

(2015) 03 RAJ CK 0195

In the Rajasthan High Court

Case No : SB Civil Review (Writ) Petition No. 31/2012 in SB Civil Writ Petition No. 11274 of 2010

Monika Maheshwari

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 20-03-2015

Acts Referred:

Citation : (2015) 03 RAJ CK 0195

Hon'ble Judges : M.N. Bhandari, J

Bench : Single Bench

Advocate : S.K. Gupta, Additional Advocate General, Advocates for the Respondent

Final Decision : Allowed

Judgement

M.N. Bhandari, J.—This review petition has been filed against the order dated 20.7.2011, whereby, writ petition was disposed of with certain directions/observations. The appeal against the said order was disposed of with liberty to the petitioner to file a review petition as certain facts could not be placed before this court. It is apart from the fact that petitioner had undertaken the course for one year and three months by the aforesaid time. In view of the liberty given by the Division Bench, review petition has been preferred.

Brief facts of the case -

2. This case pertains to admission in DM (Cardiology) course for the academic year 2010. Total 13 seats in the discipline of DM (Cardiology) were advertised with 30% reservation for in-service candidates. If 30% reservation is applied on 13 seats, it comes to 3.9 seats and if it is rounded off, comes to 4 seats. As against the aforesaid, only 3 seats were kept for in-service candidates due to wrongful fixing of roster point. It was not in dispute that if 4 seats would have been kept for in-service candidates, petitioner was to get admission as per her merit.

3. The petitioner preferred a writ petition to challenge the action of the respondents and co-ordinate Bench of this court had passed an interim order for admission of the petitioner. She was given admission and thereupon completed the course in pursuance to the interim order. The writ petition was, in the meanwhile, decided by the court followed by the special appeal. This court found discrepancy in the roster point depriving the petitioner to get admission as per the quota meant for in-service candidate and the merit of the petitioner. To balance the equities, a direction was given to the Medical Council of India (MCI) for approval of additional seat for the session 2010-11, while disposing of the writ petition. The observation aforesaid was not accepted by the MCI thus petitioner preferred an appeal and the Division Bench, finding that petitioner has already undergone course for 1 year and 3 months and considering additional facts, asked to prefer the review petition and, for which, liberty was given. Accordingly, this review petition has been preferred.

4. The review petitioner, present in person, submitted that when finding regarding discrepancy in roster point was favourable to the petitioner then petitioner's admission should have been maintained while removing a candidate from the open category. This court should review its order accordingly. In the alternative, one seat should be adjusted in the next year by maintaining admission of the petitioner.

5. An additional fact regarding Dr Babban, who left the course of the academic session 2013-14, has been given with a request to adjust one seat in the said academic year. It would not only balance the equities but do justice. The petitioner was not only entitled but meritorious to get admission against 30% quota meant for in-service candidates. The default of the State Government in fixing the roster point should not result in casualty of the quota meant for in-service and meritorious candidates. The petitioner had given a reference of similar adjustment made by the MCI in their meeting held on 21.8.2012. To save admission in medical course, one additional seat was given with adjustment in the subsequent academic year. Reference of the judgment in the case of "Monika Ranka and ors versus Medical Council of India and ors", Civil Appeal No. 5518-5519 of 2008, decided vide the order dated 4.9.2008 was given wherein even ineligible candidates were allowed to be continued, having completed part of the course. A further reference of the judgment of the Hon'ble Supreme Court in the case of Deepa Thomas and Others Vs. Medical Council of India and Others, (2012) 1 SCALE 738 : (2012) 3 SCC 430 : (2012) 3 SLJ 11 was given wherein also ineligible candidates were allowed to continue the course in absence of their default in getting the admission. The prayer is accordingly made to review the judgment in the light of the aforesaid material and to do complete justice.

6. Learned counsel appearing for MCI raised an objection regarding maintainability of the review petition. Referring to the scope of review, it was submitted that a ground is not made out showing an error in the order apparent on the face of the record. The prayer is accordingly to dismiss the review petition.

