

(2013) 06 SHI CK 0008
In the High Court Of Himachal Pradesh
Case No : CWP No. 3450 of 2013

Sachin and Others

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 28-06-2013

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2013) 2 ShimLC 938

Hon'ble Judges : Sanjay Karol, J; Dev Darshan Sood, J

Bench : Division Bench

Advocate : Ajay Mohan Goel, for the Appellant; Shrawan Dogra, Advocate General, Mr. B.S. Parmar, V.S. Chauhan, Additional Advocate General and Mr. Vikram Thakur, D.A.G., for the Respondent

Final Decision : Dismissed

Judgement

Dev Darshan Sood, J.—The petitioners are in-service doctors, who appeared in the Entrance Examination for Post Graduate Courses conducted by the National Board of Examination in December, 2012.

The grievance in this writ petition is that there should and ought to be 95% reservation for in-service candidates/doctors in terms of the Notification (Annexure P-4) issued by the State Government., which reads:-

Adhisuchana

.....

1.3 Akhil Bhartiya quota ke 50 pratishat sthano ke bad shesh sthan charanvadh tarike se Pradesh mein karyarat Chikitskon ke liye hi charanvadh tarike se niman roop se hoga:-

1.3... After excluding All India quota of 50%, the remaining seats will be reserved for the in-service doctors in the State in the following manner....

2. The petitioners challenge the subsequent Notification dated 8th February, 2013, which reads:-

NOTIFICATION

In partial modification of this Department's Notification of even number dated 09-12-2011 the Governor of Himachal Pradesh is pleased to prescribe that the ratio for GDO's and direct candidates in the State Quota for PG Degree/Diploma seats in Government Medical and Dental Colleges would be 66.66% - 33.33% respectively. This quota would be applicable from the academic session 2013-14 and would be in effect till academic session 2016-2017.

3. The case of the petitioners is that the reservation as provided vide Annexure P-4, Notification dated 19th May, 2009, cannot be diluted by issuance of Prospectus Annexure P-12 for Entrance Test for Post Graduate Degree (MD/MS) and Diploma Courses in two Medical Colleges in Himachal Pradesh i.e. Indira Gandhi Medical College, Shimla and Dr. Rajinder Prasad Government Medical College, Kangra at Tanda.

4. Learned counsel for the petitioners urges that since the Entrance Test was held in December, 2012, pursuant to advertisement issued by the National Board for Education, it was these conditions in the Notification of 2009 which were applicable and according to which 95% seats should and ought to have been reserved for in-service candidates. The conditions having been altered by virtue of fresh Notification having been issued only on 8th February, 2013, the respondents have acted unfairly and in violation of Article 14 of the Constitution of India.

5. Learned counsel relies upon the judgment of the Supreme Court in Mohd. Sohrab Khan Vs. Aligarh Muslim University and Others, We are unable to accept this contention. We cannot accept that the Notification of 2009 creates promissory estoppel against the Government or in any manner vests an immutable right in the petitioners.

6. According to the reply of the State, the reservation of 95% of the in-service State candidates was reduced to 66.66% because of the past experience where the State found that adequate numbers of In-service candidates are not available in which eventuality seats remained unfilled and had to be allocated then to the other categories (non in-service candidates). It was contended on behalf of the State that they have not in any manner deprived the petitioners of their rights for consideration and selection, but only reduced the reservation. We do note at this juncture that 95% preferential treatment for 50% of the seats reserved for in-service candidates practically obliterates the chance of the candidates other than GDOs for consideration. Surely, preferential treatment cannot be extended to the extent that it makes access to higher education of a particular category of doctors a mere mirage, but we do not pronounce on this. True, as urged that it is open to this Court to review irrationality in decision making process. But the Court cannot substitute its own views over those which have been found to be

based on a rational assessment of the data available with the respondents. It is in this backdrop that the submissions have to be considered and not in vacuo. The principle of equality or estoppel has to be invoked in a fact situation and not as a generality. The data furnished by the State and which figures have not been disturbed is as under:-

Detail of number of seats for the academic session 2013-2014 and proposed distribution of seats between Direct quota and GDO quota as per existing PG policy i.e. at the ratio of 66.6% : 33.3%:-

PG (MD/MS) Degree

PG (MD/MS) Diploma

Detail of number of seats for the academic session 2013-14 and proposed distribution of seats between Direct quota and GDO quota as per previous PG policy i.e. at the ratio of 95% : 5%

PG (MD/MS) Degree

PG (MD/MS) Diploma

7. Taking into consideration these facts and figures, the State reduced the in-service preferential treatment to only 66.6% of the 50% seats available to GDOs.

8. We also note one more fact that the representations were made by the in-service candidates in February, 2013 vide Annexure P-13. We find that these representations have been addressed to the Chief Minister as also the Revenue Minister by Dr. Jiwa Nand Chauhan, General Secretary of the HMOA. We also note that after that no action was taken by the petitioners, who are also members of this Association and on declaration of the result have come to this Court on 30th May, 2013. True, that the question of reservation and preferential treatment according to the Medical Council of India Regulations has been left open to each State according to its own peculiar conditions, but at the same time these cannot be extended to the extent that it obliterates the chances of other candidates. We say no more.

9. We also note that at the time when the petitioners appeared for the competitive examination, there was no specific assurance which has been held out by the State or the National Board of Examination (which is not a party before us) Even passing the examination does not vest any indefeasible right in the petitioners. They have approached this Court at a late stage when a number of candidates participated in the examination. We also note that the National Board or the affected parties have not been impleaded in this writ petition.

10. On the question as to whether the Notification creates a right on the petitioners, we need not add that the petitioners never joined Government service on this assurance that when they would be appearing for the Entrance Examination, they would be entitled to a particular percentage of preferential treatment. We are not oblivious of the facts that the petitioners had submitted

application forms pursuant to the Information Brochure where they specifically agreed that this preferential treatment could not be restricted 66.6%. Be that as it may, we are unable to persuade ourselves that any vested right in the petitioners either created by acts of the State Government or their assurance has been violated. We also find that there is no violation of Article 14 of the Constitution of India so far as the rights of the petitioners are concerned, but say nothing about the percentage of preferential treatment in the seats allocated to in-service candidates and whether this percentage also violates Article 14 of the Constitution of India.

11. In these circumstances, we find no merit in this writ petition which is dismissed. No costs. All interim orders are vacated. All miscellaneous applications are disposed of.