
(1995) 03 RAJ CK 0020

In the Rajasthan High Court

Case No : Civil Writ Petitions No. 6325, 6251, 6271 and 6272 of 1994

Dr. Sudhir Baldwa and Others

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 07-03-1995

Acts Referred:

Constitution of India, 1950 — Article 14, 141

Citation : (1995) 2 WLC 420 : (1995) 1 WLN 404

Hon'ble Judges : V.K. Singhal, J

Bench : Single Bench

Judgement

V.K. Singhal, J.—This order shall dispose of all the above listed writ petitions as the point involved in all of them is identical. For the purpose of disposing of the writ petitions, the facts of S.B. Civil Writ Petition No. 6325/94. Dr. Sudhir Baldwa V State of Rajasthan and Another will be taken.

2. The petitioner Dr. Sudhir Baldwa passed his MBBS from the SMS Medical College, Jaipur in the year 1992-93 and appeared in All Rajasthan Pre-P.G. Entrance Examination, 1994 and was declared successful and was placed in the merit position at No. 113-1 in the over-all merit prepared in the Pre-P.G. He was initially allotted P.G. (Medicine) at RNT Medical College, Udaipur vide order dated 1.6.1994 and in the first re-shuffling he was given preference for Ajmer in the same speciality vide order 13.7.94. It is stated that one Dr. Om Prakash Garg was also allotted M.D. Medicine at Jaipur and an application for mutual transfer was submitted by Dr. Garg from Jaipur to Ajmer and by Dr. Baldwa from Ajmer to Jaipur. When the joint request was not accepted, Dr. Garg had no option but to resign and the said resignation was accepted on 30.9.94. The grievance of the petitioner is that in the past on the basis of the application for mutual transfer the candidates were transferred and for the purpose the name of Dr. Alok Madan and Dr. Sunil Gupta have been given in which the transfer from Jaipur to Bikaner and Bikaner to Jaipur was made. In case of the petitioner it is submitted that similar treatment has not been given and the action of the respondent is violative

of Article 14 of the Constitution of India. A representation is alleged to have been sent to the Principal Secretary, Government, Medical and Health Department, on 12.11.1994 in this regard. It is also stated that the seat which is available on account of resignation of Dr. Garg was not initially taken into consideration on 15.11.1994. It is also submitted that the counselling of the vacant seat is only in respect of the candidates who have not been given admission earlier and as such giving the admission to such a candidate who is lower in merit is not. in accordance with Ordinance 278-E and the judgment of the Apex Court, because such a candidate having lower merit could be able to get a better speciality and better place. Counselling should have been only on the basis of merit-cum-preference. It is submitted that the course for P.G. is 3 years and in the first year the training remains the same in all the Medical Colleges and as such it does not affect any candidate if transfer is made in accordance with the principle of merit-cum-preference.

3. Mr. Bhandari appearing on behalf of the respondents submits that in the case of Dr. Mahendra Kumar Bhadu v. State of Rajasthan S.B. Civil Writ Petition No. 3305 of 1993 decided on 10.11.1993 1993(1) RLR 628 this court has observed that re-shuffling is permissible within 4 months from the date of initial appointment and since the initial appointment of the petitioner was on 1.6.94 therefore his case could not have been considered. The resignation of Dr. Garg was received on 20.9.94 and was accepted on 30.9.94. It is denied that any application for mutual transfer was submitted. The vacancy on account of resignation of Dr. Garg was for inservice candidate and in order to find out whether such a vacancy could be filled from a candidate of general category, the selection Board has to take a decision. The guidelines prepared by the State Government in pursuance of the judgment given by this court in the case of Mahendra Kumar Bhadu (supra) do not contemplate the transfer of a candidate who has already been given admission earlier at the time of counselling. The case of Dr. Alok Madan is said to be special case and it is stated that it was done on the basis of re-shuffling and not in the counselling process. It was on the basis of that because they were so adjusted without affecting the right of any other candidate.

4. Mr. Ashopa, appearing on behalf of Dr. Sumet Shah submits that Dr. Shah appeared in Pre-P.G. in 1994 and was placed in merit at No. 219. in the interviews in the last week of May, 1994 he had not availed the same and the first-reshuffling took place in July, 1994, he has also not availed the same and so was the position in the second-re-shuffling which was on September 26 to 29, 1994 and it was in the counselling for which the notification was issued on 15.11.1994. The petitioner was given admission in view of the guidelines issued by the Government on the basis of the judgment given in the case of Dr. Mahendm Kumar Bhadu (Supra).