7. Coming to the merits, it was submitted that 13 seats were allocated for the course of DM (Cardiology). The admission cannot be permitted beyond intake capacity. It is looking to the fact that intake capacity is given after determining availability of required infrastructure for the course. It cannot be extended by one seat having no facility to provide the course. It is more so when the course is of super speciality. The prayer is accordingly made to dismiss the review petition after considering the aforesaid. A reference of the judgment of the Hon'ble Supreme Court in the case of Aneesh D. Lawande and Others Vs. The State of Goa and Others, (2014) 1 ABR 173 : (2013) 9 AD 405 : (2013) 11 SCALE 149 has been given, wherein, the Apex Court has deprecated the practice of adjustment of the seat in medical course. The judgment aforesaid applies to the facts of this case.

8. It was further added that the judgments referred by the petitioner in the cases of Monika Ranka and Deepa Thomas (supra) have no application to the facts of this case. It is, no doubt, true that the admission was given to ineligible candidates contrary to the MCI Regulations but it was within permissible intake capacity. In view of above, adjustment was made within intake capacity and not by extending it. The clarification regarding minutes of the meeting dated 21.8.2012 was also given. Therein also, intake capacity of 3 seats was approved for the academic year 2012-13 but, due to delay in issuance of letter of permission for increase of the seats from 2 to 3, adjustment of one seat was made. In the next academic year 2013-14, one seat was reduced. Therein, the college was having capacity to teach 3 students and it was not that the adjustment was made without having capacity to teach the student for the course in question. It was due to delay in issuing letter of permission that only 2 admissions were permissible as per the schedule given by the Apex Court, whereas, college had given admission to 3 students. The decision of the MCI does not help the petitioner. The prayer is accordingly to dismiss the review petition.

9. Mr. SK Gupta, learned Additional Advocate General also opposed the review petition. It is in view of the fact that discrepancy in the roster point was not annulled by the court in given facts and circumstances of the case, thus no ground remains now to review the judgment. It cannot be merely for the reason that the petitioner has completed the course. The prayer is accordingly made to dismiss the review petition.

10. Mr. MA Khan, learned counsel for the university and Mr. Vinod Kumar Gupta have adopted the arguments raised by learned Additional Advocate General.

11. I have considered rival submissions of the parties and perused the record.

12. The facts of the case have already been summarised and the judgment sought to be reviewed specifies discrepancy in the roster point resulted in violation of 30% quota meant for in-service candidates. If the roster points would have been applied properly and by maintaining the quota, the petitioner

was entitled to get admission being meritorious candidate. The court could have set aside the roster but looking to the fact that candidates had already completed 10 to 11 months course by the aforesaid time, hence, to balance the equities, appropriate direction was given to the MCI to adjust one seat.

13. The respondents were under an obligation to maintain 30% quota meant for in-service candidates and if it applies to 13 seats meant for DM (Cardiology) course for the academic session 2011-12, it comes to 3.9 seats and on rounding off, it becomes 4 seats. As against the aforesaid, only 3 seats were kept for in-service candidates to favour open category candidate in an illegal manner, which deprived the petitioner to get admission in DM (Cardiology) course. The co-ordinate Bench of this court earlier passed an interim order in favour of the petitioner for her admission and now she has completed the course.

14. The question for my consideration is as to whether a case is made out for review of the judgment on the facts given above. The scope of the review of the order is quite limited. It can be when an error on the face of record is shown or that some material could not be placed, which goes in the root of the case.

15. If the present case is considered, the petitioner has brought new material as it was not available earlier. This includes a case of Dr Babban apart from the minutes of the meeting dated 21.8.2012, where, MCI itself made accommodation of one seat in MD (DVL) course for MNR Medical College and Hospital, Sangareddy, Andhra Pradesh. These facts are relevant. It is not that petitioner would be benefited by adjustment of one seat but would be the open category candidate, who was given admission in excess to the seats meant for them. It is reiterated that so far as petitioner is concerned, she has been made victim on account of faulty roster point fixed by the State Government, otherwise, if quota meant for in-service candidates would have been properly applied, she was not only coming in the merit but was entitled for admission to the DM (Cardiology) course. The MCI and other respondents have failed to understand the aforesaid and the directions in the judgment for adjustment of one seat was taken in favour of the petitioner without realising the aforesaid situation. If the quota meant for in-service candidates is adhered to, admission to open category candidate would have been affected and not of the petitioner.

