
(1994) 08 MAD CK 0086
In the Madras High Court

Dr. T. Rajendran

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 18-08-1994

Acts Referred:

Citation : (1994) 2 MLJ 615

Hon'ble Judges : AR. Lakshmanan, J

Bench : Division Bench

Judgement

AR. Lakshmanan, J.—The above writ petition has been filed for the following relief:

To issue a writ of certiorarified mandamus or any other appropriate writ or direction calling for the records in respect of the impugned order Ref.

No. 73431/MEII/I/93 dated 6.9.1993 issued by the 2nd respondent, quash the same and direct the 2nd respondent to admit the petitioner in D.M.

(Nephrology) Course in the Madras Medical College in the service candidate seat for 1993-94.

2. Under the impugned proceedings dated 6.9,1993, Dr. S. Ramakrishnan, formerly Assistant Surgeon, Government Hospital, Kumbakonam,

undergoing D.M. (Neurology) Course in 1992-93 session at Madras Medical College, Madras-3, was permitted to join the D.M. Nephrology

course in 1993-94 session immediately at the Madras Medical College, Madras-3, as per his request. The said order is under challenge in this writ

petition.

3. According to the petitioner, he appeared for the entrance examination for 1993-94 higher speciality post graduate courses and was placed as

No. 1 in the waiting list of service candidates for the D.M. Nephrology course. Of

the two vacancies advertised, one is reserved for the service candidates. The 4th respondent, who also appeared for the said 1993-94 entrance examination, was selected for the vacancy of service candidate in D.M. Nephrology course. He had earlier appeared for the 1992-93 entrance examination for higher speciality post graduate courses and was selected for D.M. Neurology Course and he joined the same some time in April-May, 1993, and is undergoing the said course since then, According to the petitioner, the 4th respondent, who is undergoing post graduate higher speciality in D.M. Neurology of 1992-93 batch is ineligible for admission subsequently to another higher speciality course, which it is claimed, is in total violation of the General Instructions III (3) of the prospectus for higher speciality courses, 1993-94. General Instructions 111(3) runs thus:

No candidate who has undergone the post graduate course in one Higher Speciality or undergoing any post graduate higher speciality course will be eligible for admission subsequently to another higher speciality course. Candidates qualified in one higher speciality or undergoing any post graduate higher speciality course securing admission into another higher speciality by suppressing the fact that "they have already undergone the course are liable to be expelled and their selection will be cancelled.

4. Therefore, the petitioner wrote to the Secretary, Selection Committee on 26.7.1993 and 25.8.1993 as the first service candidate selected and eligible to fill up the second vacancy of D.M. Nephrology. He again wrote to the Secretary of the Selection Committee on 6.9.1993 marking copies to respondents 1 and 2 who have acknowledged the letters on 7.9.1993 and 8.9.1993. The petitioner had also brought to the notice of the respondents General Instructions 111(3) of the prospectus. It is also the case of the petitioner that the procedure for selection as laid down in the prospectus should be strictly adhered to.

5. The Secretary, Selection Committee, filed a counter-affidavit and a supplementary counter-affidavit. It is stated in the counter-affidavit that Dr. S. Ramakrishnan (E.E. No. 1215), a service candidate has applied for admission to higher speciality courses 1992-93 session for D.M. Gastro Entrology and D.M. Neurology. He was not selected for both the courses during 1992-93 session. He was in the waiting list for D.M. Neurology.

Meanwhile, applications were called for various post graduate diploma/degree courses and higher speciality courses for 1993-94 session and entrance examination was conducted on 7.3.1993. Since Dr. S. Ramakrishnan was not selected in 1992-93 session, he appeared for entrance examination for higher speciality courses 1993-94 session-D.M. Neurology and D.M. Nephrology (E.E. No. 810004). The results were published on 1.4.1993 and Dr. S. Ramakrishnan was selected to D.M. Nephrology course since he secured the highest mark i.e. 66.70. In the meanwhile, an undertaking was given by the Advocate General on 2.4.1993 in this Court that further process i.e., sending of intimation letter for admission etc., to selected candidates for 1993-94 session in higher speciality courses will be kept in abeyance till the disposal of the post graduate case pending in this Court.

