
(1997) 04 RAJ CK 0022
In the Rajasthan High Court
Case No : Civil Writ Petition No. 780 of 1997

Narsee Ram Meena

APPELLANT

Vs

University of Rajasthan and Others

RESPONDENT

Date of Decision : 21-04-1997

Acts Referred:

Constitution of India, 1950 — Article 226
Rajasthan University Act, 1946 — Section 29

Citation : AIR 1998 Raj 18 : (1997) 2 WLC 508

Hon'ble Judges : Anshuman Singh, J

Bench : Single Bench

Advocate : Mahendra Goyal, for the Appellant; Alok Sharma and Narendra Jain, for the Respondent

Final Decision : Dismissed

Judgement

1. The facts giving rise to this petition under Article 226 of the Constitution of India are that the petitioner passed his MBBS Examination in May 1996 from the University of Rajasthan, Jaipur. True copy of mark-sheet dt. 27-7-96 has been filed as Annexure-1 to this petition. It is alleged that according to the Ordinance 268 of the University of Rajasthan Ordinances, the MBBS Degree shall be conferred after passing the final MBBS Examination and after a candidate has undergone compulsory rotating internship for a period of 12 months. It is further alleged that Ordinance 272 provides that after passing final MBBS Examination, every candidate will be required to undergo compulsory rotating internship to the satisfaction of the University for a period of 12 months so as to be eligible for the award of the Degree of MBBS and full registration. It further provides that the University shall issue a provisional MBBS Pass Certificate on passing the final examination. It further provides that the State Medical Council will grant provisional registration to the candidate on production of provisional MBBS Pass Certificate. The provisional registration will be for a period of one year. It has been averred that after passing the final MBBS Examination the petitioner was granted a provisional MBBS Pass Certificate by the respondent No. 3, copy of

which has been filed as Annexure-2 to this petition. It has been further stated that on the basis of the provisional certificate issued by the respondent No. 3, the petitioner was issued a provisional registration as provided under the provisions of Ordinance 272 by the Rajasthan Medical Council, true copy of which has been filed as Annexure-3 to this petition. Initially, the petitioner started his internship from 5-8-96 at M.G. Hospital, Jodhpur. Subsequently, he got him transferred to the SMS Hospital, Jaipur for completing his internship and joined the same on 24-8-96. Subsequently, the petitioner was posted at General Hospital Sawaimadhopur under the District Level posting for a period of three months and started his internship there with effect from 5-1-97. It has been averred that the petitioner was served with an order dt. 25-1-97 issued from the respondent No. 2 stating therein that in pursuance of telegram dt. 13-1-97 sent by the respondent No. 3 the internship training of the petitioner has been cancelled with effect from 25-1-97, copy of which has been filed as Annexure-4 to this petition. After receipt of the said order the petitioner is alleged to have approached the respondent No. 2 and also requested the authorities to provide a copy of telegram mentioned in the impugned-order and wanted to know the reason for cancellation of his internship but, the respondents refused to supply the copy of telegram and did not convey the petitioner the reasons of cancellation of his internship. Feeling aggrieved by the aforesaid order and inaction on the part of the respondents, the petitioner approached this Court in the present petition.

2. When this petition came for admission before this Court on 4-2-97 show cause notices were issued to the respondents Nos. 2 and 3 only to show cause as to why this petition may not be admitted and disposed of. Notices of stay application were also issued to the aforesaid respondents and interim-order was passed in favour of the petitioner allowing him to continue his internship. The case came again for admission before this Court on 26-3-97 and on that date this Court issued notices to the University of Rajasthan also and directed the University to file counter-affidavit. Though, the counter has been filed on behalf of the respondents Nos. 2 and 3 but, no counter has been filed on behalf of the respondent No. 1.

3. I have heard Shri Mahendra Goyal learned counsel for the petitioner, Mr. Alok Sharma, learned counsel for the respondent No. 1 and Mr. Narendra Jam for the respondents Nos. 2 and 3. The main argument advanced on behalf of the petitioner is that the impugned-order cancelling the internship of the petitioner has been passed in flagrant violation of principles of natural justice as no opportunity was provided to the petitioner to show cause. The other limb of the argument of the petitioner is that once the respondents allowed the petitioner to undertake one year compulsory rotating internship training after being declared passed in final MBBS Examination in May 1996, the respondents are bound by the principles of promissory estoppel and the impugned-order is liable to be set-aside on the basis of the aforesaid two grounds. In the counter-affidavit filed by the respondents Nos. 2 and 3 the main contention contained is that in fact the

