
(1980) 12 OHC CK 0002

In the Orissa High Court

Case No : Original Jurisdiction Case No. 1690 of 1980

Dr. Sudhir Kumar Mohanty

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 15-12-1980

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1981) 51 CLT 461

Hon'ble Judges : R.N. Misra, Acting C.J.; J.K. Mohanty, J

Bench : Division Bench

Advocate : G.A.R. Dora, for the Appellant; Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

R.N. Misra, A.C.J.

1. Petitioner, a medical graduate, was working as a full time post graduate student in the Department of Surgery. According to the requirements of the Indian Medical Council, one of the pre-requisites for admission into the post-graduate studies is completion of the M.B.B.S. course including one year's compulsory rotating internship and one year's housemanship. Alternately, the candidate has to work as a full-time post-graduate student in the concerned department. Petitioner alleges that after completing his internship for a year, he worked as a Senior Medical Research Fellow for one year from 18th March 1979 and this was equivalent to Residential Housemanship (R.H.S.). Petitioner intended to take admission into the 2 year course for M.S. in Surgery but the Prospectus published by the Board set up by the State Government did not accept R.H.S. as equivalent of being a post-graduate student. Petitioner, therefore, could not apply for being selected for M.S. Course in General Surgery and has applied for a writ or direction to the opposite parties to admit him into such course so that he could take the examination in July, 1982.

2. Opposite Parties have filed a common counter affidavit and have taken the stand that Petitioner was not qualified to be admitted as the allegation of equivalence was not accepted and in terms of the scheme laid down in the Prospectus Petitioner did not possess the requisite qualification for seeking admission into the Course. In paragraph 5 of the counter affidavit it has been categorically pleaded that the R.H.S. Course is not equivalent to post-graduate course. The prescription by the Indian Medical Council is recommendatory according to the counter affidavit and Government keeping in view the guideline therein have set up a Selection Committee to conduct an entrance examination or selection of candidates every year in terms of a Prospectus to be published. This has been the prevailing practice for several years past and neither the Indian Medical Council nor the Universities have ever taken exception to the procedure. There is also a denial to Petitioner's assertion that he was walking as a Senior Research Fellow.

3. There is no dispute that strictly within the ambit of the prospectus Petitioner does not possess the requisite qualification. Mr. Dora for the Petitioner, however, places strong reliance on the recommendation of the Principal of the S.C.B. Medical College (opposite Party No. 3) and the clearance given by the Utkal University as per Annexure-2 for the purpose of supporting his argument that R.H.S. Course was equivalent to the prescription under the prospectus. We do not think it is for the Court to decide whether one would be as good as the other when the Prospectus prescribes the qualifications in a particular way. There is no challenge to the Prospectus in the writ application and the Selection Board was certainly bound to act according to the Prospectus as that was the guideline within which it was expected to work. We do not think it would be appropriate for the Court in an application under Article 226 of the Constitution to examine and decide that the R.H.S. Course is equivalent to the requirement under the Prospectus and, therefore, Petitioner, though admittedly he does not possess the prescribed qualification as a pre-requisite, is yet entitled to admission because he has an equivalent qualification.

The writ application fails and is dismissed. There shall be no order for costs.

J.K. Mohanty, J.

4. I agree.