6. According to the Secretary of the Selection Committee, when the same was kept in abeyance, Dr. S. Ramakrishnan got selection from waiting list for 1992-93 to D.M. Neurology Course and he joined the course at Madras Medical College, Madras on 7.5.1993. He was only in the waiting list for 1992-93 session at the time when he submitted the application for higher speciality courses 1993-94 session. Further, he was not given admission for D.M. Neurology Course for 1992-93 session for D.M. Neurology Course for 1992-93 session at that time, when the results were published for 1993-94 session on 1.4.1993. If Dr. S. Ramakrishnan has been given admission to D.M. Nephrology course for 1993-94 session, after the publication of the result, he would have joined the course. Since the selection for 1993-94 session was kept in abeyance and consequent on the operation of waiting list 1992-93, Dr. S. Ramakrishnan got selection for D.M. Neurology Course for 1992-93 session and he joined the course on 7.5.1993.

7. Among the candidates who applied for D.M. Nephrology course 1993-94 session, Ramakrishnan secured the highest marks and got selected.

The details are given below:

Subsequently, on the basis of the judgment of this Court, selection intimation was sent to him for D.M. Nephrology course. Thereafter, he discontinued D.M. Neurology course and joined D.M. Nephrology course.

8. Also a service candidate, also filed a detailed counter-affidavit. It is

mentioned that at the relevant point of time he was fully eligible under the prescribed conditions to apply and appear for the examination for the year 1993-94 and on 7.3.1993 the entrance examination was conducted for the academic year 1993-94 and on 2.4.1993 the results were published and he was selected directly for both D.M. Neurology and D.M. Nephrology course for the academic year 1993-94 and as a result of the pendency of writ petition in this Court, no notification from the college authorities was sent intimating the 4th respondent to join the course for 1993-94 even though he was selected directly under open category as a service candidate. In the meantime, on 30.4.1993, he was intimated that he had been selected for the D.M. Neurology Course for 1992-93 which was originally wait listed. Because of the subsequent development, which emanated after the orders of this Court in a batch of writ petitions, the authorities intimated the 4th respondent to join the course D.M. Nephrology on 16.8.1993 for the academic year 1993-94. It is stated by the 4th respondent that on 5.8.1993 he represented to the 2nd respondent and sought permission to join the D.M. Nephrology course for the academic year 1993-94 and for relieving him from D.M. Neurology Course, which he had joined on 7.5.1993. The 4th respondent stated that he had mentioned and set out all the material facts including his joining in D.M. Neurology Course on 7.5.1993 in his representation and the 2nd respondent approved the change of course from D.M. Neurology to D.M. Nephrology and the Selection Committee had also approved the orders of the 2nd respondent by the impugned order. The intimation for approval was received by the 4th respondent on 14.9.1993 and he joined the D.M. Nephrology course for the session 1993-94. The 4th respondent has also stated that he has not violated any of the conditions stipulated in the prospectus and that the selection made by the 2nd respondent is in accordance with the prospectus. The 4th respondent also has placed before this Court all the relevant correspondence between him and the authorities concerned dated 5.8.1993, 16.8.1993 and 6.9.1993 in support of his contention.

9. Admittedly, the 4th respondent appeared for the entrance examination for higher speciality courses 1992-93 session on 13.9.1992 and he was not selected for the higher speciality course but his name was kept in the waiting

list for D.M. Neurology course. During the first week of February, 1993, entrance examination for 1993-94 session was conducted. The 4th respondent wrote the said examination on 7.3.1993 and the results were published and he was selected directly for both D.M. Neurology and D.M. Nephrology course for the academic year 1993-94 on 2.4.1993.

The admission for 1993-94 session was challenged in a batch of writ petitions in this Court and therefore, according to the 4th respondent, no

intimation of admission was sent to the selected candidates. However, the 4th respondent received an order for joining D.M. Neurology Course

for the academic year 1992-93 on 30.4.1993 and admittedly he joined the said course on the last date viz., 7.5.1993.

10. It is thereafter this Court while disposing of the writ petitions has clarified that the writ petitions do not cover the super higher speciality

courses. On 3.8.1993, the 4th respondent received an intimation card to join D.M. Nephrology course for 1993-94 session. After making

representation and obtaining permission to change from D.M. Neurology 1992-93 session to D.M. Nephrology 1993-94 session, the 4th

respondent joined the D.M. Nephrology course for the session 1993-94 on 15.9.1993. It is not disputed that the 4th respondent is continuing his

super speciality course in D.M. Nephrology course since 15.9.1993.

