
(2008) 05 DEL CK 0184

In the Delhi High Court

Case No : Writ Petition (Civil) No. 2713 of 2008

Dr. Shilpa Garg

APPELLANT

Vs

National Board of Examination (DNB) and Another

RESPONDENT

Date of Decision : 29-05-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2008) 105 DRJ 70

Hon'ble Judges : Sudershan Kumar Misra, J

Bench : Single Bench

Advocate : Party-in-Person, for the Appellant; N.K. Kaul and Rakesh Gosain, for the Respondent

Final Decision : Dismissed

Judgement

Sudershan Kumar Misra, J.—The petitioner is a graduate doctor. She prays that the decision of the first respondent taken in December 2005 that henceforth, final/exit examinations, inter alia, in Venereology and Dermatology shall be held only on an annual basis in December of each year, instead of the earlier policy of holding biannual examinations in June and December of the same year, be quashed. And that in addition to the scheduled final examination in December 2008, the first respondent i.e., the National Board of Examinations, be directed to hold the said examination for the degree of, "Diplomate of the National Board" [DNB for short] in Venereology and Dermatology, in June 2008 also.

2. A brief background of the case is as follows;

3. The National Board of Examination, who is the first respondent here, was established in 1975 with a view to, "improving the quality of the medical education by elevating the level of established standards of postgraduate examinations and modern medicine...." In its own words, "although the medical Council of India has laid down standards for postgraduate examinations conducted by various universities and other institutions, it is felt that the level of

proficiency and standards of evaluation still very considerably in these institutions and universities. Hence, it was felt to set up a national body to conduct postgraduate medical examination to provide a common measurement standard and the mechanism of evaluation of the minimum level of attainment of the objective for which postgraduate degree courses were started in medical institutions.

4. The degree awarded by the first respondent to those who clear the aforesaid postgraduate medical examination is called the, "the Diplomate of the National Board" (in short "DNB"). This degree has been equated with postgraduate degrees, as also with postdoctoral qualifications of universities, by the Government of India. Successful candidates who are awarded this degree after a final examination, which is also called the, "exit examination", are eligible to be considered for appointment as specialists in hospitals.

5. With a view to obtaining the aforesaid DNB degree in dermatology and Venereology from the first respondent the petitioner cleared the required centralised entrance test in that subject on 12/12/2004. This qualified her to undergo training for a period of three years in any hospital accredited for that purpose. She Therefore joined the Base Hospital, Delhi Cantonment as a trainee in that subject on 14.02.2005, and also got herself registered with the first respondent for a period of three years commencing from that date.

6. Admittedly, as on the date of her registration, the first respondent used to hold the aforesaid, "exit examinations" biannually, i.e., twice a year, for candidates who had completed the prescribed training period. These examinations were usually held in the months of June and December. Also, since her training was coming to an end on 13.2.2008, she would have become eligible to take the exit examination for the first time only after that date. Significantly, when she took registration in 2004, the bulletin of information published by the first respondent contained the following;

GENERAL INFORMATION;

1. Instructions in the booklet are liable to changes based on decisions taken by the board from time to time. Candidates are directed to refer to the latest bulletin or corrigendum that may be issued to incorporate these changes. Instructions can also be read on the website www.natboard.nic.in

7. While the petitioner was undergoing training after her registration with the first respondent as aforesaid; on 28.12.2005, the Governing Body of the first respondent approved the recommendations of the Examination Review Committee to reschedule the exit/final examination from biannual to annual in certain specialties depending on the number of candidates appearing in that examination. It was decided that henceforth, along with some others, the exit examination for the petitioner's subject would also be held only once a year in December. Since there was some uncertainty during arguments about the circumstances under which examinations with regard to some of the specialties

were to be held twice a year, while in other specialties it was to be held only once a year, the respondent has produced its record pertaining to this decision in court. A perusal of that record shows that the Examination Review Committee had suggested that in case the number of candidates taking the examination is 100 or more for any specialty, the exit examination would also be conducted in June, otherwise it will be conducted in December alone. For determining the number of candidates likely to sit for the examination in the month of June, the committee suggested two models. The first model involved inviting applications from prospective candidates, and thereafter determining whether the number of candidates is 100 or more. The second model suggested that the number of candidates be determined on the basis of data available for June 2005, and in all those specialties where the number of candidates was more than 100 in June 2005, a biannual examination should henceforth be held. Looking to the report of the committee, the Governing Body of the first respondent decided that the examination in major 10 subjects (where the number of candidates is more than 100), theory examinations will be held in June and December every year, whereas for other subjects only one annual examination will be held in December.