16. Realising the facts aforesaid, the question comes as to whether admission of one candidate of open category should go as a consequence of it or the MCI should allow adjustment of one seat by carry forward and, at the same time, reducing it in the next academic session, as a consequence thereupon. The reference of certain judgments have been given which are in the case of Monika Ranka and Deepa Thomas (*supra*). Therein, similar adjustment was permitted even to make room for ineligible candidate, whereas, in the case in hand, petitioners is not only eligible but comes in merit. The admission in those cases were given to the candidates who were not eligible as per the Regulations of the MCI, yet their admissions were maintained with a direction to reduce equivalent number of seats in the subsequent academic year.

17. Learned counsel for MCI, however, raised an issue that adjustment in those case was within intake capacity and not by exceeding it. I agree to the aforesaid proposition of the learned counsel for the MCI and, in strict sense, the facts of those cases are not applicable to the present case other than adjustment of the seats. The fact however remains about the minutes of the meeting dated 21.8.2012 in regard to MNR medical College and Hospital, Sangareddy, Andhra Pradesh under Dr NTR University of Health Sciences, Vijaywada, Andhra Pradesh. The decision of the MCI is quoted hereunder for ready reference -

"Matter relating to Increase of Seats in MD(DVL) course at MNR Medical College and Hospital, Sangareddy, A.P. under Dr.N.T.R. University of Health Sciences, Vijayawada in view of the order passed by the Hon''ble Supreme Court and the Hon''ble High Court.

The Board of Governors considered the agenda note, order of various Hon''ble courts and documents available on file. After detailed discussion, the Board of Governors decided that in view of the judgement of the Hon''ble Supreme Court in Priya Gupta case, the Medical Council of India cannot issue Letter of Permission for the academic year 2012-13. Therefore, the Board of Governors decided to issue Letter of Permission for increase of seats in MD(DVL) course from 2(Two) to 3(Three) for the academic year 2013-14 at MNR Medical College and Hospital, Sangareddy, Andhra Pradesh under Dr. NTR University of Health Sciences, Vijayawada, A.P. Regarding candidate Dr. B. Archana who had already been admitted against MD (DVL) course in the academic year 2012-13 (whereas Medical Council of India has not issued Letter of Permission for the same), in view of Dr. NTR University of Health Sciences, Vijayawada letter No. 3978/82/08, dated 31.05.12, the Board of Governors decided that since the candidate has already been admitted in May 2012 she may continue to study at MNR Medical College and Hospital, Sangareddy, A.P. in MD(DVL) course. MNR Medical College and Hospital, Sangareddy, A.P. and Dr. NTR University Health Sciences, Vijayawada, A.P. to be directed that in MD(DVL) course there will be 2(Two) seats in the academic year 2013-2014 because of 1(One) excess admission made this academic year (i.e. 2012-13). MNR Medical College and Hospital, Sangareddy, A.P. is directed to admit only 2(Two) candidates in MD(DVL) course in the academic year 2013-2014. The order of the Board of Governors is also recorded on the file."

18. The perusal of the minutes of the meeting reveals that for the academic year 2012-13, intake capacity of two seats was permitted as it could not issue letter of permission for three seats. It was issued for the session 2013-14. The college had given admission to three candidates in excess to the intake capacity. A representation was made by the Board of Governors to allow the candidate to continue the course with reduction of one seat in the academic session 2013-14. It was permitted by the MCI, by reduction of one seat in the next year.

19. The argument of learned counsel for MCI is that even for the academic session 2012-13, the medical college was having capacity to teach 3 students,

thus adjustment was made keeping in mind the intake capacity of the college.

20. The aforesaid argument is attractive but, if accepted, then there was no reason for the MCI to take away one seat of the academic session 2013-14, rather, in strict sense, such accommodation is not permissible. The perusal of the minutes shows that as per the judgment of the Hon''ble Supreme Court in the case of Priya Gupta Vs. State of Chhatishgarh and Others, AIR 2012 SC 2413 : (2012) 5 SCALE 328 : (2012) 7 SCC 433 : (2012) AIRSCW 3354 , excess admission should have been given for the academic session 2012-13 in absence of letter of permission. The MCI, in fact, made adjustment to over come with the judgment of the Hon''ble Supreme Court or even to nullify it in substance.