5. In the affidavit submitted by Dr. Garg, it has been submitted that he submitted an application for transfer from Jaipur to Ajmer vice DR. Baldwa who

is studying in JLN Medical College Ajmer and both of them met the convenor Pre-P.G. Board in person and they were informed that the application for mutual transfer would be considered. When the said application was not considered, he resigned on 29.9.94.

6. Mr. R.D. Rastogi appearing on behalf of Dr. Narendra Bishnoi submits that the merit of his client was at No. 219-11 and he was given admission in Diploma course of Child Health (DCH) at RNT Medical College, Udaipur which diploma is an unrecognised one and in the first re-shuffling on July 26, 1994, he was transferred from Udaipur to SMS Medical College, Jaipur in DCH course vide order dated 30.7.94. His grievance is that the person having lower merit was given PG degree course which has resulted in in-equality. Dr. Satyendra Sogani who was admitted in Microbiology was given Mr. Surgery at Jodhpur as the diploma course given to him was not recognised by the Medical Council of India. Mr. S.K. Singh adopted the arguments of Mr. R.D. Rastogi for representing Dr. Sameer Sharma and Dr. Sanjay Singhal. In respect of those three petitioners Mr. Bhandari submits that the said candidates have not amended their writ petitions after the counselling and as such their writ petitions have become infructuous.

7. In order to see the controversy the provisions of Ordinance 278-E and various decisions which have been relied upon from both sides are to be considered. The Ordinance 278-E reads as under

O-278-E

(I) Total Number of Seats.

Total number of seats subject wise for various post-graduate aduat courses for MD and MS will be as notified by the Principals/Head of the Respective Institution.

(II) Reservations.

(a) 25% of the total seats (irrespective of the other meeservations made hereunder) will be fitted in as per allocations made by the Director General of Health Services Government of India, New Delhi on the basis of the result of All India Competitive Entrance Examination for admission to P.O. Courses (M.D./MS) on open merit.

(b) 8% of the seats, after excluding the seats to be filled in as per allocations made by the Director General of Health Services, Govt. of India, New Delhi as mentioned in clause (a) above from the total seats shall be reserved for natural born scheduled caste candidates and 6% seats for natural born scheduled tribe candidates, selection for these vacancies shall be made as per roster system to be notified by the State Government.

(c) 25% of the seats, after excluding the seats to be filled in as per allocations made by the Director General of Health Services, Govt. of India, New Delhi as mentioned in clause (a) above shall be reserved for in-service candidates of Rajasthan State Medical services in the various specialities as determined and

fixed from time to time by State Government out of which 8% seats shall be reserved for in-service natural born tribe candidates, the State Government shall communicate such numbers of seats speciality wise to the principals of the respective Medical Colleges.

The remaining seats shall be called "General seats" and the unfilled seats from these reserved under clauses (a),(b) and (c) above after exhausting the waiting list, shall be filled by the candidates of general category.

(III) Selection of candidates.

For seats mentioned at sub-clause(a) of Clause II the selection shall be made as per allocations made by the Director General of Health Services, Govt. of India, New Delhi on the basis of the result of All India Competitive entrance Examination for admission to the Post Graduate Course of MD and MS on open merit.

The selection for the remaining seats for post graduate course of MD and MS shall be done on decided on the basis of Pre-PG entrance Test.

Separate Merit List shall be prepared for (II-b) and (II-c) and the seats of general category.

The merit lists of the above categories shall be sent to the convenor of the Post Graduate admission Board (i.e. the principal SMS Medical College Jaipur).

The selection will be aone by a central PD Admission Board constituted of all the principal of the State Medical College with the Principal, SMS Medical College, Jaipur as its convener. The central PG Admission Board shall interview and the candidates and allocate them college and subject on the basis of merit-cum-preference list.

The vacancies due to not joining within the stipulated time shall be filled by re-shuffling on the basis of merit cum preference list and the resultant vacancies or such vacancies which cannot be filled by re-shuffling shall be filled by taking candidates from the waiting list on merit cum preference basis at the earliest but not later than six months from the late of initial appointment. No admission shall be made after six months from the date of initial appointment even if any vacancy is left unfilled or any vacancy occurs subsequently.

(IV) Eligibility for Admission.

All candidates seeking admission to MD and MS courses should have obtained registration i.e. they must have completed satisfactorily one year's compulsory rotating internship after passing the Final MBBS examination and must have registration with the Rajasthan Medical Council.