8. In addition, by the aforesaid decision of December, 2005, which the petitioner is impugning here, the first respondent also amended the rules contained in the December 2004 Bulletin of Information in terms which the petitioner was registered for the course whereby she was not entitled to appear for the exit examination before 13.2.2008. As a consequence of this change, the petitioner now became entitled to appear in the final theory examination in December 2007 itself. Admittedly, she availed of that opportunity and failed.

9. Consequently, by communication dated 11.3.2008, the petitioner was informed by the first respondent that she had failed in the final theory examination conducted by the Board in December 2007, and that she can now appear in the next final theory examination of the board to be held on December 2008.

10. On 13.3.2008 itself, the petitioner wrote to the first respondent requesting that the next theory examination be conducted in June 2008 and the earlier practice of conducting the theory exam every six months be resumed. Since that request has not been acceded to, the petitioner has approached this Court for relief.

11. To begin with, the petitioner was represented by counsel before this Court, however on 20.5.2008 she stated that she wished to argue the matter in person and Therefore her counsel was discharged from the case.

12. It is the petitioner's case that the first respondent has been following the practice of holding biannual examinations in all the specialties for the last 30 years or so and Therefore it is obliged to follow the same practice even now. The petitioner states that at the time of her enrolment in February 2005 for the course, the final examinations were being conducted twice a year, and Therefore,

the respondent is obliged to make the same opportunities available to her regardless of any subsequent change in the rules adopted by the first respondent in this behalf on the ground that, "later change of policy should not be applied to her." she claims that the provisions of the bulletin of information for the December 2004 examination would continue to apply to the petitioner irrespective of any subsequent change in the policy, "even if the said changes are found to be reasonable", because the respondents had entered into a contractual arrangement with the petitioner, and cannot be allowed to withdraw unilaterally the benefit of examination twice a year in her case. In short, she claims that the respondents are estopped from denying the benefit of the rules as they stood at the time when she was registered with the first respondent for the said course.

13. Another ground urged by the petitioner is that since the respondent has continued with its practice of holding biannual examinations for many other specialties, Therefore the decision of the respondent to hold annual examinations only in some specialties, including that of the petitioner, amounts to hostile discrimination.

14. The petitioner claims that as a result of the decision of the first respondent to do away with the June examination altogether, the next opportunity for clearing the said examination would be available to the petitioner only in December this year and Therefore, "she shall have to wait for another six months for appearing in the final theory examination". She contends that this shall cause undue hardship to her along with others who are similarly situated. According to her, in this way, her professional career will receive a setback for nearly 6 months for no fault of hers, as compared to other colleagues who may have failed in other specialties where examinations are still being conducted twice a year thus enabling those candidates to get another chance in June 2008 also.

15. It is also the petitioner's case that having failed in her previous attempt in December 2007, she has been rendered unemployed for one year since the next available chance for her to clear the said examination would only arise in December 2008. She complains that this has resulted in financial hardship to her. In this context it would be relevant to note that at the same time, in response to the respondent's contention that one of the reasons for changing the system of examination from biannual to annual in the petitioner's subject was the excessive financial burden cast upon the respondent the petitioners position is that, "a candidate will be willing to shell out more money than sacrifice his/her career for six months."