petitioner has secured only 17 marks out of the 40 marks in periodical assessment in Surgery (including Orthopaedic) of Final Year MBBS Examination conducted in May, 1996. However, due to some inadvertence his periodical assessment marks were mentioned as 21 instead of 17, It is alleged that one student namely; Dalpat Singh filed an application before the respondent No. 3 alleging that he got 23 marks out of 40 in periodical assessment whereas, in his mark sheet only 11 marks have been shown in periodical assessment in Subject Surgery and, therefore, his mark sheet should be corrected. After the receipt of the said request made by Mr. Dalpat Singh, the respondent No. 3 wrote a letter to the respondent No. 1 -University of Rajasthan for correction in the mark-sheet. It has been alleged that when the result was checked the mistake was discovered in the mark-sheets of 13 students including the petitioner and since it was found that the petitioner secured only 17 marks in periodical assessment of MBBS Examination whereas in the mark-sheet 21 marks were shown therefore, his internship was cancelled. It has been further alleged that mark sheets of all 13 students including the petitioner were corrected and all 13 students including the petitioner were informed vide letter dt. 4-1-1997. The learned counsel for the respondents Nos. 2 and 3 contended that the arguments advanced by the learned counsel for the petitioner are wholly devoid of merits. The petitioner was fully aware that his internship training was cancelled because of the mistake which was corrected subsequently in the mark-sheet. It is further alleged that the petitioner has concealed this fact from this Court therefore, the petition should be dismissed on this ground alone. I have considered the argument of the learned counsel for the petitioner as well as learned counsel for the respondents and I am of the opinion that the arguments advanced by the learned counsel for the petitioner are wholly unsustainable and deserve to be rejected. Mr. Alok Sharma, learned counsel for the respondent No. 1 -University of Rajasthan submitted that in spite of the intimation sent to the University, no reply has been filed however, he was frank enough in conceding that the impugned-order is not sustainable in view of the Ordinance 169-H (2) though, this ground has not been taken by the counsel for the petitioner in the petition nor any argument has been advanced regarding this Ordinance. Before testing the validity of the impugned-order on the aforesaid ground, I consider it proper to refer to the Ordinance 169-H(2) in extenso, which runs as under :-

"O.169.H. (2) If an error is noticed after the declaration of the result/issue of mark-sheet/ certificate/degree/diploma, as the case may be, and rectification of the error involves a change in the marks obtained by the candidate or in his result to his disadvantage, the Syndicate shall have the power to order necessary correction in result/mark-sheet provisional certificate/degree/ diploma, as the case may be. In the event of the candidate refusing to submit or not responding to the requirement of submitting the mark-sheet certificate degree diploma, as the case may be, for necessary correction, the Syndicate may cancel his examination and further take such other action as it deems proper."

4. From the perusal of the Ordinance 169-H(2), it is patently clear that after

declaration of result and issue of mark-sheets any change/ correction in the mark-sheets to the disadvantage of a candidate can be done only by the Syndicate and Syndicate alone. In the instant case, learned counsel for University of Rajasthan has made a statement that the Syndicate has not taken any decision regarding cancellation of certificate or correction of mark-sheet of the petitioner in the Final MBBS Examination. From the facts stated above, I am of the view that since the impugned-order is in violation of Ordinance 169-H(2) the same cannot be sustained and deserves to be quashed. It has been urged by the learned counsel for the respondents Nos. 2 and 3 that no such allegation has been made in the writ petition that the Syndicate who is the competent authority has not taken any decision. There is no dispute between the counsel for the respondent No. 1 and counsel for the respondents Nos. 2 and 3 on the point that Syndicate alone is competent authority to cancel the certificate or make corrections in the mark-sheet issued by the University of Rajasthan. It is true that the said plea has not been raised by the petitioner in the petition but the mere fact that the said plea is a pure question of law even if is not raised in the petition, the Court cannot refuse to grant relief in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India. With the consent of the parties the petition is being disposed of finally at the admission stage itself.

For the reasons stated above, petition succeeds and is allowed. However, the respondent No. 1 - University of Rajasthan is directed to place the matter before the Syndicate who may decide the case of the petitioner after verifying the facts and hearing the petitioner within a period of three months from the date of presentation of the certified copy of the order of this Court. In the meantime, the petitioner shall be allowed to continue his Internship till the decision of the Syndicate and if any order to the disadvantage of the petitioner is passed by the Syndicate, it would be open to the petitioner to challenge the same in accordance with law.

There will be no order as to costs.