
(1972) 10 SHI CK 0003
In the High Court Of Himachal Pradesh
Case No : L.P.A. No. 10 of 1972

Harish Kumar

APPELLANT

Vs

The State of Himachal Pradesh

RESPONDENT

Date of Decision : 03-10-1972

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : AIR 1974 HP 28 : (1972) 1 ILR HP 154

Hon'ble Judges : R.S. Pathak, C.J.;C.R. Thakur, J

Bench : Division Bench

Advocate : D.P. Sud and M.L. Vaidya, for the Appellant; Bakshi Sita Ram, General and Inder Singh, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Pathak, C.J.—This Letters Patent Appeal is directed against the judgment and order of our brother D. B. Lal dismissing a writ petition.

2. The appellant, Harisk Kumar Malhotra, appeared in the Pre-medical Examination of the Punjab University in 1969 but, it is said, he was unable to appear in the Biology practical paper of the examination because of acute dysentery, He was placed in the list of candidates entitled to appear in the "Compartment" examination. It seems that he did not take that examination and instead preferred to appear afresh in the Pre-medical Examination of the year 1970. He obtained 384 marks out of a total of 650 marks, and therefore, had a percentage of 59.6 in the compulsory subjects of English, Physics, Chemistry and Biology.

3. The Himachal Pradesh Medical College, Simla was affiliated to the Punjab University. It is an institution belonging to the Government of Himachal Pradesh Medical Department, and its prospectus for the year 1970-71 was finalised with the approval of the Himachal Pradesh Government. The appellant applied to the Medical College for admission to the M.B.B.S. First Year Course of that Medical

College in June 1970 and was invited for an interview before the Selection Board on July 23, 1970. The Himachal Pradesh University Act, 1970 was brought into force on July 22, 1970 and in consequence thereof the Himachal Pradesh Medical College was dis-affiliated from the Punjab University and. affiliated to the Himachal Pradesh University as from July 22, 1970.

The Selection Board selected a number of candidates for admission to the Medical College but did not select the petitioner. The appellant maintains that he was entitled to admission and points out that the respondents Nos. 6 to 9 were admitted although they obtained a lower percentage of marks than he did. Accordingly, the appellant filed a writ petition in this Court challenging the refusal of the respondents to admit him to the M.B.B.S. First Year Course in the Himachal Pradesh Medical College. The writ petition has been dismissed.

4. The prospectus of the Himachal Pradesh Medical College for the year 1970-71 sets out the conditions for admission to the college. Paragraph 2 of Section J. of Part-B provides that:

"2. The minimum qualification for admission is F. Sc. (Medical Group) or Pre-Medical or equivalent examination as recognised by the Punjab University in 2nd Division, which for this purpose will be 50% of total marks obtained in compulsory subjects viz., English, Physics, Chemistry (including Organic Chemistry) and Biology only, of the qualifying examination, after deducting the marks, if any, obtained in the optional subjects."

Paragraph 6 provides that selection of the candidates for admission will be made by a Selection Board, duly constituted by the Himachal Pradesh Government, after interviewing the candidates and that the Board would take into consideration the marks obtained in the four compulsory subjects mentioned in paragraph 2 of the qualifying examination as well as the candidate's performance at the interview. Paragraph 8, which is material, provides :

"8. The candidates who have passed their qualifying examination in the second attempt, 2 per cent. marks will be deducted from the aggregate marks (excluding optional). The candidates appearing in part of qualifying examination will be treated as a failure (attempt). The candidates of improved division from other University/Board will not be allowed admission in this Institution, in view of the decision of the Punjab University, reproduced below. However, applications for admission of such candidates will only be considered on their first success in the qualifying examination"

It appears that the appellant has been refused admission for the year 1970-71 on the ground that his case fell under paragraph 8 and after deducting the two percent marks mentioned therein his position became junior to the respondent Nos. 6 to 9.

5. It is contended for the appellant that paragraph 8 does not apply in his case for the reason that his appearance at the Pre-Medical examination of 1970

cannot be treated as "a failure attempt" inasmuch as he had not appeared earlier at a Pre-Medical examination. The argument is that his sitting for some papers at the Pre-Medical examination of 1969 cannot be treated as an appearance at the Pre-medical examination because for reasons beyond his control he could not appear in all the papers at that examination, having fallen ill before he could appear for the last paper.