Further

(i) For seats referred at sub-clause (a) of clause - II, the Eligibility shall be as laid down by the Government of India from time to time.

(ii) For seats reserved for inservice candidates as referred at clause (II-c) the candidates must have served the state i.e. the Government of Rajasthan continuously for more than 5 years after regular appointment under Rajasthan Medical and Health Services Rules, 1963 and should be below the age of 45 years and should have completed atleast 3 years of service in the rural area of the State of Rajasthan. Rural area is defined as a Rural area where Rural allowance is admissible to the doctors and should have actually served in the rural area.

(iii) For seats not reserved in the sub-clause (a),(b) and (c) of Clause (II) candidates must have passed Final MBBS Examination from the University of Rajasthan or the candidates should have been nominee of the Rajasthan Govt. and were admitted to the MBBS course as State Nominee in a Medical College outside the State of Rajasthan or the candidate if bonafide resident of Rajasthan and has contained the MBBS Degree from a medical college from outside the state of Rajasthan where they secured admission on All India Competitive basis.

(V) Period of Training.

The period of training for MD/MS shall be three years after registration of the candidate with the University as a Post- Graduate student at an institution affiliated to the University for training in that particular subject/speciality Out of the total period of three years a candidate shall be required to study for atleast 2 years in the same speciality/subject.

(VI) Method of Training for MD and MS.

(a) The emphasis will be on inservice training and not on didactic lectures. Candidates will take part in seminars group discussion clinical meeting etc. In service training requires the candidate to be resident in the campus and he will be given graded responsibility in the Management and treatment of patient on trusted in his care. It should also include adequate training in Basic and Medical Science relevant to the subject/speciality concerned. The candidate will be required to participate in the teaching & Training Programmes of under graduate student and interneers in their subject/specialities.

(b) All candidates will attend a post-graduate course of eight weeks as Applied Basic Science (to be started immediately on completion of one year after the registration of regular batch of students for post graduate course) for MD Branches (i) to (vii) and MS Branches (i) to (v) applied basic Sciences. Tropical Medicine communicable Diseases for MD Branches (ix) to (xiv) and Applied and clinical aspects of the subject concerned for MD Branches (xv) to (xvii) and MS Branches (vi).

(c) Candidate will also attend a four month comprehensive course in the subject/speciality in two parts in February/ March and September/October. During this period the candidates will also attend a course of atleast six lectures/lecture demonstrations on the Principle of Statics as applied to Medical science and

Research.

(VII) Examination and Assessment.

The progress of work of the candidates shall be assessed periodically by the respective guides and report submitted to the Head of the Institution through the Head of the Department at the end of every six months. The assessment report may also be conveyed in writing to the candidate who may also be advised of his shortcomings, if any.

In case the report indicates that a candidate is incapable of continuing to do the work of the desired standard and complete it within the prescribed period, the Head of the Institution may recommend cancellation of his/her registration at any time to the University.

The examination in MD/MS shall consist of

(A) Thesis or Dissertation,.

(B) Written Papers and.

(C) Clinical oral and practical examination, as the case may be.

(A) Thesis Dissertation;

(i) Each candidate will submit plan for the thesis/dissertation on the proposed subject through his guide and the Head of the Institution to the University of Rajasthan for registration of the subject so as to reach the Registrar's office within six months from the date of his/her registration for the MD/MS examination. The thesis dissertation will be submitted in the University at least 4 months before the date fixed for the examination. In exceptional circumstances the thesis could also be accepted at least 3 months before the date fixed for the examination on the recommendation to the effect made by the guide and the Principal.

(2) No candidate will be permitted to change the subject of his thesis/dissertation without prior approval of the University.

(3) The thesis/dissertation may relate to the study of a series of at least 25 clinical cases in the same subject/speciality or may be research on specified problem. The presentation of material in the thesis should be precise and concise and the number of pages should as far as possible not exceed 100. The thesis/dissertation shall embody the results of candidate's own work. This work shall include a precise method of investigations. He will be required to submit 3 type written copies of the thesis/dissertation prepared under direction and guidance. Approval by the examiner of the thesis submitted by the candidate shall be precondition for his admission to the written part of the examination. The thesis shall be evaluated by two external examiners and two internal examiners of the branch concerned. It will be deemed to have been approved, If it is approved by a majority of the examiners and similarly it will be deemed to have

been rejected. If it is rejected by a majority of the examination. If two examiners approve the thesis and the other two reject it, it shall be referred to a fifth examiner (external) whose judgment shall be treated as final. In case the thesis submitted by a candidate is rejected, he shall be required to submit afresh thesis/dissertation.

