
(1986) 07 RAJ CK 0020

In the Rajasthan High Court

Case No : Special Appsal Writ No. 195 of 1986

Shyam Sunder Pathak

APPELLANT

Vs

University of Rajasthan and Others

RESPONDENT

Date of Decision : 18-07-1986

Acts Referred:

Citation : (1986) WLN 368

Hon'ble Judges : Narendra Mohan Kasliwal, J;Inder Sen Israni, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The petitioner Shyam Sunder Pathak filed a writ petition No. 1128/1985 in which he made the following prayers:

(a) accept the writ petition;

(b) quash the result pertaining to the Long Case (one) Clinical Test for Final MBBS held in the year 1985, whereby the petitioner had been awarded a "Zero" mark out of 60 (Annexure-7) by issue of a writ of mandamus or any other appropriate order, direction or writ as this Court may think fit and proper in the circumstances of the case;

(c) declare the action of the University of Rajasthan of making another reference to Shri Bharathi and to Academic Council as ultra vires of the powers of the University and of no consequence what ever in the eye of law;

(d) issue a writ or mandamus or any other appropriate order, direction or writ directing the University to award at least 50% marks in the Long Case (one) Clinical Test or average of the marks obtained by him in other subjects or such marks as this Hon''ble Court may think fit and just in the circumstances of the case;

(e) In the alternative, this Hon''ble Court may issue a writ of mandamus or any other appropriate order, direction or writ directing the University to examine the

petitioner in the Paper of Long Case (one) Clinical Test with a set of examiners other than those who have already examined him, at the earliest and in the meanwhile the Respondents be directed to admit the petitioner to Rotating Internship before July 7, 1985 as that the petitioner is awarded MBBS Degree along with his other batch mates of February, 1985 and his chance of Post-Graduate in a subject according to his merit is not jeopardised and the petitioner is not being put to any loss in his future career..

(f) Any other relief deemed fit and just and proper in the circumstances of the case may kindly be granted in favour of the petitioner;

(g) Cost of the writ petition be allowed in favour of the petitioner.

2. Learned Single Judge by order dated May 19, 1986 observed as under:

This would show that except securing zero mark in the long case in Clinical, the petitioner has performed fairly well in other papers. In Clinical also it appears that 10 marks were allotted for day to day Clinical assessment and he secured 7 marks out of that 10 marks. In periodical assessment he secured 25 marks out of 40 marks. It may also be stated that in the examination held in August, 1985, in which the petitioner appeared, he secured 258 marks out of 400 marks in the paper of Surgery including Orthopaedics out of which 162 marks out of 260 marks were secured in Theory and 96 marks out of 150 marks were secured in Clinical. Out of the aforesaid 96 marks, he secured 40 marks out of 60 marks in the long case (one) and 56 marks out of 90 marks in short cases (three). In these circumstances it was expected that the University would throw some light on the question as to why the petitioner was awarded zero mark at the Clinical examination in the long case in MBBS Final Examination held in February, 1985. The reply filed on behalf of the University is silent on this subject. Awarding of a zero mark is rather unusual. It means that the student has no knowledge whatsoever of the subject or has committed such a serious blunder that he does not deserve to qualify for the MBBS degree. In the present case out of the 150 students, the petitioner was the only student who was awarded zero mark. The examiners could have explained why they felt it necessary to award zero mark to the petitioner. One of the examiner Professor K.C. Dadoo is a party (Respondent No. 3) to the writ petition, but he has not filed any affidavit. The other examiners have also not filed any affidavit indicating the reason why the petitioner was awarded zero mark. The reply is supported by the affidavit of Shri P.L. Sharma Officer-in-charge who has no personal knowledge as to what happened at the examination and has verified the contents of the reply on the basis of the record. The record only contains the marks sheet signed by all the four examiners.