11. We have perused the counter-affidavit. It is seen from the counter-affidavit filed on behalf of respondents 1 to 3 that though the 4th respondent

and the petitioner are service candidates, the 4th respondent secured 66.70 marks and he was selected from the Open Quota, and the petitioner,

who is placed in the first place in the waiting list under service quota, has secured 60.80 marks. One R. Balakrishnan, who has secured 62.35

marks, as seen from the counter-affidavit of respondents 1 to 3 was selected under service quota for D.M. Nephrology course for 1993-94

session. Admittedly, only two seats are reserved for D.M. Nephrology for service candidates. Having regard to certain subsequent developments,

it becomes unnecessary for us to refer to and decide the rival contentions advanced by the learned Counsel on either side.

12. It is stated by the learned Counsel for the petitioner that Dr. R. Balakrishnan, who was selected as service candidate for D.M. Nephrology

course for 1993-94 session, appears to have joined the said course on 16.8.1993

and he has abstained from attending the said course since

15.1.1994. It is also stated that he has left the country and has also not intimated about his absence from duty of the authorities concerned. At the

time of hearing, the learned Special Government Pleader was requested to ascertain this fact from the authorities concerned. On verification and

ascertainment, the learned Special Government Pleader does not dispute the fact that Dr. R. Balakrishnan after joining the course on 16.8.1993

has not been attending the course since 15.1.1994. The learned Counsel for the petitioner has also placed before this Court the letters written by

the petitioner on 15.4.1994 and 11.5.1994 to the Commissioner and Secretary, Health and Family Department, Government of Tamil Nadu. In his

letter dated 15.4.1994 the petitioner has informed the authorities concerned that Dr. R. Balakrishnan who joined D.M. Nephrology course in

1993-94 selection has left the course and discontinued and therefore the said seat may be allotted to him since he is No. 1 in the waiting list.

13. It is not disputed that on 3.5.1994 the Professor and Head of the Department, Department of Nephrology, Madras Medical College, Madras-

3, addressed a letter to the Dean, Madras Medical College, Madras-3, informing him that Dr. R. Balakrishnan, a service candidate joined as D.M.

Nephrology post graduate course in his department on 16.8.1993 has not reported for duty since 15.1.1994 and that it is essential that

appropriate action is taken against him. It is also stated that the said Dr. R. Balakrishnan has left the country and therefore he should be directed to

join duty forthwith failing which the post graduate seat which he occupied will be given to some other candidate. It is further state letter that

appropriate action may please, be taken urgently.

14. It is seen from the letter dated 11.5.1994 written by the petitioner to the Commissioner and Secretary, Health and Family Welfare

Department, that a reference was made to the letter dated 3.5.1994 of the Professor and Head of the Department of Nephrology to the Dean of

the Madras Medical College, and the petitioner requested the Commissioner and Secretary, Health and Family Welfare Department to do the

needful in this connection at an early date.

15. Admittedly, no action appears to have been taken against the said Dr. R. Balakrishnan for abandoning D.M. Nephrology course and the duty.

It is needless to emphasise that no seat in any higher speciality course like D.M. Nephrology should be allowed to lie vacant for undoubtedly a long

time or go waste or lapse on account of discontinuance of studies or abandonment of the course by the selected candidate. In our opinion,

respondents, 1 to 3 ought to have taken steps to fill up the said vacancy caused on account of the absence of Dr. R. Balakrishnan since 15.1.1994

by admitting the selected candidate in the waiting list. There appears to be truth in the statement of the learned Counsel for the petitioner, which

was not denied by the learned Special Government Pleader that the said Dr. R. Balakrishnan has discontinued the course and gone out of India.

Public interest as also the interests as also the interests of justice requires that the one vacant seat out of the two reserved for service candidates in

D.M. Nephrology course, which was allotted to Dr. R. Balakrishnan should have been filled up by offering the same to the petitioner who occupies

the first place in the waiting list under the service quota. Therefore, the interest of justice requires that respondents 1 to 3 should be directed to take

immediate steps to fill up the one vacancy in D.M. Nephrology course for 1993-94 session by allotting the said seat to the petitioner without any

further loss of time or delay.

16. For the foregoing reasons, respondents 1 to 3 are directed to allot the D.M. Nephrology course one seat meant for service candidates to the

petitioner within four weeks from to-day. There will be an order in the writ petition as stated above. However, there will be no order as to costs.