

(1997) 04 AHC CK 0011
In the Allahabad High Court
Case No : Writ Petition No. 4 (SB) of 1997

Dr. Vivek Goel and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 08-04-1997

Acts Referred:

Citation : (1997) 04 AHC CK 0011

Hon'ble Judges : Brijesh Kumar, J;A.S. Gill, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Brijesh Kumar, J.—In all the abovenoted writ petitions the question involved for consideration is the same. Hence they are being disposed of by one order.

2. Heard learned Counsel for the Petitioners as well as learned State counsel and Sri Sandip Dixit who has put in appearance on behalf of Director General, Medical Education and Training as well as on behalf of Agra Medical College. The parties have also exchanged their affidavits. Therefore, with the agreement of the learned Counsel for the parties, the writ petitions are being finally disposed of.

3. All the Petitioners after completing their M. B. B. S., course had appeared in the Post Graduate Medical Entrance Examination which is conducted for admission to the Post Graduate courses, namely, M. D., M. S. and Post Graduate Diploma course. They were given admission in different courses in different medical colleges but they were not given the subjects of their choice. Some of such persons approached this Court with the grievance that due to wrong implementation of reservation policy, they had not been given admission in the subject/speciality of their choice. This Court upheld the contention in Dr. Ram Kumar and Ors. v. State of U.P. and Ors. Writ Petition No. 1040 (M.S.) of 1993, decided on 24.5.93. The State, it is informed, preferred SLP in the Hon'ble Supreme Court which was dismissed. Hence, it appears fresh exercise was undertaken implementing the reservation policy in the matter of admission as

held by this Court, as a result of which subjects of courses of study of the Petitioners had been reshuffled and they have been allocated seats for Post Graduate course, in different subjects as indicated in the writ petitions. It delayed starting of their Post Graduate course of study. Since the period of the course allocated earlier which they had undergone for some time could be of no avail in different subjects of study but it appears that the opposite parties stopped payment of stipend admissible to the Junior Residents pursuing Post Graduate course reckoning the period of three years from the date, the Petitioners had started the course first allocated to them implementing the reservation policy in a wrongful manner. It has been objected to by the Petitioners. It is submitted that the Petitioners were not at fault and the right subjects should have been allocated to them as subject of their study according to their choice. It is further submitted that they would have got the same course initially as well, had the reservation policy not been wrongly applied. It is submitted that the Petitioners are entitled to continue to get the stipend as Junior Residents during the currency of the courses of their Post Graduate Study which started on correct implementation of reservation policy.

4. On behalf of the opposite parties, it has been submitted that the Petitioners could not claim stipend as Junior Residents for more than a period of three years and the period during which they had been pursuing those different courses for some time and had been paid the stipend, that will have to be adjusted in three years" course even though, the Petitioners were allowed to pursue the correct course later. We, however, find no merit in the submission. The Residency seems to have been provided for Post Graduate students by way of improvement of Post Graduate Education and Training. This would be evident from the scheme promulgated by the State Government dated October 9, 1990, a copy of which has been filed as Annexure 1 with the supplementary affidavit filed today on behalf of the opposite parties in Writ Petition No. 4 of 1997 (SB). It very clearly provides that during the period of three years, Post Graduate Course of M. D., M. S. the Junior Residents shall be called Junior Residents First Year, Junior Residents Second Year and Junior Residents Third Year respectively and the duration of the same shall be one year each.

5. A perusal of Clause (3) of the scheme also indicated that Junior Residency is almost a part of the course of the Post Graduate Education which appears to have been provided with a view to improve the Post Graduate Education and Training. The period of Junior Residency, it appears begins and ends with the course of M. D., M. S. or Post Graduate Diploma course. Therefore, period of Training as Junior Resident spent in other subjects, as wrongfully allotted, than in which the student is pursuing his course of study cannot be made a part of the Post Graduate Education undertaken by the students on correct allotments. The whole course has to be gone through afresh in the particular speciality and the period spent In pursuing a different course cannot be adjusted in the new course. Therefore, we find no force in the contention raised on behalf of the opposite parties that since they had been paid their stipends in the earlier course

which was being pursued due to wrong allocation of subject of study, the same be adjusted in the new course. In the new course the subject of study as well as Practical Training as Junior Resident has to be in the same discipline or speciality. In view of the above, we are of the view that a student cannot be denied stipend admissible as Junior Resident while pursuing the course of M. D., M. S. and Post Graduate Diploma, during the prescribed period.

