
(1991) 02 MP CK 0024
In the Madhya Pradesh High Court
Case No : M.P. No. 853 of 1990

Dr. Ram Kumar and Another	Vs	APPELLANT
State of Madhya Pradesh and Others		RESPONDENT

Date of Decision : 22-02-1991

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1993) 38 MPLJ 384 : (1993) MPLJ 384

Hon'ble Judges : S.D. Jha, J;R.K. Verma, J

Bench : Division Bench

Advocate : C.L. Yadav, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Verma, J.

The petitioners, who are related as father and son have filed this petition under Article 226 of the Constitution of India as a public interest litigation for protecting the rights of the petitioner No. 2 Dr. Sunil Kumar Bansal.

The petitioner No. 2 Dr. Sunilkumar Bansal was given admission in Post Graduate Diploma Course in M.G.M. Medical College in Orthopaedics in the academic year commencing on 26-11-89 and ending on 25-11-90. It has been stated that after having completed the diploma course the petitioner No. 2 has now passed the diploma examination.

It is alleged by the petitioners that pursuant to selections on the basis of merit the name of the petitioner No. 2 was put in the waiting list of Institutional Merit Candidates for admission to Post Graduation Degree of M.S. in Orthopaedics pertaining to the academic year commencing on 26-11-89 and ending on 25-11-90. The petitioners have also alleged that respondent No. 4 Dr. Anil Sharma who was admitted to Post Graduate Degree course of M.S. (orthopaedics) in M.G.M. Medical College Indore and joined that course on 26-11-89 as an Institutional Merit Candidate, has left his seat vacant, he having

gone to U.S.A. since 4-6-1990. On these allegations the petitioners claim that the petitioner No. 2 is entitled to be given admission to M.S. Course in Orthopaedics against the seat of Dr. Anil Sharma which is alleged to have fallen vacant. The petitioners have claimed that the petitioner No. 2 is entitled to be admitted under Rule 10 of the M.P. Selection for Post Graduation Courses Rules of 1984 to fill up the vacancy of seat in the Post Graduate Course in M.S. in the circumstances as alleged and have placed reliance on the decision of the Supreme Court in Ajay Pradhan Vs. State of Madhya Pradesh and Others, which has been filed as annexure-4 to the petition. A notice to show cause against admission of this petition was issued to the respondents. Respondent No. 4 has not appeared before us but reply to the show cause notice has been filed on behalf of respondent Nos. 1, 2 and 3 i.e. State of Madhya Pradesh, Director of Medical Education and the dean M.G.M. Medical College, Indore on 21-8-90 and an additional reply on their behalf has been filed on 12-10-90.

According to the reply filed on behalf of respondents Nos. 1, 2 and 3, it has been denied that the seat in M.S. orthopaedics allotted to Dr. Anil Sharma Respondent No. 4 is lying vacant. It has been averred that Dr. Anil Sharma is on leave and has not vacated the seat and that the said seat cannot be allotted to the petitioner No. 2. In the additional reply filed on behalf of respondent Nos. 1 to 3 it has been averred that the respondent No. 4 Dr. Anil Sharma is a registered Post Graduate Student on Institutional Merit Candidate seat of the year 1989 which was allotted to him under the Rules and that presently he is on leave which has been admittedly recommended and forwarded by the Head of Department of Orthopaedics Surgery which is pending in the Dean's office. It has also been averred that in the present Rules there is no such provision for cancelling registration of a Post Graduate Student on the ground that the candidate is absent for some time and therefore the seat cannot be treated as vacant.

Broadly speaking there are two main controversies raised on the contention of the petitioners firstly that the seat of M.S. Orthopedics allotted to respondent No. 4 on merit basis must be treated as having fallen vacant because of prolonged and indefinite absence of the respondent No. 4 and secondly that the petitioner No. 2 can even now be allotted the seat which was filled in the academic year commencing on 26-11-89 and ending on 25-11-90 on account of its having fallen vacant by reason of the respondent No. 4 having gone abroad.