(4) A candidate who has submitted his thesis/dissertation once and the name has duly been approved by the examiners, will not be required to submit a fresh one if he/ she re-appears for the examination in the same branch on a subsequent occasion. Thesis/dissertation may also from the basis of the oral examination and due credit may be given for the same. The examiner may also inform the University about any outstanding thesis in a particular branch. The approved thesis or dissertation will be property of the University and could be published with the permission of the University.

(5) If a candidate seeks admission to examination in any other branch he shall be required to submit a fresh thesis/dissertation.

The above ordinance provides the period of training for MD/MS as 3 years after registration of the candidate atleast 2 1/2 years study is required to be in the same speciality or subject which has been given to the candidate. It is clearly provided that the selection for PG course of MD/MS shall be done on the basis of merit judged on the basis of Pre-PG entrance test. The Principal, SMS Medical College is the convenor of the Central PG admission Board which is constituted of all the pPrincipals of State Medical Colleges and the admission is to be given on the basis of merit cum preference list after holding the interviews. The vacancies for non-joining any candidate within the stipulated time are to be filled by re-shuffling which is also on the basis of merit cum preference list and if the seats could not be filled in by re-shuffling only then the candidates from the waiting list are to be taken again on merit cum preference basis. The Ordinance has not contemplate any counselling. It is specifically provided that no admission shall be made after six months from the date of initial appointment even if any vacancy is left unfilled or any vacancy occurs subsequently. This Ordinance came up for consideration by a Division Bench of this court in the case of Dr. Mohendra Bangani v. State of Rqjasthan D.B. Special Appeal No. 135 of 1992 decided on 27.5.92 wherein it Was considered that for no reason the authorities have the discretion to give admission after lapse of six months to any candidate from the waiting list. This court has followed the said decision in the case of Dr. Mahendra Kumar Bhadu (Supra).

8. The Apex Court in the case of Anand S. Biji Vs. State of Kerala and Others, evolved the concept of counselling on equitable basis. According to the system which was prevailent inrespect of All India quota, the admission was given in PG course on the basis of merit cum preference cum eligibility. If the result of the candidate has not come in the first list then while preparing the second or third list, over all merit cum preference cum eligibility was not examined and admission was given to less meritorious candidate. In order to eliminate the un-

equal result and even the delay the system of counselling was proposed by which from the examination the merit list was to be prepared irrespective of the choice given. A chart was to be kept ready and displayed indicating the name of the college, subject where the seats are available and the candidate was required to give the choice in order of merit. No second/third list in this manner was to be issued. If any seat remained vacant was to be surrendered to the State Government. This judgment makes it further clear that the counselling was contemplated for the selection itself and it was not considered for any re-shuffling or counselling after the selection. The seats surrendered to the State Government have to be filled in accordance with the relevant provisions of the Ordinance, rules by-laws as provided in that State which in the State of Rajasthan is Ordinance 278-E as exparties aforesaid.

9. In the case of Dr Santosh Kumari (Mrs) Vs. Union of India (UOI) and Others, the Apex Court held that the seat has to be made available according to the merit irrespective of the fact that the candidate of higher merit has approached the court or not other candidate of higher merit being available and interested in getting the seats.

10. Mr. Bhandari has placed reliance on the principles evolved by this court in the case of Mahendra Kumar (supra) wherein the observations were made that the counselling shall be available to all the candidates who did not join the speciality of PG in the State quota. In other words, the candidates who joined the PG course in the State quota shall not be eligible for taking part in the counselling. The decision in the case of Dr. Dinesh Kumar and Others (II) Vs. Motilal Nehru Medical College, Allahabad and Others, and Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, were taken into consideration and it was considered that the selection should be on the basis of merit. The case of Sandhya Kabra and Others Vs. University of Delhi, was also referred and on that basis the proposed procedure was mentioned.

11. I have considered over the matter. The provision of Ordinance 278-E in my opinion do not have any ambiguity. It is clearly stipulated therein that the vacancy due to non-joining within the stipulated time has to be filled up by re-shuffling on the basis of merit cum preference list and if such candidate is not available only then the resultant vacancy which could not be filled by re-shuffling be filled in by taking the candidates from the waiting list and that too on merit cum preference basis. No admission has to be given after six months from the date of initial appointment even if any vacancy is left unfilled or any vacancy occurs subsequently. The respondents have no right therefore to fill up the vacancy after six months by any of the methods and for any reason. Filling up the vacancy after six months is not only contrary to the Ordinance 278-E but also contrary to the decision given by this court in the case of Mahendra Bangani (Supra).

