
(2007) 05 MP CK 0040
In the Madhya Pradesh High Court

Dr. Shailendra Kumar Patne

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 16-05-2007

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : AIR 2007 MP 162 : (2007) ILR (MP) 916 : (2007) 3 MPHT 16 : (2007) 2 MPLJ 447

Hon'ble Judges : A.K. Patnaik, C.J.; Sugandhi Lal Jain, J

Bench : Division Bench

Final Decision : Allowed

Judgement

A.K. Patnaik, C.J.

The petitioner is working as a Demonstrator in Pharmacology in Gandhi Medical College, Bhopal and he has completed more than 12 years of service. He appeared in the Post Graduate Entrance Examination, 2007 as an in-service candidate and was ranked at Sr. No. 4 in the merit list of Scheduled Caste candidates. On the basis of his position in the merit list, he was called for counselling but was not allotted a seat of M.D. Pharmacology because a seat of M.D. Pharmacology was not available to be allotted to the petitioner. He was not allowed to opt for a seat in any subject other than Pharmacology because of the provision in Rule 9.2(a) of the Madhya Pradesh Medical and Dental Post Graduate Course Entrance Examination Rules, 2007 (for short "the Rules") that a Demonstrator working on a regular basis in Medical College of Government of Madhya Pradesh who has completed five years of regular service will be eligible to opt a seat in his own subject only in which he is working. Aggrieved, the petitioner has filed this writ petition with a prayer to declare the provision in Rule 9.2(a) of the Rules as ultra vires the Constitution.

Mr. Aditya Sanghi, learned Counsel for the petitioner submitted that a Demonstrator and a Medical Officer are both in-service candidates. Under the Rules, a Medical Officer can opt for any subject in the PG Course but under the

impugned Rule 9.2(a) of the Rules, a restriction has been put that a Demonstrator can opt a seat in his own subject only in which he is working in case he selected to the PG course. He vehemently submitted that this amounts to discrimination against a Demonstrator and Rule 9.2(a) of the Rules is therefore violative of the equality clause in Article 14 of the Constitution and should be declared as ultra vires.

Mr. Kumaresh Pathak, learned Deputy Advocate General, on the other hand, relying on the return filed by the respondent Nos. 1 and 2 submitted that the restriction for allowing the Demonstrator for in-service candidate only in the subject in which he has been working has been put in the Rules for the purposes of ensuring that the Demonstrator after doing PG course does not leave the service. He submitted that if a Demonstrator is allowed to opt for a seat in any subject other than the subject in which he is working as Demonstrator, he may leave the job after doing PG in other subjects and there will be shortage of Demonstrators in Medical Colleges. He further submitted that a Demonstrator is appointed for a particular subject whereas a Medical Officer is not appointed for any particular subject and a Medical Officer works in different areas of medical service. He submitted that Demonstrators and Medical Officers therefore constitute two different classes and the equality clause in Article 14 of the Constitution is no way violated.

Mr. Sanghi cited the decision in *State of Madhya Pradesh and Ors. v. Gopal D. Tirthani and Ors.* AIR 2003 SC 3636, in which the Supreme Court has held that Article 14 of the Constitution permits classification but such classification must satisfy two tests and these are- (i) it must be founded on the intelligible differentia, which distinguishes persons or things placed in a group from those left out or placed not in the group and (ii) the differentia must have a rational relation with the object sought to be achieved. Mr. Sanghi submitted that in *State of Madhya Pradesh and Ors. v. Gopal D. Tirthani and Ors.* (supra), the Supreme Court upheld the classification of open candidates and in-service candidates and therefore a classification can be made for open candidate and in-service candidates for the purposes of determining the inter se merit of open candidates and in-service candidates separately. He submitted that once the inter se merit of in-service candidates, Medical Officers is determined a further classification cannot be made in the Rules so as to permit Medical Officers to choose any subject of their choice in PG course depending upon their turn on merit while debarring Demonstrators from making such choice of any subject in PG course and restricting the Demonstrators to seek admission in the PG course only in the subject in which he is working.

It is not disputed that under the Rules Medical Officers as well as Demonstrators can apply for admission to PG course as in-service candidates. In *State of Madhya Pradesh and Ors. v. Gopal D. Tirthani and Ors.* (supra), the Supreme Court has held in Para 25 at Page 3656 of the judgment as reported in the AIR SCW that the eligibility test called the entrance test or the pre-PG test is

conducted with for two purposes and these are (i) to assess the inter se merit of candidates and (ii) to ensure that candidates with minimum qualifying percentage are admitted to Medical Post Graduate courses. The Supreme Court further held in Para 28 at Page 3652 as reported in the AIR SCW that the High Court was therefore right in coming to the conclusion that in a State where five Universities existed with different standards and assessment methods, the inter se academic merit of the candidates passing out from five different Universities cannot be assessed except through a common entrance examination. Paragraphs 25 and 28 of the judgment of the Supreme Court are quoted hereinbelow:

The eligibility test, called the entrance test or the pre-PG test, is conducted with dual purposes. Firstly, it is held with the object of assessing the knowledge and intelligence quotient of a candidate whether he would be able to prosecute Post-Graduate studies if allowed an opportunity of doing so; secondly, it is for the purpose of assessing the merit inter se of the candidates, which is of vital significance at the counselling when it comes to allotting the successful candidates to different disciplines wherein the seats are limited and some disciplines are considered to be more creamy and are more coveted than the others. The concept of a minimum qualifying percentage cannot, therefore, be given a complete go-by. If at all there can be departure, that has to be minimal and that too only by approval of experts in the field of medical education, which for the present are available as a body in the Medical Council of India.