3. Learned Single Judge thereafter held that the petitioner had been awarded zero mark in the long case and record relating to the said examination is not available and, it is not possible to make an objective assessment of the performance of the petitioner. In these circumstances, the petitioner could have legitimately asked for a direction by this court for holding of a special

examination in the paper in which the petitioner had failed and for declaration of his result on the basis of the marks obtained in the said special examination. The giving of such a direction for holding a especial examination for the petitioner is not necessary in the present case because during the pendency of this writ petition, an examination was held in August, 1985 and the petitioner appeared in the subject of Surgery and Orthopaedics in the said examination and in that examination he has passed in that subject. In the circumstances the marks obtained by the petitioner in the Clinical Examination for long case in the said examination can be taken into account for the purpose of directing the University to declare the result of the petitioner in the MBBS Final examination after taking into account the marks obtained by him in the long case in the Clinical examination in the examination held in August, 1985.

4. Learned Single Judge after recording the above findings gave the following relief in the operative part of the judgment.

The writ petition is therefore allowed and the University is directed that the result of the petitioner in the M.B.B.S. Final examination held in February, 1985 be revised and in the place of the marks awarded to him in the said examination in the long case in the Clinical examination in the subject of Surgery including Orthopaedics the marks obtained by him in the long case in the Clinical examination in the subject of Surgery and Orthopaedics held in August, 1985 may be substituted and the result of the petitioner be declared on that basis. In the facts and circumstances of the case, the parties are left to bear their own costs in this writ petition.

5. The petitioner has filed this special appeal and has prayed that the operative part of the judgment passed by the learned Single Judge may be modified as follows:

The writ petition, therefore, is allowed and the University is directed that the result of the petitioner in the M.B.B.S. final examination held in February, 1985 be revised and in the place of the marks awarded to him in the said examination in the long case in the clinical examination in the subject of Surgery including Orthopaedics the marks obtained by him in the long case in the clinical examination in the subject of Surgery and Orthopaedics held in August, 1985 may be substituted and the result of the petitioner be declared on that basis. The University is further directed to consider the application of the petitioner for Post Graduate Selection as invited by notice of the Principal S.M.S. Medical College Jaipur vide his office No. 21659-759 dt. 9/13-5-1986. The short fall in the period of one year Rotating Internship will not stand as bar in the consideration of the application of the petitioner and for his admission to the said course. The University is also directed that the petitioner will be allowed to make good the short fall in the Internship period. The Principal Medical College, Jaipur is directed to arrange to make payment of the stipend to the petitioner w.e.f. 11-7-1985 the date on which the stay was confirmed after notice. In the facts and circumstances of the case the parties are left to bear their own costs in this writ

petition.

6. It has been contended by learned Counsel for petitioner that the petitioner was not at all in fault and had availed the earliest opportunity of filing the writ petition before this Hon'ble Court on 3rd July, 1985. It has been submitted that the result of M.B.B.S. was published in the newspaper on May 29, 1985 and when he was not shown in the list of successful candidates, he immediately rushed to the University and obtained advance copy of marksheet (Annexure-7). Thereafter he submitted a petition demanding justice from the University by moving a representation on 30th May, 1985 (Annexure-8) On the above representation the Registrar of the University was pleased to refer the case to Dr. G.C. Patni retired professor of Mathematics and Chairmen of the Grievance Committee of the University. G.C. Patni came to the conclusion that in order to arrive at a proper decision in the matter, the written material of the petitioner in the Clinical Test was necessary to be examined. Dr. Patni therefore, advised the University to call for the written material of all the candidates who had appeared in the long case (one) Clinical Test from the S.M.S. Medical College, Jaipur. It came to the knowledge of the petitioner that the University was pleased to call for the above mentioned written material from the principal S.M.S. Medical College, Jaipur for which time was spent till 13th June, 1985. The Principal, Medical College on inquiry from the department of Surgery was informed that the written material of all the candidates who had appeared in the Clinical examination had been destroyed. The Principal, Medical College, Jaipur, as such, on or about June 14, 1985 informed the University that the written material as required by the University could not be supplied as the same had been destroyed. Thereafter, the petitioner requested Dr. Patni to grant him personal hearing in the matter. Dr. Patni was good enough to grant an interview on June 26, 1985 and he felt convinced after the interview that the petitioner seems to have been victimised by the examiner. Dr. Patni recommended that the petitioner be examined afresh in the subject and the marks obtained by him in other subjects may be considered for declaring his result. However, the recommendation of Dr. Patni does not appear to have found favour with the University. It came to the knowledge of the petitioner that the University decided to refer the whole case to the Academic Council for final decision on the advice to be given by Shri Bairathi, an officer of the University to whom the case was referred for advice second time.

