fill them in accordance with law. This process should be done within fifteen days from today.