6. Learned Counsel appearing for the opposite parties and the Director General, Medical Education and Training have drawn our attention to Clause (11) of the Scheme that the admissible perquisites and conditions of service of all students under the scheme shall be regulated by the Government Orders to be issued separately. He has also very fairly indicated the Government Order issued in that regard, a copy of which has been filed as Annexure 3 dated August 5, 1992, which says that the stipend shall be made admissible to the Junior Residents during the period of study of the course which is three years for Post Graduate course of M. D., M. S. and two years for Post Graduate Diploma. There is no other Government Order which may have been issued making curtailment in the matter of payment of stipend during the course of study of M. D., M. S. or the Post Graduate Diploma. Therefore, payment of stipend during the currency of Post-Graduate course would be in consonance with Clause (11) read with the Government Order dated August 5, 1990.

7. It may also be worthwhile to mention here that earlier some of the students had filed a writ petition in this Court, namely, Writ Petition No. 670 (S/B) of 1996 in similar circumstances relating to the same year of admission to Post Graduate courses. This Court by order dated 31.7.1996 had allowed the writ petition with a direction to the opposite parties to continue to pay the stipend admissible to the students for a period of three years from the date they had been allocated the correct courses of Post Graduate study. Sri Sandip Dixit, learned Counsel appearing for the Director General Medical Education and Training informs that the SLP filed before the Hon'ble Supreme Court against the aforesaid order of this Court had been rejected. In this view of the matter also, we feel that the opposite parties are liable to pay the stipend to the Post Graduate students as Junior Resident during the period of their course of study without adjusting the period and the payments made earlier while they were not correctly allotted their subjects of Post Graduate courses.

8. Sri Sandip Dixit submits that in Writ Petition No. 84 (S/B) of 1997 (Dr. Ajay Kumar Gupta and Ors.) and Writ Petition No. 202 (S/B) of 1997 (Dr. Ajai Sharma and Ors.) which relate to the students in Agra Medical College and Writ Petition No. 132 (S/B) of 1997 (Dr. Pradeep Pandey and Ors.) which relates to the students in Kanpur Medical College, the course of their study has come to an end and the examinations have already been held prior to March, 1997, namely, some time in October, 1996 in Agra and in December, 1996 in Kanpur. Therefore, they would not be entitled for the payment of stipend as Junior Resident after the course of study is over and the examination has been held. He has also pointed

out one of the orders passed by Hon"ble the Supreme Court a copy of which has been filed as Annexure 6 to the supplementary affidavit on an interim relief application in Dr. Ajay Kumar Agarwal and Ors. v. State of U.P. and Ors. Writ Petition (C) No. 1114 of 1990, dated April 8. 1993. It was provided by Hon"ble the Supreme Court by the abovenoted order that if the course is over and examinations are held before the period of three years, if necessary, the students may be allowed to continue the training part of the course, namely, Residency, but they would not be paid the stipend during that period. Sri Sandip Dixit has submitted that the Petitioners in Writ Petition No. 84 (S/B) of 1997 and Writ Petition No. 202 (S/B) of 1997 relating to Agra Medical College, they have given in writing that they may be allowed to continue the Junior Residency for a full period of three years and they would not claim any stipend for the period after the examinations were over.

9. In view of the discussions held above, all the abovenoted writ petitions are allowed and the opposite parties are directed to pay the stipend to the Petitioners as Junior Residents during the period of three years of course of study of M. D., M. S. reckoning it from the date they have been allotted the correct subjects of courses of study without adjusting the period of course they had undergone in different subjects wrongly allocated due to wrong Implementation of reservation policy. So far, Petitioners in Writ Petition No. 84 (S/B) of 1997, Writ Petition No. 202 (S/B) of 1997 and Writ Petition No. 132 (S/B) of 1997 are concerned whose course of study has come to an end and examinations have been held, if necessary, they would be allowed to complete the period of three years as Junior Residents but would not be entitled for any stipend if the courses are over and the examinations were held. It is further provided that the opposite parties shall clear off the arrears of amount of stipend which may not have been paid to the Petitioners or may have been stopped being paid during the currency of the Post Graduate course, within a period of two months from today. Writ Petition No. 326 (SB) of 1997 (Dr. Manoj Rajani and Anr.) and Writ Petition No. 329 (S/B) of 1997 (Dr. Pramod Kumar Jain) which have been filed fresh and have come before us today out of which Writ Petition No. 326 (S/B) of 1997 relates to Kanpur Medical College and Writ Petition No. 329 (S/B) of 1997 which relates to Agra Medical College they also stand finally disposed of in the same manner as indicated above.