Clearly the State of Madhya Pradesh was not justified in holding and conducting a separate entrance test for in-service candidates. Nor could it have devised a formula by combining Clauses (i) and (iii) of Regulation 9 (1) by resorting to Clause (iv). Recourse can be had to Clause (iii) when there is only one University. When there is only one University in one State, the standard of assessment can reasonably be assumed to have been the same for assessing the academic merit of the students passing from that University. When there are more Universities than one in a State, the standards of different Universities and their assessment methods cannot obviously be uniform and may differ. Then it would be futile to assess the comparative merit of individual performances by reference to Clause (iii). The High Court is, therefore, right in forming an opinion that in the State of Madhya Pradesh, where five Universities exist, the method of evaluation contemplated by Clause (iii) is not available either in substitution of or in addition to Clause (i). The candidates qualified at the Pre-PG or entrance test held in common for in-service and open category candidates, would then be divided into two separate merit list to be prepared for the two categories and merit inter se of the successful candidates shall be available to be assessed separately in the two respective categories.

It is thus clear that candidates who qualify in the Pre-PG or entrance test are divided into two separate merit lists to be prepared for the two categories and merit inter se of successful candidates is assessed separately in the in service and the open categories.

In the present case, under the rules, it is not disputed that entrance test was held both for in-service and open candidates and separate merit lists of in-service candidates and open candidates were drawn up. It is also not disputed that in the separate merit list of in-service candidates, the Medical Officers and the Demonstrators were placed in order of merit on the basis of marks obtained by them in the common examination. In other words, in the same merit list of in-service candidates, Medical Officers and Demonstrators were placed as per their position in the merit list. Now if a Medical Officer placed lower than the Demonstrator in the merit list of in-service candidates was to be allowed seat in any subject in the Post Graduate course and a Demonstrator even though placed above such Medical Officer in the merit list was to be allowed a seat only in the subject in which he is working and was not to be allowed seat in PG course in other subjects, the right of Demonstrators for equal treatment guaranteed under Article 14 of the Constitution would be violated.

Admissions in Post Graduate courses are to be governed by merits of candidates. But as has been held by the Supreme Court in *State of Madhya Pradesh and Ors. v. Gopal D. Tirthani and Ors.* (supra), candidates can be categorized to different classes for the purposes of determining their inter se merit within the class if the classification is based on intelligible differentia and such differentia has rational nexus with the object sought to be achieved. The classification of Demonstrators and the Medical Officers for the purposes of ensuring that Demonstrators do not leave the service as Demonstrator after PG course affects the right of Demonstrators to choose a subject of his choice on the basis of their merit position in the merit list of in service candidates and such a classification has no rational nexus with the object of granting admission on the basis of the inter se merit of candidates and is clearly violative of the right to equality of the demonstrators guaranteed by Article 14 of the Constitution.

That apart, we find that in Rule 9.2(a) a provision has also been made that in case of selection to PG course, a Demonstrator has to execute a bond of Rs. 3 lakhs to serve five years after completion of degree course. Rule 9.2(a) of the impugned Rule is quoted hereinbelow:

9.2. (a) Demonstrator working on regular basis in Medical College of Govt. of Madhya Pradesh who have completed five years of regular service, will be eligible to opt a seat in their own subject only in which they are working. In case of selection to PG course, the demonstrator has to execute a bond to serve the State Government for five years after completion of degree course. As per Government order the demonstrator has to execute bond of Rs. 3 lacs compulsorily. The maximum age limit for selection to PG course for demonstrator will be 45 years on 30th April of exam year.

Hence, if the object behind the rule is that the Demonstrator does not leave the service after completing his PG course, such object is achieved by the provision made in the rules that the Demonstrator has to execute a bond of Rs. 3.00 lacs to serve the Government for five years after completion of degree course.

We, therefore, declare the provision in Rule 9.2(a) of the Rules restricting the Demonstrators to opt a seat in his own subject only in which he is working as discriminatory and ultra vires Article 14 of the Constitution. Rest of the provisions in Rule 9.2(a) of the Rules are not assailed. In view of the aforesaid declaration, the petitioner will now be allowed to participate in the counselling in subjects other than the subject in which he is working. The writ petition is allowed with the aforesaid direction.