12. In respect of counselling principle evolved by the Apex Court in the case of Anand S. Bigi (Supra) an example was given that a candidate having 250 Marks

is allotted a seat in MS (General Surgery) and a candidate with 225 marks is allotted a seat in MS (Ophthalmology). If the candidate of MvS (General Surgery) does not join then at the time of preparing the second list the candidature of a candidate to whom MS (Ophthalmology) was given is not considered and the candidate having lesser marks of 220 get admission in MS (General Surgery). It is not only an inequality which is being created by this process, but the merit is altogether ignored and for the purpose counselling was proposed. If the observations of the Apex Court in *Anand S. Biji* (Supra) are kept in view which are applicable for initial appointment, the result would be that by following such procedure counselling would be done of any successful candidate in accordance with merit cum reference. The Ordinance has contemplated re-shuffling which was not contemplated in the case before the Apex Court and, therefore, the stage of counselling would be at the time of first admission being given on the basis of number of the seats available in the college and the result has to be declared on that basis. If for any reason, the seat falls vacant, may be because of non-joining (which would include resignation after joining within 6 months) the procedure of Ordinance 278-E has to be followed and according to the said procedure the seats have to be filled up by re-shuffling on the basis of merit cum preference basis. It is only if the seats could not be filled up by re-shuffling then the candidates have to be taken from the waiting list and that too on the basis of merit cum preference. It appears that the decision in the case of *Anand S. Biji* (Supra) was not brought to the notice of Hon'ble N.L. Tibrewal J. when for the purpose of admission the inequality by giving admission to less meritorious candidate was pointed out and therefore for initial list the counselling was proposed. In view of the said decision, I am of the view that the counselling is applicable for initial list for giving admission to the candidates which is achieved here by interview after merit list is prepared and thereafter the Ordinance has contemplated re-shuffling alone within 6 months from the date of initial appointment and the said re-shuffling is possible only on the basis of merit cum preference and if such candidate is not available, only then the candidates from the waiting list can be called. The observations made in the case of *Dr. Mahendra Kumar Bhadu* (Supra) that counselling would be available to all the candidates who did not join any speciality in PG/DipIoma courses in the State quota run counter to the observations made by the Apex Court and the Ordinance.

13. Ordinarily, I would have referred this matter to the Division Bench for authoritative pronouncement, but in view of the provisions of Article 141 of the Constitution of India the decision of the Apex Court being binding, I am following the law laid down by the Apex Court in the case of *Anand S. Biji* (Supra) and I am of the opinion that in accordance with the said view the admission to a less meritorious candidate cannot be given ignoring the claim of higher meritorious candidates. In a particular case, as happened in these cases as well, less meritorious candidates may get Degree course while the person with higher merit could get only diploma course which cannot be the intent of the Ordinance.

14. In *Sandhya Kabra v. University of Delhi* referred to above the procedure

formulated under the new scheme of 1992 as produced in para 60 provides that a candidate admitted to a particular subject and assigned to a particular institution will not be entitled to seek any change of subject or institution at all. No request for change of subject or institution would be entertained. The seats were to be filled from waiting list. It was in these circumstances the Full Bench observed that for a candidate who has already received admission to certain course would not be entitled for change of course or hospital. Ordinance 278-E does not put any such restriction and contemplates only re-shuffling on merit cum preference basis. In the matter of medical science Post Graduation the place is also having its importance.

15. In the case of the petitioner Dr. Sudhir Baldwa it has come on record that the order of the Governor dated 1.8.94 mutual transfer was permitted in the case of Dr. Alok Madan and Sunil Kumar Gupta. This is said to be without affecting the rights of other meritorious candidates. The admission to Dr. Summet Shah at Jaipur has been given who was having merit at No. 219 and therefore Dr. Sudhir Baldwa has a better claim on the basis of merit and on the basis of Ordinance 278-E as he was having merit position at No. 113-1.

16. It is, therefore, directed that the petitioner Dr. Sudhir Baldwa shall be adjusted at Jaipur instead of Dr. Summet Shah and appropriate order would be passed within 15 days. In respect of other three petitioners the exercise shall be under taken by the respondents within 30 days.

17. Consequently, the writ petitions stand disposed of with the above directions.