
(1991) 04 MP CK 0024
In the Madhya Pradesh High Court
Case No : M.P. No. 360 of 1991

Satish Suman (Dr.)

APPELLANT

Vs

Director, Medical Education and Others

RESPONDENT

Date of Decision : 15-04-1991

Acts Referred:

General Clauses Act, 1897 — Section 9
Madhya Pradesh General Clauses Act, 1957 — Section 6

Citation : (1993) 38 MPLJ 377 : (1993) MPLJ 377

Hon'ble Judges : V.S. Kokje, J;V.D. Gyani, J

Bench : Division Bench

Advocate : S. Waghmare, for the Appellant; C.S. Chhazed, for the Respondent

Judgement

V.S. Kokje, J.

This order shall also govern the disposal of M. P. No. 608 of 1991 (Rajaram S/o Heeralalji Bedia v. Director, Medical Education, Bhopal and 3 Ors). The petitioner in this case belongs to Scheduled Caste and having passed his M.B.B.S. examination in the year 1988 and having completed his internship in the year 1989, has also completed house job in the month of Dec. 1990. The petitioner was desirous of being admitted to a Post Graduate Degree/Diploma course in the M.G.M. Medical College, Indore. He could not get admission under the Scheduled Caste quota because respondent No. 4, Dr. Rajaram Bedia, also a member of Scheduled Caste was doing his house job during the year 1990 and was higher in merit than the petitioner.

According to the petitioner, the respondent No. 4, Dr. Rajaram Bedia could not complete his house job during the calendar year 1990 because of his long absence due to an unfortunate illness and, therefore, the petitioner had a right to be admitted in his place. The petitioner, therefore, filed an earlier petition registered as M. P. No. 23 of 1991. All the respondents in that case are respondents to this case also. In that case on 8-1-1991, this Court issued a direction to the Dean, M.G.M. Medical College, Indore to issue a notice to the

respondent No. 4 Dr. Rajaram Bedia, calling upon him to join the course within 15 days of the receipt of the notice and to explain his absence. It was further directed that if the respondent No. 4 did not turn up to join the course within the stipulated time and did not explain the absence to the satisfaction of the Dean, he be deemed to have abandoned the course and the vacancy thus created be filled in by admitting the petitioner to the Post Graduate Course as per Rules. It was further directed that if the respondent No. 4 Dr. Rajaram Bedi joins the course in response to the notice and explains his absence to the satisfaction of the Dean, the petitioner would be free to challenge his eligibility or the Dean's decision by filing a fresh petition.

In response to the notice sent to the respondent No. 4, Dr. Rajaram Bedia, he reported to the Dean, M.G.M. Medical College, Indore on 16-1-1991 and sought permission to complete his house job. In the letter, which appears to be the joining report of the respondent No. 4 submitted to the Dean, M.G.M. Medical College, Indore, annexed to the return filed by the respondents Nos. 1, 2 and 3 he has stated that he was suffering from malignancy of right ulna and as such was on leave from 5th Sept. 1990 to 10th Nov. 1990 and 16th Nov. 1990 to 15th Jan. 1991. By this letter the respondent No. 4 sought permission to complete his house job and Post Graduate studies. The Head of the Department forwarded the request to the Dean with a recommendation to take a sympathetic view in the case. It appears that the respondents Nos. 1, 2 and 3 permitted respondent No. 4 to continue his house job but did not grant him admission to the Post Graduate Course.

The petitioner coming to know that the respondent No. 4 had joined the house job but has not been granted admission to the course requested the Dean to grant admission to him in the Post Graduate Course. Ultimately a demand of justice was also made and when nothing was done in response to it the present petition was filed, seeking a mandamus against the respondents Nos. 1, 2, and 3 to grant admission to the petitioner in a Post Graduate Degree/Diploma course in Anaesthesia in M.G.M. Medical College, Indore.

The petition was admitted on 25-2-1991 and notices were issued to all the respondents. Smt. Shubahada Waghmare, learned counsel appeared for the petitioner. Shri T. N. Singh, learned Dy. Advocate General appeared for the State, while Shri C. S. Chhazed, entered appearance on behalf of the respondent No. 4. The respondents Nos. 1, 2 and 3 in their return contended that neither the petitioner nor the respondent No. 4 was granted admission because there was no seat vacant. According to the respondents Nos. 1, 2 and 3 both the petitioner and the respondent No. 4 were doing their house jobs on additional seats without a guarantee of admission to a Post Graduate Course. So far as the respondent No. 4 is concerned the respondents Nos. 1, 2 and 3 took a stand that since he had admittedly not completed his house job during the calendar year 1990, he could not have been admitted in the year 1990. The respondent No. 4 has been given permission to complete his house job which he would be completing in the

year 1991. So far as the petitioner is concerned, he was not granted admission because as already stated there was no vacant seat available. Another reason stated in the return for refusing to grant admission to the petitioner was that he did not have the requisite 50% of the marks necessary for admission. Candidates having less than 50% but above 45% marks could be admitted according to the respondents Nos. 1, 2 and 3 till the year 1989 only. As per the circular issued by the Government relaxing the rules. The respondent No. 4 in his return has attacked the eligibility of the petitioner for admission contending that the petitioner's name was not in the final list and also on the ground that the petitioner did not possess 50% marks which were essential for the purpose of grant of admission. Throughout the reply filed by the respondent No. 4 in this petition he has maintained he had joined house job again and he was completing the same. It has also been contended that the completion of house job does not mean working for 365 days of the year without any break. It is stated that the respondent No. 4 has worked on Sundays and other holidays. The rules also did not prescribe any minimum number of hours of days. However, the respondent No. 4 has not contended that he has completed the house job within the calendar year 1990.