16. The record produced shows that the first model was rejected by the first respondent for the following reasons:

- i) NBE would be involved in wasteful expenditure;
- ii) It is frustrating for candidate to apply and then wait for 4-6 weeks to know whether the examination would be conducted or not;

iii) The preparation of DNB exit question papers commences by February every year for JUNE session but the results for December session are normally declared by March. The applications for DNB examination scheduled for JUNE session have to be invited thereafter to give chance to the fail candidates for appearing in the June session. Simply, adding 4-6 weeks for scrutiny, determination of eligibility and other associated steps lands the process to end April or beginning of May. Hardly any time is left either for the candidate or the NBE;

iv) Candidate cannot prepare for DNB examination in a period of 4-5 weeks;

v) The said process may be acceptable for yearly examination or where the generation of question papers does not involve the 8-10 experts;

In addition, further reasons for accepting the second model are as follows:

i) There would be no uncertainty to the candidates with respect to their respective specialties whether they are annual or biannual;

ii) The candidates would not unnecessarily file the application forms and then wait for decision whether exam is being conducted or not;

iii) The Board would not be involved in wasteful expenditure of publishing the application forms, sale of application forms, Bulletin of information, determination of eligibility of candidates etc;

iv) The preparation of question paper would begin in time.

17. A perusal of the record also shows that in case of a specialty for which annual examinations are to be held in December only on the basis of the June 2005 data, if the number of candidates reaches the figure of 200 for two to three sessions consecutively, then the examinations for that specialty may be converted to biannual examinations, and vice versa. All this shows that the first respondent which comprises a number of eminent experts in the field, have applied their minds and taken an informed decision in the matter. It is a decision of an expert body and, as has been repeatedly held, the court would not normally interfere with the decision of experts in the field in the absence of clear mala fides or obvious non-application of mind.

18. In any case, to my mind, the issues raised in this petition are no longer rest integra. A recent decision of the Supreme Court of India in the case of National Board of Examinations Vs. G. Anand Ramamurthy and Others, is almost directly on the point. That was a petition filed by two doctors who had obtained degrees in Masters of Surgery and thereafter, in June 2003, they had enrolled themselves with the National Board of Examination, i.e., the first respondent herein, for the same DNB degree as one being pursued by the petitioner herein. There also, according to the Bulletin of Information and Application Form, it was stated that the examination will be held twice a year. However, just when those doctors were about to complete their three years training and were expecting their examinations in June 2006, they discovered that the National Board of

Examination had changed its policy whereby, the examination for their specialties were now to be held annually in December of each year. The policy in question, that brought about the change in that case, is the same which is under challenge before this Court also. In that matter, a Single Judge of this Court issued a mandamus to the National Board of Examination, i.e., the first respondent herein, to abide by and honour the curriculum contained in the Bulletin of Information published at the time when the petitioners in that matter were enrolled with the Board on the principles of legitimate expectation and promissory estoppel. An appeal filed in that case by the National Board of Examination before the Division Bench of this Court also came to be dismissed, inter alia, for the reason that, according to the court, "In January 2003 once they had registered themselves and undergone three years training it was too late in the day for the appellant to say that they have changed the policy in 2006 and pursuant to that policy no examination can be held in June 2006". The Division Bench also upheld the reasoning adopted by the learned Single Judge who had noticed that out of the total of 54 streams or subjects for which examinations are conducted by the Board, the Board was admittedly continuing to hold biannual examinations for as many as 27 streams. It further concluded that, "merely because there are less number of students, the appellant cannot abdicate their responsibility not [sic] to conduct the examination for the respondents on the ground that it would require some more finances". In that case, another plea taken by the National Board of Examination to the effect that the petitioners there were also ineligible for taking the examination because they did not have the requisite certificate of training from the head of the department, was also rejected. Consequently, the Division Bench of this Court in the aforesaid Letters Patent Appeal concluded that not only were the petitioners in that case eligible for taking the examinations, but also that the National Board of Examination was obliged to conduct biannual examinations for the petitioners because the Bulletin of Information and application form on the basis of which those doctors had registered themselves with the National Board of Examination in the year, 2003 had stated so and Therefore, it was not open to the Board of Examination to say that they have changed their policy in 2006. The National Board was held bound by principles of promissory estoppel. The Appellate Court also held that in view of the fact that under the amended policy of 2006 also, since examination for as many as 27 streams out of total of 54 streams were still being held biannually, the Board was bound to hold the examination for the petitioner's stream in June also. It further held that simply because a lesser number of students were to take the examinations for a particular stream, it is not open to the board to change the schedule and henceforth conduct the examination in December on the ground that it would require more finances. The Appellate Court held that this amounted to the board abdicating its responsibility.