The argument, in our opinion, has no force. There can be no dispute that the appellant appeared at the Pre-medical examination of 1969. He appeared in all the papers except one. It is immaterial that he could not appear in that paper because he was taken ill. For the purposes of the point before us, it must be held that his appearing in the papers, even if not in all of them, at the Pre-medical examination of 1969 must be treated as an appearance at that Pre-medical examination. It is urged on behalf of the appellant that the conclusion is open only if he had taken advantage of the right to appear in the "Compartment" examination for the paper omitted by him, and if thereafter it was found that he had failed it could be inferred that he had appeared and failed at the Pre-medical examination of 1969.

It seems to us that the opportunity given to a candidate, unsuccessful in the regular examination, to appear at a Compartment examination is given merely to afford him a further chance of being declared successful at the regular examination. Upon success in the Compartment examination a candidate is treated as having been successful in the regular examination. The decision of the appellant not to take the advantage of appearing at the Compartment examination cannot affect the conclusion that he had appeared at the Pre-medical examination of 1969 and had failed. His appearance at the Pre-medical examination of 1970 was a second attempt or what has been described as a "failure attempt". Paragraph 8 was therefore clearly attracted. It is urged on behalf of the appellant that there was no Compartment examination in 1969, and therefore the regular examination of 1970 should be treated as a compartment examination relevant to the regular examination of 1969. The submission is plainly untenable.

6. It is then urged by the appellant that the provision providing for a deduction of two per cent marks (to which we shall refer as "the 2% deduction clause") in the case of a candidate appearing for the second time is invalid. The submission is that the provision is not contemplated by the Punjab University Act and the Regulations made thereunder nor by the Himachal Pradesh University Act and, therefore, it falls outside the scope of the power of those who prepared the prospectus. Alternatively it is urged that the provision is discriminatory and contravenes the "equality" provisions of the Constitution.

7. As regards the first submission, it is necessary to determine the relation in which the Punjab University stood in respect of the Himachal Pradesh Medical College. Section 27 of the Punjab University Act provides for the affiliation of colleges to the University. Part-E of the Punjab University Calendar 1970 contains

the Regulations relating to affiliated colleges and students studying there. Neither from the Act nor from the Regulations does it appear that the Punjab University had the power to control the conditions upon which students would be admitted to an affiliated Medical College. Our attention was drawn to the provisions in Vol. II of the Punjab University Calendar, 1970 relating to the degree of M.B.B.S., and an attempt was made by learned counsel for the appellant to show that the provisions of the prospectus relating to admission followed those Regulations closely.

It was contended that those Regulations of the Punjab University Calendar governed the provisions of the prospectus relating to admission, and inasmuch as the Regulations did not provide for the 2% deduction clause its inclusion in the prospectus fell outside the scope of what was permitted by the Punjab University in regard to the admission of candidates to the Medical College. The submission is based upon a mis-conception as to the scope of the Regulations in the Punjab University Calendar. The Regulations are not concerned with the admission of students to the Medical College. As they plainly show, they are concerned with the admission of students to the First Professional Examination of the M.B.B.S. That is a point which the student reaches after he has been admitted to a Medical College and completed the course of studies prescribed for the First Professional Examination. The conditions for admission set out in the prospectus relate to an earlier point of time. They are concerned with the stage of admission to the Medical College.

8. Nor has it been shown to us that the 2% deduction Clause is inconsistent with anything contained in the Himachal Pradesh University Act. The Himachal Pradesh University Act was brought into force on July 22, 1970. As the Ordinances could not be issued in time a Removal of Difficulties Order was made on August 29, 1970. By that order the Regulations and Rules of the Punjab University which were in force immediately prior to the commencement of the Himachal Pradesh University Act in respect of certain matters were made applicable till such time as the first Ordinances of the Himachal Pradesh University were made by the State Government.

The provisions which were made applicable related to the admission of students, the conduct of examinations, and the management of colleges and institutions maintained by the University and the affiliated colleges. As we have shown, there was nothing in the Regulations and Rules of the Punjab University which governed the conditions for admission to an affiliated Medical College and therefore, it seems to us, the operation of the Removal of Difficulties Order made no difference in that regard. That also disposes of the appellant's contention that as his interview took place after the coming into force of the Himachal Pradesh University Act, the 2% deduction clause could not affect him as it cannot be said to have been carried forward by the Removal of Difficulties Order, because it was not mentioned therein.