21. It is quite surprising that now in the instant case, MCI is opposing it despite the fact that not only petitioner has completed the course but she was otherwise entitled to the admission as per her merit and quota meant for in-service candidate. In strict sense and if accommodation is to be made, it is to the candidate, who was given admission in excess to the quota meant for open category and not for the petitioner.

22. Learned counsel for MCI has given reference of the judgment in the case of Aneesh D Lawande (supra), wherein, similar exercise has been deprecated. If the judgment aforesaid is applied in strict terms, then the decision of the MCI in the case of MNR Medical College and Hospital also vitiates. No decision could have been taken, which goes beyond intake capacity, as is permissible under law but in the case of MNR Medical College and Hospital, adjustment of one seat was made. Further more, final directions given by the Hon''ble Apex Court in the case of Aneesh D Lawande (supra) are to be seen. Therein, admissions were allowed, looking to the facts of that case. The Hon''ble Apex Court, however, found that if adjustment is made by taking way a seat of subsequent academic session, it affects meritorious candidate, who would be aspirant to get admission in the next year. Para 31 and 32 of the said judgment are quoted hereunder for ready reference -

"31. We will be failing in our duty if we do not take note of two submissions put forth by the learned Counsel for the State as well as by Ms. Indu Malhotra, learned senior Counsel for the private Respondents. The first one is to the effect that there should be increase of the seats for the academic year 2013-14 and the students should be adjusted. Be it noted, an application was filed by the College for enhancement of seats for 2014-15 and during the pendency of this petition there has been a request to the Medical Council of India to prepone it for the year 2013-14. Enhancement of seats requires inspection and is controlled by a set of Regulations and, in any case, the application for 2014-15 cannot be directed to be processed in the current year.

32. The next submission relates to the issue whether the students who cannot be adjusted in the seats of All India quota that have been transferred to the State quota of this year can be adjusted next year. During the course of hearing

though there was some debate with regard to giving of admissions to such students in the academic year 2014-15, Mr. Amit Kumar, learned Counsel for the Medical Council of India, has seriously opposed the same and, thereafter, has cited the authorities which we have referred to hereinbefore. We are bound by the said precedents. In certain individual cases where there is defective counselling and merit has become a casualty, this Court has directed for adjustment in the next academic session but in the case at hand, it is not exactly so. Though we are at pains, yet we must express that it will not be appropriate to issue directions to adjust them in respect of the subsequent academic year, for taking recourse to the same would affect the other meritorious candidates who would be aspirant to get admissions next year. For doing equity to some in presenti we cannot afford to do injustice to others in future. Therefore, the submission stands repelled."

23. From the perusal of the aforesaid paras, it becomes clear that in certain individual cases, where there is a defective counselling and merit has become casualty, the court had directed for adjustment in next academic session.

24. In the case in hand, the merit has become casualty so far as petitioner's case is concerned. It quota meant for in-service candidates would have been applied properly, petitioner was entitled to get admission as per her merit. She was denied admission due to faulty roster point, thus it becomes a case not only of casualty of quota system but of merit also. The adjustment of one seat can easily be made in the instant case as, for the academic session 2013-14, one Dr Babban had left the course in mid session thus adjustment can be made accordingly and if not, one admission of open category candidate should go, being in excess to the quota. It would be of the candidate at the bottom of the list.

25. The stand of the MCI is otherwise opposed to their own decision in the case of MNR Medical College where they had permitted admission in excess to the intake capacity. The plea regarding availability of infrastructure for study against three seats, in the MNR Medical College and Hospital was raised by the learned counsel for the MCI but merely for that reason, the MCI should not have violated judgment of the Supreme Court in the case of Priya Gupta (supra) or their own Regulations. If they have done so, then why similar exercise should not be applied here?

26. In view of above, I find reasons to review the judgment to the limited extent. The respondents are directed to maintain admission of the petitioner as 4 seats should have been given to in-service candidates against 13 seats meant for DM (Cardiology) against academic session 2010-11. Three seats allocated to in-service candidates were short by one seat to provide 30% quota. In view of aforesaid, admission to the open category candidate was in excess but candidate having completed the course and passed it, thus while maintaining the admission of the petitioner, respondents are directed to adjust one seat in the academic session 2013-14. It would do complete justice without discrimination in the

action of the MCI. With the aforesaid, review petition stands allowed.