7. Learned Counsel for the appellant thus, submitted that the batch mates of the petitioner had already been called for Rotating Internship on June 7, 1985 and according to the University Ordinances, after passing the Final MBBS it was necessary to complete one year Rotating Internship before conferring the MBBS degree. Under Clause (d) of Ordinance 268 a relaxation not exceeding 30 days was permissible in hard and genuine cases under very exceptional circumstances on the recommendation of the Principal of the College. In view of the above circumstances the petitioner was left with no option except to knock the doors of this Hon'ble Court and the petitioner without losing any time filed the writ

petition on 3rd July, 1985 It has been submitted that inspite of the best efforts of the petitioner this Hon''ble Court was pleased to pass an order on 11-7-1985 directing the respondent Nos. 1 and 2 to permit the petitioner to join the Rotating Internship prescribed for the MBBS course. It has been submitted that though the petitioner had submitted the above stay order to the Principal of the College on 12th July, 1985, but the petitioner was allowed to join compulsory Rotating Internship on 20th July, 1985. In the above circumstances it has been submitted that the University should be directed to confer the degree of MBBS on the petitioner along with the batch mates who were conferred such degree on or before 6-6-1986 after compleiing their Rotating Internship of one year. In the alternative it has been submitted that this Hon''ble Court had given a direction on 11-7-1985 to permit the petitioner to join the Rotating Internship but with no fault on his part. He was actually allowed to join the Rotating Internship on 20th July, 1985, as such, the University should be directed to confer the degree of MBBS on the petitioner on 10th June, 1986 after condoning the period of 30 days as provided under clause (d) of Ordinance 268.

8. Mr. M.I. Khan, learned Govt. Advocate appearing on behalf of the Principal, S.M.S. Medical College, Jaipur though conceded that it was a hard case but he submitted that the Principal has himself made a recommendation for condoning the period of 30 days and beyond that it was not within the competence of the Principal to condone any further period. It was further submitted by Mr. Khan that so far as the Principal is concerned, he had acted in good faith, and had taken prompt action without any delay on his part. It was also submitted that the Principal shall abide by any directions given by this court.

9. Mr. A.K. Sharma, learned Counsel appearing for the University also submitted that they have to follow the ordinance made by the University and even though it might be a hard case, it was not within the competence of the University to condone the delay for more than 30 days.

10. We have given our thoughtful consideration to the entire facts and circumstances of the case and have also perused the record. Learned Single Judge himself has given a finding in favour of the petitioner that in the present case awarding of zero mark to the petitioner was rather unusual. Out of 150 students the petitioner was the only student who was awarded zero mark. The examiners could have explained as to why they felt it necessary to award zero mark to the petitioner. One of the examiners Professor Shri K.C. Dadoo who is party to these proceedings did not file any affidavit. The other examiner also did not file any affidavit indicating the reason why the petitioner was awarded zero mark. Learned Single Judge after considering the performance of the petitioner in other papers and taking note of the marks secured by him in other papers observed that except securing zero mark in the long case in Clinical, the petitioner had performed fairly well in other papers. In Clinical also the petitioner was awarded 7 marks out of 10 marks for day-to-day Clinical Assessment. In periodical assessment he secured 25 marks out of 40 marks. Thus, the Learned