19. That matter was then carried to the Supreme Court by the National Board of Examination, i.e., the first respondent herein. There, the Supreme Court in its wisdom has overturned the decision of both the Single Judge as well as the

Division Bench on all aspects of the matter, including the finding that the first respondent was in any way estopped from changing the examination schedule. It held that the High Court was not correct in applying the doctrine of legitimate expectation and that there could be no embargo in the way of the National Board of Examination bona fide changing the examination schedule, more so, when it had admittedly and categorically reserved its right to do so in the information bulletin given to the candidates. It further upheld the policy decision of the Governing Body of the National Board of Examination to change its current practice of conducting examinations on biannual basis for all the disciplines of Modern Medicine. It was held that if the revised policy to conduct the biannual examination only for those streams where the number of candidates were more than 100, from June 2006 onwards, was intended to curtail its expenditure, it could not be faulted with. In this context, the following observations of the Supreme Court are relevant;

7. We have carefully considered the submissions made by both the learned Senior Counsel. In our opinion, the High Court was not justified in directing the petitioner to hold examinations against its policy in complete disregard to the mandate of this Court for not interfering in the academic matters particularly when the interference in the facts of the instant matter lead to perversity and promotion of illegality. The High Court was also not justified in exercising its power under Article 226 of the Constitution of India to merge a past practice with decision of the petitioner impugned before it to give relief to the respondents herein. Likewise, the High Court was not correct in applying the doctrine of legitimate expectation even when the respondents herein cannot be said to be aggrieved by the decision of the petitioner herein. The High Court was also not justified in granting a relief not sought for by the respondents in the writ petition. The prayer of the respondents in the writ petition was to seek a direction to the petitioner herein to hold the examinations as per the schedule mentioned in the Bulletin of 2003. However, the High Court passed an order directing the petitioner herein to hold the examinations for the respondents according to the schedule mentioned in the Bulletin of 2003. The effect of this order is that the petitioner would have to permit the respondents to take the exam even if they do not meet the eligibility criteria fixed by the petitioner in its policy of 2003. Our attention was also drawn to the Bulletin of Information of 2003. In view of categorical and explicit disclosures made in the Bulletin, all candidates were made aware that instructions contained in the Information Bulletin including but not limited to examination schedule were liable to changes based on decisions taken by the Board of the petitioner from time to time. In the said Bulletin of Information, candidates were requested to refer to the latest Bulletin or corrigendum that may be issued to incorporate these changes. Thus, it is seen that the petitioner has categorically reserved its rights in the Bulletin of Information to change instructions as aforesaid which would encompass and include all instructions relating to schedule or examinations. It is also mentioned in the Bulletin in no uncertain terms that the instructions contained in the

Bulletin including the schedule of examinations were liable to changes based on the decisions taken by the governing body of the petitioner from time to time. Hitherto examinations were being conducted twice a year i.e. in the months of June and December 2006. There could be no embargo in the way of the petitioner bona fide changing the examination schedule, more so when it had admittedly and categorically reserved its rights to do so to the notice and information of Respondents 1 and 2. In any event, the completion of three years' training is a necessary concomitant for appearing in the DNB final examination.

8. Likewise, the bare perusal of Clause 4 of the Bulletin of Information, June 2006, manifests that the petitioner has reserved right to change the guidelines/practice and further it has been made absolutely clear that the candidate shall be governed by the Bulletin of Information for the session in which the candidate appears.

9. No mala fide has been alleged against the petitioner in the writ petition. The governing body of the petitioner in the larger interest of the candidates as well as of the petitioner, and medical education in general, has decided to change the current practice of conducting the examination on biannual basis for all the disciplines of Modern Medicine with the revised policy to conduct the biannual examination only in those streams where number of candidates is more than 100, from June 2006 onwards, to curtail its expenditure. The above policy decision, in our opinion, cannot at all be faulted with.