As regards the first contention of the petitioners that the seat of M.S. Orthopaedics allotted to respondent No. 4 on merit basis must be treated as having fallen vacant because of the respondent No. 4 having gone abroad, the learned G.A. appearing on behalf of respondents Nos. 1 to 3 has submitted that the respondent No. 4 has not vacated the seat allotted to him as a Post Graduate (M.S.) stipendiary merit student and the said seat cannot be allotted to the petitioner No. 2. He has further submitted that there is no provision for cancelling registration of a post Graduate student on the ground that the student

is absent for some time or has gone abroad. It has also been stated that the respondent No. 4 Dr. Anil Sharma is on leave and has not vacated the seat. The petitioners have vehemently argued that in the circumstances when the respondent No. 4 is remaining absent indefinitely even after a long period of absence this court should declare the seat of the respondent No. 4 in M.S. Orthopaedics course as vacant and direct the authorities to admit the petitioner No. 2 whose name was put in the waiting list of admission of 1989 pertaining to the subject of Orthopaedics prepared on the basis of merit for the purpose of admission to P.G. Degree (M.S. Course) in orthopaedics at the inception of the academic year commencing on 26-11-89 and ending on 25-11-90.

It has been submitted that the petitioner No. 2, having been admitted in P.G. Diploma course in orthopaedics, has prosecuted that course and passed the Diploma Examination and that the said period of study in Diploma course can be treated equivalent to the first year course of P.G. Degree M.S. Course in orthopaedics and as such, the petitioner No. 2 can be held eligible for admission in M.S. Degree course in orthopaedics even after elapse of the first Academic Session which ended on 25-11-1990.

The petitioners have during the course of arguments referred to the Madhya Pradesh Selection for post Graduation Courses (clinical, para-clinical and non-clinical courses) in Medical Colleges of Madhya Pradesh Rules, 1984 but have not been able to point out any such rule which may provide for forfeiture of seat of a selected candidate who after joining the course goes on leave and remains absent for indefinite period. It appears that there is also no provision in the Rules requiring minimum attendance in an academic year although the desirability of prescribing minimum attendance cannot be denied. In the circumstances no case has been made out for declaring or treating the seat of the respondent No. 4 in M.S. Degree course as vacant.

The second contention of the petitioners is based on the assumption that there is a vacancy of one seat in M.S. Degree course available and involves the question whether the petitioner No. 2 can be considered for admission to a seat pertaining to the academic year commencing on 26-11-89 and ending on 25-11-90 Rule 10 of the Madhya Pradesh Selection for Post Graduation Course (clinical para clinical and non-clinical courses) in Medical Colleges of Madhya Pradesh Rules, 1984 seems to answer this question and is reproduced hereunder for the sake of ready reference:--

"The seats available in any particular year will be filled up in that year. No candidates will be admitted against seats remaining vacant from previous years."

During the arguments the petitioners as well as the respondents have heavily relied on the decision in the case of Dr. Ajay Pradhan (*supra*) and the cases referred to therein for reading the true scope and meaning of Rule 10 governing admission to seats available in any particular year. It would therefore, be pertinent to refer to the observations made by the Supreme Court in the said

case in so far as it covers the controversy raised in this case.

It would be useful to reproduce hereunder paras 8 and 9 of the Supreme Court decision in Dr. Ajay Pradhan's case (supra) which deal with construction of Rule 10 :--

"8. On a plain construction Rule 10 is in two parts. The power to admit a student under the first part arises when a seat falls vacant in a particular year. The words 'filled up in that year' necessarily qualify the preceding words 'the seats available in any particular year.' It must logically follow that a necessary concomitant of the power under the first part of Rule 10 is the 'availability' of the seat being filled up in the academic year to which it pertains. The words 'filled up that year' which follow clearly imply that the vacancy cannot be carried over to the next academic year of years. That construction of ours is reinforced by the second part of Rule 10 which, by the use of negative language, clearly creates a bar against the seat being filled up in the next or succeeding academic year. What is implicit in the first part of Rule 10 is made explicit in the second part. The use of the negative words in the second part 'No candidates will be admitted..... etc.' are clearly prohibitory in nature and exclude the applicability of the carry-forward rule. It follows that if a seat falls vacant for any reason, namely, that the candidate selected in order of merit does not join the PG course in MD/ MS in a medical college or by the reason of his death or otherwise, and due to inaction on the part of the authorities the seat is not filled up in the academic year to which it pertains, there is no question of the vacancy being carried forward to the next academic year.

