

(2011) 01 MP CK 0034

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1313 of 2009

Ramesh Chandra Shrivastava (Dr.) and Another

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 05-01-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 2 MPLJ 333

Hon'ble Judges : A.K.Shrivastava, J

Bench : Single Bench

Final Decision : Allowed

Judgement

A.K. Shrivastava, J.

The Petitioner by this petition under Article 226 of the Constitution of India has prayed for following reliefs:

That, this Hon"ble Court may kindly be pleased to direct the Respondents Nos. 3 and 4 to refund the tuition fees of Rs. 35,000/- deposited by the Petitioners under protest on Petitioner No. 2's admission to Master of Surgery (Obstetrics & Gynecology) Course along with interest @ 18% per annum.

That this Hon"ble Court may kindly be pleased restrain the Respondents from demanding tuition fees from the Petitioners in future while prosecution of Master of Surgery (Obstetrics & Gynecology) Course by the Petitioner No. 2.

Petitioner No. 2 has obtained admission in Post Graduate MS (Obstetrics & Gynecology) Course and Petitioner No. 1 is her father. The contention of the learned Counsel is that Petitioner No. 1 has undergone sterilization operation on 11-5-1989 and in this regard he has filed two documents Annexures-P-2 & P-3, hence, he is entitled to obtain back the tuition fee of his daughter (Petitioner No. 2) which he deposited in the light of the circular of the State Government dated 6-7-1990 (Annexure-P-4).

Learned Counsel further submits that when all these facts were demonstrated to the Dean Medical College, Jabalpur (Respondent No. 4), he did not agree and in these adverse facts and circumstances the Petitioner has deposited tuition fee, so that, the admission of Petitioner No. 2 may not be cancelled. However, looking to the mandate as well as assurance given by the State Government, the Petitioners are entitled for the benefit in terms of said circular (Annexure-P-4). Hence, it has been prayed by the learned Counsel that the tuition fee which was deposited be refunded to the Petitioners.

Per Contra, Shri Harish Agnihotri, learned Government Advocate by placing reliance on a later circular of the State Government dated 17-10-2007 has submitted that the said benefit can be extended only once and not for the second time and therefore, even though no specific order has been passed by the Dean Medical College to return the tuition fee, since the circular dated 17-10-2007 (Annexure-P-9) has superseded the earlier circular (Annexure-P-4) dated 6-7-2010 it should be given effect to and hence the Petitioners are not entitled for any relief.

Considered the rival contentions of the learned Counsel for the parties and after having heard them, I am of the view that this petition deserves to be allowed.

On bare perusal of circular of State Government dated 6th July, 1990 (Annexure-P-4) it is gathered that the State Government in order to promote the scheme of sterilization so as to check the population of the country, exempted the tuition fee to the children of the parents of green card holders. True, this circular has been superseded by later circular dated 17-10-2007 which has been annexed as Annexure-P-9, but according to me this circular would not, debar the Petitioners from the exemption of tuition fee for the simple reason that in clause 2 of the said circular it has been clarified by the State Government that this circular will not be applicable to the persons who had already undergone the said sterilization operation prior to 13-5-2003.

In this context, I would like to refer sub-para (3) of clause 1 of the said circular which reads thus:

I have no scintilla doubt in holding that this circular would not debar the Petitioner from the benefit, since the Petitioner No. 1 had already undergone sterilization operation prior to cut of date which is 13-5-2003.

I do not find any merit in the contention of the learned Government Advocate Shri Agnihotri that for the second time the said benefit would be given only to the persons who are below to the poverty line. If the aforesaid circular is taken into consideration to its true spirit, this Court finds that in the first part of clause which is referred hereinabove, the State Government has directed that the green card holders who had undergone operation prior to 13-5-2003 will be benefited in the same manner as they were enjoying earlier, however, in second part after the cut of the date viz 13-5-2003 the State Government has provided benefit for second time to those green card holders who are below the poverty line and

therefore, according to me since the Petitioner No. 1 had already undergone sterilization operation prior to the cut of date, he is entitled for the exemption of the tuition fee which he had already deposited to get his daughter (Petitioner No. 2) admitted in the medical college at Jabalpur. The action of Dean Medical College, Jabalpur not refunding the tuition fee of Petitioner No. 2 is arbitrary in nature.

Resultantly, this petition succeeds and is hereby allowed. The Respondent No. 4 is hereby directed to return back the tuition fee to the Petitioners on or before 28-2-2011, failing which they will be entitled for the interest @ 6% per annum w.e.f. 1-3-2011. The Petitioner shall be entitled for the costs also. Counsel fee Rs. 2,000/-. Let the amount of costs be also paid to the Petitioner by adding and including it in the refund amount of the tuition fee.