20. The only additional factor that has been brought out in this case is that the petitioner herself has also benefited from the change in policy of the respondent which is being impugned by her before this Court. This is because, under the policy in force at the time when the petitioner enrolled herself in February 2005, she was not permitted to take the final/exit examination until she completed three years of training which were ending only in February 2008; however, under the impugned amended policy of December 2005, the National Board had decided to grant a maximum of 75 days as a grace period to candidates who were unable to complete the training before appearing in the final theory examination reckoned up to 15th March of that year. In this way, although the petitioner would have completed the required three years only in February 2008, and would Therefore have been eligible for the final examination under the old rules only in June 2008; she was nevertheless permitted to sit for final/exit examination in December 2007 itself under the very amended policy which she is impugning here. It is another matter that she failed the said examination. While the information bulletin itself had made absolutely clear that schedules and policies are open to change from time to time, the petitioner herself has also taken the benefit of the change in policy that enabled her to sit for the final/ exit examination in December 2007 itself, which she could not have done under the old policy in force at the time of her initial enrollment. To my mind, having decided to take the benefit of the amended policy, it does not lie in the mouth of

the petitioner to decry the same. She cannot look to the earlier policy for some other additional benefit to which she might have been entitled under that policy. Under the new policy, the petitioner got a chance to sit for the examination six months earlier. Having failed in that attempt, she cannot now be permitted to demand that the old schedule whereby the examination was to be held in June, 2008 be revived, to permit her another chance now in terms of the old policy. To my mind, even if the relationship between the two is taken to be contractual; by availing herself of the amended policy of the first respondent she has clearly approbated the same. She has acquiesced to the change in terms, Therefore, in addition to the fact that the first respondent had reserved the right to change the examination schedule right from the outset; for this reason also, the petitioner cannot be permitted to repudiate the new, amended policy. To do so would be contrary to all principles.

21. Finally, although the petitioner did not address this point at all during arguments, but I find from her pleadings that the petitioner has tried to distinguish the aforesaid decision of the Supreme Court in Ramamurthy's case (supra) on the ground that the SLP in that case, "was allowed solely on the basis that the respondents therein were found to be ineligible even as per the 2003 bulletin the observations if any about the changed policy were not only obiter but were made sub silentio and hence not binding on this Hon'ble Court". I do not agree. The expression "Obiter dictum" has been defined as "words of an opinion entirely unnecessary for the decision of the case; "A remark made, or opinion expressed, by a judge, in his decision upon a cause, "by the way." that is, incidentally or collaterally, and not directly upon the question before him, or upon a point not necessarily involved in the determination of the cause, or introduced by way of illustration, or analogy or argument. Such are not binding precedent" (See Black's Law Dictionary 6th Edition). In that case, a perusal of the decision of learned Single Judge in Dr. Anand Ramamurthy and Anr. v. Union of India and Anr. reported as 129 2006 DLT 771; as also the decision of the Appellate Court in the appeal by the National Board of Examination which was reported as National Board of Examinations Vs. Dr. G. Anand Ramamurthy and Others, ; and which ultimately led to the decision of the Supreme Court in the aforesaid Ramamurthy's case (supra), show clearly that the issues being raised before this Court by the petitioner were also raised and pressed before the court at various levels, and the opinions expressed by the courts in that case cannot be said to have been expressed by the way or incidentally or collaterally. The aforesaid judgment of the Supreme Court has clearly been rendered on all the issues raised by the petitioners in that petition. It is also undeniable that the issues raised here were also raised in that petition. They were all duly decided by the court. For that reason, the observations of the Supreme Court in that case cannot be said to be an obiter dictum. Furthermore, with regard to the obiter dictum of the Supreme Court, that Court had the following to say in Commissioner of Income Tax, Hyderabad-deccan Vs. Vazir Sultan and Sons, :

It is no doubt true that this Court was not concerned with any agency agreement

in the last mentioned case and the observations made by this Court there were by way of obiter dicta. The obiter dicta of this Court, however, are entitled to considerable weight and we on our part fully endorse the same.