Rule 10 is a specific provision made for the benefit of the merit candidates who are placed in the waiting list. Normally, the question of a seat being filled up must arise at the commencement of the academic year or soon thereafter. In our considered opinion on the terms of Rule 10 as it exists, no other view is possible. When a seat falls vacant in any particular academic year there is a corresponding duty cast on the authorities to take immediate steps to fill up the same. There is no question of a right of admission to a seat falling vacant in the midst of or towards the end of, the academic year."

In the instant case the respondent No. 4 after selection as a merit candidate was admitted to the PG course in M.S. (orthopaedics) on 26-11-89 and he joined the course. Subsequently, he wants on leave since 4-6-90. The stand of the authorities respondents 1, 2 and 3 is that there has been no seat available in the academic year commencing on 26-11-89 and ending on 25-11-90 since the respondent No. 4 has not vacated the seat and that there is no question of right of admission of petitioner No. 2 to a seat which has not fallen vacant.

From the observation of the Supreme Court on the construction of rule 10 it is clear that the question of filling up a seat arises in an academic year if there is a vacancy in that year in a seat pertaining to that academic year. In the instant case the seat of respondent No. 4 in M.S. Degree Course which is being claimed

by petitioner No. 2 on the assumption that it has fallen vacant pertains to the academic year commencing on 26-11-89 and ending on 25-11-90 and as such even on the assumption of a vacancy as made by the petitioner No. 2 there can be no question of a vacancy pertaining to the academic year commencing on 26-11-89 being carried forward to the next academic year, commencing on 26-11-90 as per the observations of the Supreme Court reproduced hereinabove. Further even if it were to be assumed that the respondent No. 4 consequent upon his going on leave since 4-6-90 i.e. in the midst of the academic year (26-11-89 to 25-11-90) there is no question of a right of admission to a seat falling vacant in the midst or towards the end of the academic year to which the seat pertained as per the observations of the Supreme Court. There is also no question of the vacancy being carried forward to the next academic year commencing on 26-11-90. The petitioner No. 2 can, therefore, have no valid claim to seek admission to a seat in M.S. (orthopaedics) course pertaining to the academic year commencing on 26-11-89 and ending on 25-11-90 even if existence of a vacancy in the seat were to be assumed on the submission of the petitioners.

The decision of the Supreme Court in Dr. Ajay Pradhan's case (supra) makes a reference to three decisions of this Court viz. Dr. Mrs. Urrailla Shukla v. State of Madhya Pradesh M.P. No. 297/83 decided on 17-4-84, Rekha Saxena v. State of M.P. 1985 MPLJ 142 and Dr. Sunil Gajendragadkar v. State of Madhya Pradesh M.P. No. 57/ 85 decided on 11-3-85. In the case of Dr. Urmilla Shukla it appears that a seat in PG course in obstetrics and Gynaecology was kept vacant probably because of filing a writ petition by her and she was given provisional admission and as such, no question of violation of Rule 10 arose in the circumstances.

In the other two cases viz. Rekha Saxena's case and Dr. Sunil Gajendragadkar's case, the High Court largely relying on the concept of justice and fairness repelled the contention based on Rule 10 that a seat falling vacant in a particular academic year can only be filled-up in that year. But the Supreme Court in regard to these cases observed that on the language of Rule 10 it is difficult to sustain the view expressed by the High Court, as regards the case of Dr. Ajay Pradhan which was initially decided by this Court, the Supreme Court while dismissing the appeal, has affirmed the view of the High Court in that case viz., that the second part of Rule 10 mandates that if any seat has not been filled up in the academic year to which it pertains the exercise cannot be undertaken in the succeeding year.

The judgment of the Supreme Court passed in the case of Dr. Ajay Pradhan (supra) also decides another civil Appeal No. 1639/88 Sanjay Kumar Shrivastava v. State of Madhya Pradesh and in relation to that case the Supreme Court while dismissing that appeal too on 8-8-1988, has reiterated the view that the seat that became vacant in the academic year 1986-87 cannot now be filled in terms of Rule 10.