9. We have been referred by learned counsel for the appellant to D.N. Chanchala

Ors. Vs. The State of Mysore and Others, where the Supreme Court while referring to Medical Colleges set up and maintained by the State Government from out of public funds has pointed out that if they are affiliated to a University the Government cannot frame rules or act inconsistently with the Ordinances or the Regulations of the University laying down the standards of eligibility. We are not satisfied that the conditions of admission prescribed in the prospectus, which are under consideration in the present case, are inconsistent with the Ordinances or Regulations of the Punjab University Act or the Himachal Pradesh University Act.

10. It is pointed out that according to the case of the respondents the 2% deduction clause has been incorporated to give effect to the instructions of the Director General of Health Services contained in his letter of March 31, 1967 but that letter, it is said nowhere instructs the Himachal Pradesh Medical College to adopt that rule for admission generally. We have perused that letter, and it appears to us that thereby the Director General merely informed the Himachal Pradesh Medical College that the - 2% deduction clause was applied in the case of candidates who sought admission as nominees of the Government of India. What seems is that the Himachal Pradesh Medical College thus came to know of the existence of such a rule and considered it appropriate to adopt it in the case also of candidates who generally applied for admission in the usual way.

11. The next submission against the validity of the 2% deduction clause is that it is discriminatory. We are unable to agree. Those who framed the prospectus considered it appropriate to draw a distinction between candidates who appeared at the Pre-Medical examination for the first time and those who appeared at it for the second time. In the case of the latter, it was considered appropriate to impose a stricter test. By imposing the 2% deduction clause in their case an attempt was made, as it were, to scale down the advantage in some measure which a candidate obtained by reason of his experience acquired during the first attempt. It was considered desirable to admit the best candidates to the Medical College, and the system of examinations has so far been taken as the most suitable test. To place all candidates at the same competitive level, the 2% deduction clause was devised.

There can be no dispute that those who appear for the second time at a certain kind of examination have a slight advantage over those who appear at such an examination for the first time. The 2% deduction clause was apparently considered as an equalising factor. Learned counsel for the appellant has placed reliance on Kumari Chitra Ghosh and Another Vs. Union of India (UOI) and Others, and The State of Andhra Pradesh and Others Vs. U.S.V. Balram, etc., In neither case was the validity of a rule comparable to the 2% deduction clause in question before the Court and in our opinion those cases are distinguishable from the case before us.

12. It is urged that only the Senate of the Punjab University could have imposed the 2% deduction clause and it did not lie within the competence of the Himachal

Pradesh Medical College. As we have already said, the Punjab University Act has not been shown to govern the conditions for the admission of candidates to an affiliated Medical College. This contention must fail.

13. Finally, it is pointed out that a concession in the matter of applying the 2% deduction clause was extended to two candidates, Hari Priya and Vijay Kumar Kapoor, who sought admission during the year 1967-68, and it is said that the concession should have been extended to the appellant also. As it has not, the petitioner has been subjected to discriminatory treatment. The contention cannot be accepted, because both Hari Priya and Vijay Kumar Kapoor were government nominees and governed by a different set of rules.

14. It was also contended that the Hirnchal Pradesh Medical College, at the relevant time, was an institution of the Central Government inasmuch as Himachal Pradesh was a Union Territory at that time, and the Himachal Pradesh Administration was not competent to participate in the finalisation of the prospectus. It is clear, we think, that the Himachal Pradesh Administration was fully competent to settle the terms of the prospectus and it was not necessary that reference should have been made directly to the Central Government in the matter.

15. Before the learned single Judge the appellant challenged the validity of the constitution of the Selection Board, but learned counsel for the appellant states that he does not press that contention before us.

16. In our judgment, none of the contentions raised on behalf of the appellant can be accepted.

17. For the respondents, it is pointed out that no relief can be granted any longer to the appellant on the basis of the rules relating to admission which were in force in 1970-71 because the rules since then have materially changed and the two per cent deduction clause is no longer contained therein. It is urged that any relief granted by this Court would, in the circumstances, be futile. It is not necessary, we think, to consider this aspect of the matter because on the merits the appeal must fail.

18. The appeal is dismissed, but in the circumstances, there is no order as to costs.

C.R. Thakur, J.

I agree.