This petition i.e. M. P. No. 360/90 was finally heard on 21-3-1991 and reserved for orders. On 27-3-1991, the respondent No. 4, in M. P. No. 360/91, Dr. Rajaram Bedia filed a petition against the Director, Medical Education, Bhopal; Dean, M.G.M. Medical College, Indore; Head of the Department of Orthopaedic, M.G.M. Medical College, Indore and Dr. Satish Suman, the petitioner in M. P. No. 360/91. It was registered as M. P. No. 608/91. The case was listed for motion hearing on 1-4-1991 when it was pointed out that Shri Rajaram Bedia, could not maintain the petition challenging the eligibility of Dr. Satish Suman unless he claims admission for himself, the counsel for Dr. Rajaram Bedia sought time to amend the petition to incorporate appropriate relief and made an application for amendment on 5-4-1991. The case was again fixed on 10-4-1991 along with M. P. No. 360/91. All the parties appearing in both the cases were again heard. Both these cases are therefore, being decided by this common order.

There is no force in the contention of the respondents Nos. 1 to 3 that there was no vacancy for granting admission to the petitioner or to respondent No. 4 Dr. Rajaram Bedia. In fact admission was granted to Dr. Rajaram Bedia initially and now the respondents- have not completed his house job during the calendar year 1990. The respondents No. 1 to 3 cannot, therefore, be heard to say now that there was no vacancy, which could be filled up by any candidate from amongst the reserved category.

As regards the contention of Dr. Rajaram Bedia made in Misc. Petition No. 608/91 by way of an amendment that he was entitled to admission to the P.G. Course in the year 1990 quota, it is noteworthy that in his return in Misc. Petition No. 360/91 he did not put forward such a claim and in Misc. Petition No. 608/91 also, as it originally stood, no such claim was put forward. The burden of the

contentions of Dr. Rajaram Bedia in both the cases has been that Dr. Satish Suman, the petitioner in Misc. Petition No. 360/91 was not eligible for admission. In Misc. Petition No. 1460/90 (Dr. Shefali Jain v. The Director of Medical Education, M.P., Bhopal and Ors. decided by us on 31-1-1991), we have taken a view that for completion of one year's house job, it is not necessary to work on all the 365 days of the year. A reasonable period of absence can be condoned by the authorities on sufficient cause being shown. It was argued on behalf of respondent No. 4, on the strength of the aforesaid Judgment that Dr. Rajaram Bedia the respondent No. 4 in this case had sufficient reason to be absent from 5th Sept., 1990 to 19th November, 1990, 16th November, 1990 to 15-1-1991. Though in Misc. Petition No. 608/91 Dr. Rajaram Bedia has stated in paragraph 5 that he was on leave from 17-9-1990 to 11-10-1990, 3-10-1990 to 9-11-1990 and 15-11-1990 to 15-1-1991, but in his application for permission to complete the house job dated 16-1-1991, which is filed as annexure R-2 by the respondents Nos. 1 to 3 in M. P. No. 360/91, he has stated that he was on leave from 5th Sept. 1990 to 10th Nov. 1990, 16th Nov. 1990 to 15-1-1991. The period of leave in the calendar year 1990 thus works to 113 days. Even if, casual leave, Gazetted holidays etc. are deducted from this absence, still a large number of days of absence will remain to be condoned. It is essentially for the College Authorities to take a decision on whether the absence is condonable or not and by asking the petitioner to continue his house job by implication, it has been decided that the absence is not condonable to the extent that Dr. Rajaram Bedia's house job could be taken as completed within the calendar year 1990. Moreover, there was no occasion for anyone to consider whether Dr. Rajaram Bedia has completed his house job within the calendar year 1990 because he himself has asked for permission to continue the house job beyond the calendar year 1990 well within the year 1990. In such circumstances, it cannot be taken that Dr. Rajaram Bedia has completed his house job in the year 1990 and, therefore, was eligible for the admission in the year 1990.

Shri Chhazed, the learned counsel for Dr. Rajaram Bedia, invited our attention to the revised rules for selection of candidates for admission as House Officer in the Medical College, which are executive instructions on the point. He referred to Rule 12(b) which reads as under : --

"Rule 12(b) : A candidate who has paid House job against a vacant post in a subject for at least 8 months, could be permitted to complete the House job in that subject for a total period of one year if he or she gives an undertaking that during the rest of the period, the candidate is willing to do the house job in an honorary capacity. He/She will be considered for post graduation with his/her original batch."