Additionally, in *Sarwan Singh Lamba and others Vs. Union of India and others*, , the Supreme Court has held that even an obiter dictum of that court is expected to be obeyed and followed. It follows Therefore, that even if the relevant observations of the Supreme Court of India in *Ramamurthy's* case are obiter dicta, which to my mind they are not, they would be entitled to considerable weight, and this Court is expected to follow the same. I, Therefore, do not see any reason to decide otherwise in this case.

22. As regards the petitioner's claim that the decision to hold annual examination in some specialties, including that of the petitioner, whilst continuing with its past practice of holding biannual examinations for remaining specialties, amounts to hostile discrimination, I do not think the same is well founded. It is settled law that Article 14 of the Constitution of India prohibits discrimination among equals, that is, amongst those who are similarly circumstanced. In this case, the discrimination between those specialties for whom examinations shall be held annually and the others for whom the examinations will be held biannually is clearly based upon intelligible differentia and bears a reasonable nexus to the object sought to be achieved by the first respondent in creating that classification. That object is a bona fide decision to curtail its expenditure which was sought to be achieved by restricting biannual examination only to those disciplines where the number of candidates was more than 100. This decision has also been upheld by the Supreme Court in *Ramamurthy's* case (*supra*). So long as all other candidates who were enrolled for the same subject, i.e., Venereology and Dermatology, along with the petitioner, are treated alike, the petitioner cannot have any grievance.

23. Before me, the petitioner also made two more submissions, both of which were mentioned by her in her letter of 13.3.2008 written to the first respondent. Firstly, she states that since she failed to clear the examination in December, 2007, she will remain unemployed for the whole year, i.e., up to the next chance in December, 2008 and hence will not be able to meet her daily expenses. Secondly, she states that since she has already completed her three years tenure for training in her subject and thereafter failed in December, 2007 examination, she has no means to keep in touch with her subject. She states that now, instead of only six months, she will remain out of touch with her subject for the whole year and that this further spoils her chances of clearing the examination. To my mind, these considerations cannot form any good ground for this Court to overturn a rational policy decision taken by the first respondent on the basis of the recommendations of an Expert Committee by a number of eminent persons having specialized knowledge in that field. If the petitioner was to suffer any financial burden because she will remain unemployed, she has only herself to blame. It was she who failed in the examination in December, 2007. In any case,

the claim that she will remain unemployed and will not be able to meet her daily expenses does not hold water for another reason which is that, admittedly, the petitioner is also a graduate doctor and nothing prevents her from obtaining employment based on her extant qualifications. In any event, even as per the old policy, the petitioner's training would have ended on 13.2.2008. Thereafter also, the petitioner had to look for employment based on her existing credentials on which she would have had to depend and only if, and when, she ultimately passed the requisite examinations entitling her to the DNB degree awarded by the first respondent would she be entitled to utilize the same in seeking employment. The second reason also cannot be countenanced. To say that the postponement of the examination by six months would result in the petitioner's remaining out of touch with her subject for a longer period, thereby spoiling her chances for clearing the examination, is neither here nor there. After all, admittedly when she was in close touch with her subject, and even before her training ended, she was given the chance to take the examination, but even then she could not pass. On the other hand, it could well be said that a full year's gap would also afford the petitioner further time to prepare for the examination and at the same time, since she also happens to be a graduate doctor, nothing stops her from taking up a job connected with her specialty so that she may keep in touch with her subject. Be that as it may, it is not for this Court to ensure the availability of what any individual candidate might feel are optimum circumstances under which he or she might stand a better chance to succeed in the examination.

24. Similarly, the stand taken by the petitioner in response to the disclosure that one of the reasons why the Board had taken the impugned decision was to curtail expenditure, to the effect that she is, "willing to shell out more money", or her presumption that others similarly situated would also be willing to do so, cannot form the legal basis for this Court to overturn a considered policy decision taken by eminent experts in the field who are best suited to take a wholesome view of the situation and to decide such matters.

25. Finally, the expression "sub silentio" relied upon by the petitioner has been defined by Black Law's Dictionary, 6th Edition, as "under silence; without any notice being taken. Passing a thing sub silentio may be evidence of consent". To my mind, there seems to be no application whatsoever of this expression to the facts and circumstances of this case.

26. Under the circumstances, there is no merit in this petition and the same is dismissed.