

(1984) 10 AHC CK 0012
In the Allahabad High Court
Case No : Writ Petition No. 212 of 1984

Madan Lal Agarwal

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 23-10-1984

Acts Referred:

Citation : (1984) 10 AHC CK 0012

Hon'ble Judges : K.N.Goyal, J and Kamleshwar Nath, J

Final Decision : Partly Allowed

Judgement

Kamleshwar Math, J.—This petition under Article 226 of the Constitution seeks a writ of Mandamus to allow the petitioner Dr. Madan Lal Agarwal to be registered for postgraduate course in the King George Medical College, Lucknow. There is also a prayer for quashing certain conditions contained in Annexures 2 & 3 to the writ petition.

2. The petitioner appeared in the Final Professional Examination of M. B. B. S., of King George Medical College, Lucknow, in April 1983. The aggregate secured by him in the entire examination was 55.34%. The aggregate obtained by him in all the courses of ophthalmology in the said examination was 53.5%, but in the paper regarding clinical examination in ophthalmology he secured only 16 out of 50 marks, which was slightly less than 33%. The Rules framed by the Lucknow University in this connection are contained in Annexure2 of the writ petition which required, inter alia, that an examinee must secure 50% marks in each of the papers individually as contradistinguished from the requirement of 50% in the aggregate. On that basis the petitioner was declared to have failed in the subject of ophthalmology.

3. The petitioner then appeared afresh in the subject of ophthalmology and in that examination having secured 63.5% marks was declared pass.

4. When he sought admission to the Postgraduate course in King George Medical College, Lucknow, a deduction of 1 % from the aggregate marks, secured by him

in the subject of ophthalmology, was made because of his failure in the first examination in the month of April 1983, as indicated above. This deduction rested upon a condition contained in the Notification dated 15.12 1982, Annexure3 to the writ petition, issued by the Government of U. P., for admission of candidates to the postgraduate courses in the Medical Colleges of State of U. P, including King George Medical College, Lucknow. The Annexure stated, inter alia, that keeping in view the recommendations of the Medical Council of India, it was directed that while admissions to the postgraduate courses would be made on the basis of merit, the basis of determining the merit would be percentage of marks worked out after deducting one percent marks for each failure in every subject from the total percentage of marks obtained in the M.B.B.S. Examination.

5. The claim of the petitioner is that the condition contained in Annexure2 that an examinee is to be treated as having failed if he did not secure 50% marks in each paper of a subject, is discriminatory and ultra vires because there is no corresponding condition in other Universities like Kanpur University. It is further said that condition of deducting of 1% marks in a subject in which the examinee has failed, contained in Annexure3 to the writ petition, is ultra vires because it is contrary to the Rules framed by the Medical Council of India contained in Annexure1 to the writ petition.

6 The writ petition has been opposed at the stage of admission.

7. The contention of learned standing counsel is that every University is an autonomous body, having its own set of examinations and syllabi, so that the criterion adopted by one University cannot provide any guide for the criterion adapted by the other University. He further contends that the condition contained in Annexure3 for deducting 1% marks, is a uniform condition applicable for admission to all postgraduate Courses in the Medical Colleges run under the control of Government of U. P. and that the criteria, set forth by the Medical Council of India, are only recommendatory which had been considered by the Government while issuing the Notification Annexure3.

8. We have considered the submissions made by learned counsel for both sides. As only a legal issue is involved and there is no dispute as to facts, we have dispensed with the requirement of filing a counter affidavit and proceed to dispose of the petition itself.

9. Admit.

10. It is not disputed that the Lucknow University is a separate autonomous body distinct from Kanpur University. Both the Universities are entitled to have their own Ordinances determining their syllabi, curricula and the standards of passing the examinations. A governing ordinance has a statutory force and the criteria adopted in one statute neither constitutes any guidance nor provide a classification within the meaning of Article 14 of the Constitution for adoption under another statute.

11. Again, the standard set forth by the Medical Council of India in Annexure1 is clearly described as recommendations adopted by the Medical Council. It is plain enough that recommendations have no binding effect. Further, a perusal of Annexure3 to the writ petition would show that while issuing the Notification the Government of U.P. had kept in view the recommendations of the Medical Council of India.

12. Lastly, the practice of deducting 1% marks in the subject of failure is a uniform practice adopted under Annexure3 to be applied to all State Medical Colleges in U. P. including King George Medical College, Lucknow. Such a condition cannot be said to be discriminatory or unfair.

13. We, however, notice that in para 4 of Annexure3 there is a classification of candidates for the purposes of admission between those who have passed the M.B.B.S. Examination from the Medical College where the admission is sought on the one hand and those who have passed M.B.B.S. Examination from other Medical Colleges. It is stated in the said para that 75% seats in a particular Medical College shall be reserved for the candidates of that Medical College and against the remaining 25% seats, candidates who have passed the M.B.B.S. Examination from other Medical Colleges and are bona fide residents of Uttar Pradesh, shall be eligible for admission on the basis of merit along with the candidates who have passed the M.B.B.S. Examination from the Medical College where the admission is sought. It is obvious that in respect of 75% seats, the students of only King George Medical College, Lucknow, are eligible and, therefore, the criterion of deduction of 1% marks in case of failure, being applicable uniformly to that class, is fair and just. In respect of the remaining 25%seats, the selection is to be made not exclusively from the candidates who have passed M.B.B.S. Examination from other Medical Colleges but from those Medical Colleges as well as the Medical College where the admission is sought, namely, King George Medical College, Lucknow. In respect of this class of 25% seats, since the basis of selection is merit of all kinds of candidates, there can be no reasonable condition for imposing a deduction of 1% marks in respect of candidates who have passed from the Medical College, namely, King George Medical College, Lucknow, and not making a similar deduction in respect of candidates who have passed M.B.B.S. from other Medical Colleges, e.g., Medical College under Kanpur University, who had likewise failed either in written or Terminal Examination, Clinical Examination, Oral and Practical or DaytoDay work in any subject while securing pass marks in the aggregate in that subject. To this extent, the condition of deduction of 1% marks, contained in para 2 of Annexure3, cannot be made applicable in respect of partial failure, i.e., failure in clinical Examination etc. where the candidate has secured pass marks to the aggregate in the same subject.

14. We also notice that while Annexure 3 to the writ petition purports to have been issued, keeping in view the recommendations of Medical Council of India, the Lucknow University itself does not appear to have considered the

recommendation of Medical Council of India for the purposes of setting out the standards of pass and failure in its examinations as contained in Annexure1 to the petition. It would be fair and desirable for the Lucknow University to consider the recommendations of the Medical Council of India in this respect at an early date and we hope that they will take an early decision on these recommendations.

15. The writ petition is allowed in part and a writ in the nature of Mandamus shall issue to the opposite parties directing that in respect of the unreserved 25% seats referred to in para 4 of the Notification dated 15.12.1982, Annexure3 to the writ petition, the condition of deducting 1% marks in respect of any subject in which a candidate, belonging to King George Medical College, Lucknow, did secure pass marks in the aggregate was declared failed in an examination, merely on the basis of his having failed in written or Terminal Examination, Clinical Examination, Oral and Practical or DaytoDay work in any subject, shall not be given effect to.

(Petition allowed partly)