Relying on the last sentence in the aforesaid rule Shri Chhazed submits that Dr. Rajaram Bedia has a right to be considered for post graduation with his original batch i.e. in the year 1990. We cannot accept this argument for the simple reason that the rules for allotment of house job cannot govern admission to a

post graduate course, especially in the face of Rule 8.1 of the Rules For Post Graduation (M.D./M.S. Course) In Clinical, Para Clinical And Non-clinical Disciplines in Medical Colleges In Madhya Pradesh Rules, 1984 which reads as under : --

"Rule 8.1 : Merit candidates in clinical subjects shall be selected from out of those who are completing their house jobs within that calendar year."

This rule came up for interpretation before a Division Bench of this Court at Jabalpur in Dr. (Ku.) Arifa Almas Vs. State of Madhya Pradesh and Others, In paragraph 16 of that Judgment, their Lordships have held that a candidate not completing the house job within the calendar year in which the admissions were to be granted, is not eligible for admission in that year. In this case, the petitioner has admittedly not completed his house job in the year 1990 and has done so or will be doing so in the calendar year 1991. He is not entitled to admission in the year against the post of 1990.

The next question is as regards the eligibility of Dr. Satish Suman for grant of admission to post graduate course. It is being contended on the basis of an amendment incorporated in the Rules, which is annexed as Annexure R-6 to the return filed by respondents Nos. 1 to 3 in this case that reduction in minimum percentage of marks for eligibility for admission to a post graduate course was available up to 1989 only. The relevant amended Rule as quoted in Annexure R/6, reads as follows :

"8.5(f) :-- However, in partial relaxation of the preceding Rule 8.5(c) the effective percentage for eligibility for Forensic Medicine Anaesthesia and Radiology (Radiodiagnosis and Radiotherapy) will be 45% for five years from 1985 session and after expiry of five years it will by itself get restored to 50%."

It is being contended by the respondents in Misc. Petition No. 360/91 that the period of five years from 1985 session has expired in the year 1989 and in the year 1990 the concession is not available. We are not inclined to agree with this interpretation. Section 6 of the M. P. General Clauses Act, 1957, which is analogous to Section 9 of the Central General Clauses Act reads as under : --

"Commencement and termination of time : In any Madhya Pradesh Act it shall be sufficient for the purpose of excluding the first of series of days or any other period of time, to use the word "from" and for the purpose of including the last in a series of days or any other period of time, to use the word "to". "

The plain meaning of the provision is that whenever the word "from" is used in an enactment showing commencement of a period of time, the period of time from which the period is to be counted has to be excluded. There is no reason why the same principle cannot be applied to interpretation of executive instructions like the rules quoted above, interpreted thus the period of five years from 1985 session would expire with the 1990 session and not with the 1989 session, as the 1985 session will have to be excluded from counting. We,

therefore, hold that the period of five years from 1985 would include 1990 also and the concession of 45% marks would be available to the petitioner Dr. Satish Suman in the year 1990 also. Moreover, we were informed that by acting upon this interpretation admissions have been granted in the year 1990 by the respondents Nos. 1 to 3. This allegation was not refuted at the hearing also.

10-A Shri Chhazed, the learned counsel, has raised one more objection to the admission of Dr. Satish Suman. It was contended that since his name did not appear in the final list of candidates, he has to object and since he has not raised any objection as held in Arifa Alma's case (supra) on a later date he could not seek admission challenging the final list. This contention is also devoid of substance. Admittedly, the petitioner Dr. Satish Suman was undergoing a house job and could get a seat in the post graduate course only if Dr. Rajaram Bedia did not get admission. The petitioner's admission thus depended on the rejection of the claim of Dr. Rajaram Bedia. In such a situation he was not expected to raise objection and claim a seat in anticipation of Dr. Rajaram Bedia's claim being rejected. The observations in Arifa Alma's case were in different context. From paragraph 22 of that Judgment, it is clear that the objection was raised for the first time in the writ petition and the admission of Dr. Namrata Seth in that case was being contested by all others who got admission in her place. However, in this case, the absence of objection cannot be said to be fatal because there is no other contender to the post, the only other contender having been found ineligible. In these circumstances, it cannot be said that the petitioner Dr. Satish Suman is claiming the seat as an afterthought.

For the aforesaid reasons Misc. Petition No. 360/91 is allowed. The respondents are directed to grant admission to Dr. Satish Suman in the Post graduate course in Anaesthesia as per rules. He shall be deemed to have been admitted along with other candidates of his batch and shall not be put to any disadvantage because of his late admission due to the pendency of the petition. The respondents Nos. 1 to 3 shall however, be free to take extra work from Dr. Satish Suman to compensate for his absence from the Course up-till-now. The admission shall be granted within 15 days from today. Misc. Petition No. 608/91 is dismissed. There shall be no orders as to costs in both these petitions. The amount of security deposit, if any, be refunded after due verification.