
(2000) 12 MP CK 0028
In the Madhya Pradesh High Court
Case No : Writ Petition No. 4948 of 2000

Dr. Sanjay Tiwari

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 01-12-2000

Acts Referred:

Citation : (2001) 2 MPLJ 232

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : Shri A.K. Pathak, for the Appellant; Shri P.D. Gupta, Dy. Advocate General, for the Respondent

Final Decision : Dismissed

Judgement

Dipak Misra, J.

The petitioner after passing M.B.B.S. from Pt. J.N.M. Medical College, Raipur, appeared in the M.P. Medical and Dental Post Graduate Entrance Examination 1997 and was placed at S. No. 315 in the merit list. The petitioner opted for Diploma Course in Pathology in Medical College, Rewa. As a post in M.D. Pathology was vacant the petitioner applied for change of Course but the same was not paid heed to. Feeling aggrieved the petitioner filed a writ petition No. W.P. 4828/99 wherein this Court held as under :--

"During the pendency of the said writ petition the petitioner by order dated 11-7-2000 was permitted to change from the Diploma Course to Post Graduate in Pathology."

As the relief was granted the learned counsel for the petitioner withdrew the Writ Petition No. 4828/99. After Annexure P-9 came into existence the petitioner was not allowed to change his Course. On the contrary the said order was stayed on the ground that the petitioner had completed Diploma Course on 29-12-99. As the order was not given effect to the petitioner approached this Court commanding the respondents to give effect to that order.

A return has been filed by the answering respondents contending, inter alia, that as the petitioner has already completed the Diploma Course there is no question of grant of permission to change to the Post Graduate Course in Pathology. It is put forth that at the time of passing of the order vide Annexure P-9 the Authority concerned was not aware that the petitioner had already completed the Diploma Course. It is further put forth that in that situation a change of Course is impermissible as per the rules. Hence the relief prayed for by the petitioner cannot be granted.

I have heard Mr. A.K. Pathak, learned counsel for the petitioner and Mr. P.D. Gupta, learned Dy. A.G. for the State.

Submission of Mr. Pathak is that though the petitioner has completed the Diploma Course, he will be allowed to change to the Post Graduate Course in Pathology inasmuch as such an order was passed vide Annexure P-9 on 13-7-2000 by the Competent Authority. It is further his submission that by such an act presumption can be inferred that the State Government has relaxed the mandate of the rules.

Per contra, Mr. Gupta has canvassed that the order passed Annexure P-9 was passed inadvertently and, therefore, the State Government has authority to rectify the said order. It is also proponed by him the rules would not be applicable for change of Course inasmuch as the petitioner has ceased to be a student.

To appreciate the rival submissions raised at the Bar, it is apposite to refer to the relevant Rules, i.e., M.P. Medical and Dental Post Graduate Entrance Examination, 1997. The relevant Rule in the present context is sub-rule (v) of Rule (VI). It reads as under :--

"(v) A persons who fulfil the requirements mentioned in sub-paras (i) and (ii) and possesses Post Graduate Diploma in any subject can appear in the examination only two years after completing the Diploma Course. Those persons who possess Post Graduate Degree in any subject can appear in examination for doing Post Graduation in any other subject only three years after obtaining the previous Post Graduate Degree."

On a fair reading of the aforesaid Rule, it becomes crystal clear that a person after passing the Post Graduate Diploma in any subject can appear in examination only 2 years after completing the Diploma Course. Admittedly the petitioner had completed the Diploma Course in the month of December, 1999. After he had completed the said Course as envisaged under the Rules he has to wait for two years. I have carefully perused the Rules and have asked the learned counsel for the parties whether the State Government has any powers to relax the rules. On a close scrutiny of the Rules such a Rule is not perceivable in the Rules.

In view of the aforesaid, I am of the considered opinion the petitioner cannot be

allowed to change the Course to Post Graduate Pathology. It is to be inferred that the order which was passed vide Annexure P-9 was under a wrong impression and the State Government has rightly not given effect to the same.

Resultantly, no relief can be granted to the petitioner. The writ petition stands dismissed without any order as to costs.

Writ Petition dismissed.