The petitioners have also relied on another decision of this court in Dr. Jyoti

Rizwani v. State of M.P. and two others M.P. No. 1172/90 decided on 24-1-91 to point out that the respondents have been directed to admit the petitioners in M.D. Pathology course in M.G.M. Medical College, Indore against the two seats available for the year 1989-90 by permitting them to change over from D.C.P. Course to M.D. Pathology in accordance with the standing instructions in the matter as decided / recommended in letter dated 19-6-90 by the D.M.E. to the Dean. It appears that the seats were directed to be filled by an earlier order of this court dated 4-5-1990 passed in W.P. 89/90 when the academic year of 1989-90 of admission had not ended. The subsequent order dated 24-1-91 passed in M.P. No. 1172/90 is more in the nature of carrying into effect the earlier writ order and it appears that no contention based on Rule 10 was raised by the respondents in that case. As such, the petitioner No. 2 cannot get any help from the said decision particularly in face of the authoratative construction placed by the Supreme Court on Rule 10 of the Rules of 1984 aforesaid.

The petitioners have cited a decision of this Court in Dr. Satish Suman v. Director Medical Education M.P. No. 23/91 decided on 8-1-91. to urge that the admission of the respondent No. 4 can be cancelled on the ground of his indefinite absence. In the said case it appears respondent No. 4 therein was selected for admission to a seat in post Graduate course but he did not join the course and remained absent being a patient of cancer. This court directed the Dean M.G. Medical College, Indore to issue a notice to respondent No. 4 in that case calling upon him to report for joining the course within 15 days of the receipt of the notice and to explain his absence and if he does not turn-up to join the course within a stipulated time after service or tender of notice at the permanent address and explain the absence, to the satisfaction of the Dean he shall be deemed to have abandoned the course and the vacancy thus created shall be filled in by admitting the petitioner to PG course as per rules. But the said case is not applicable in the facts and circumstances of the instant case where the respondent No. 4 Dr. Anil Sharma joined the PG course and appears to have gone on leave in the mid session of the academic year and the stand of the authorities is that the respondent No. 4 is on leave, and his seat is not vacant. The academic year of admission 1989-90 which commenced on 26-11-89 has also expired. As such even if the authorities were to be directed to take steps as was directed in the case noticed above and even if the Post Graduation seat in M.S. Orthopaedics allotted to respondent No. 4 in the academic year 1989-90 were to fall vacant the petitioner No. 2 cannot seek admission against that seat in violation of Rule 10 of the Rules of 1984 after the expiry of the academic year of 1989-90.

19, In view of the discussion aforesaid this petition fails being without merit and is hereby dismissed. There shall however, be no order as to costs.

S.D. JHA, J.

While agreeing with the main conclusion that in view of bar obtaining in Rule 10 referred to in para 9 of Brother Varma's order as interpreted in Dr. Ajay Pradhan's case (supra), the petitioner could not be admitted in the midst or

towards the end of the academic year, I would like to observe that understanding of State Government that in absence of a specific provision for cancelling the registration of a post graduate student on the ground of absence in the rule the respondents Nos. 1 to 3 cannot cancel registration is not acceptable. Firstly because Rule 11 of the Rules providing for removal of the post graduate student on the ground of misconduct or act of gross indiscipline would take care of such a situation and secondly because D.B. Judgment of this court in Dr. Satis Suman v. Director Medical Education Misc. Petition No. 23 of 1991 order dated 8-1-1991 holding. "The next eligible candidate cannot be made to suffer only because rules do not specifically provide as to when a candidate should be taken to have abandoned course by absence and as to how the admission of an absent candidate should be terminated. Rule 8.4 of the P.G. Rules can be taken as a guideline in the matter and power to terminate an admission." Would appear to run counter to the understanding.

It is unfortunate that the petitioner who applied for interim directions as early as in September, 1990 could not be granted interim relief and now Rule 10 of the Rules and Dr. Ajay Pradhan's case impede his admission.

With the observations as aforesaid, I agree with the main conclusion that the petitioner cannot get admission in place of the respondent No. 4,