Single Judge was fully convinced that great injustice had been done to the petitioner and therefore, he directed the University to declare the result of the petitioner of MBBS Final examination held in February, 1985, and in place of marks awarded to him in the said examination in the long case in the Clinical examination in the subject of Surgery including Orthopaedics the marks obtained by him in the long case in the Clinical examination in the subject of Surgery and Orthopaedics held in August, 1985 were ordered to be substituted. We are convinced that the above direction alone given by the Learned Single Judge does not give full justice to the petitioner because if the degree of MBBS is now awarded to the petitioner, he lags behind his batch mates in seeking registration in the Post Graduation course which according to the respondents shall only be given to such candidates who had completed the Rotating Internship on or before June 5, 1986. In the above circumstances it has to be considered as to what direction should be given by this court in order to give full justice to the petitioner and to redress the injustice writ large in the present case.

11. In H.M. Kamaluddin Ansari and Co. Vs. Union of India (UOI) and Others, , their Lordships of the Supreme Court had condoned the rule of maximum age prescribed under the Rules for Recruitment to the Haryana Civil Services (Executive Branch) and other Allied Services.

12. In Dinesh Kumar and Others Vs. Motilal Nehru Medical College, Allahabad and Others, it was observed by their Lordships of the Supreme Court as under:

Now it is necessary to point out that the number of students admitted to the post graduate courses has turned out to be in excess of that authorised by the Indian Medical Council simply because the students admitted to the vacant seats in the post graduate courses for the academic year 1984-85 pursuant to the order of the High Court dated 28th September, 1984 and the order of the State Government dated 15th December, 1984 could commence their post graduate study only from January, 1985 and the students admitted to the post graduate courses for the academic year 1985-86 also commenced their post graduate study at the same time with the result that both sets of students one admitted for the academic year 1984-85 and the other admitted for the academic year 1985-86 started and continued their post graduate study simultaneously and together and this resulted in the total number of students being in excess of that authorised by the Indian Medical Council. But if we take into account only the number of students admitted for the academic year 1985-86, we do not think that by admitting the petitioners, the teacher-student ratio prescribed by the Indian Medical Council would be substantially breached. We may point out that even if the teacher-student ratio is violated by granting admissions to the petitioners, we would direct that this may be allowed to be done as an exceptional case, because otherwise injustice would result to the petitioners and neither the court nor the Indian Medical Council can be so insensitive as to shut its eyes to injustice. We would therefore direct that the petitioners shall be admitted to the post graduate courses in the specialities respectively chosen by

them for their house job, for the academic year 1985-86 either in the Motilal Nehru Medical College or in any of the other five medical colleges in the State of Uttar Pradesh, at the option of the State Government.

13. Now none of the admitted facts in the present case are that the direction was given by this Hon"ble Court on 11-7-1985 to permit the petitioner to join Rotating Internship prescribed for the MBBS Course but the petitioner in fact was allowed to join the Rotating Internship on 20th July, 1985. Under Ordinance 268(d), relaxation not exceeding 30 days is permissible in hand and genuine case on the recommendation of the Principal of the College. Mr. Khan appearing on behalf of the Principal, Medical College, Jaipur has already made a statement before us that the Principal has made a recommendation for granting relaxation of 30 days in favour of the petitioner. Thus, the period of the Rotating Internship of the petitioner completes on June 19,1986 after giving relaxation of 30 days. The University of Rajasthan is, therefore, directed to confer the degree of M.B.B.S. on the petitioner on June 15, 1986. It is further directed that the petitioner shall be granted registration in post graduation course along with his batch mates who had passed the final M.B.B.S. examination held in February, 1985 and for the purpose of registration in post graduation course the delay in the confirmment of degree on the petitioner is condoned. Learned Counsel for the appellant brought to our notice that the petitioner has already been granted provisional registration in post graduation course and now in the view taken by us, it is directed that the respondents would grant final registration to the petitioner along with his batch mates and he would be granted registration in the speciality according to his merit.

14. It is not necessary to given any direction regarding the grievance made by the petitioner that he has not been paid the emoluments during the period of his Rotating Internship because learned Government Advocate made a statement before us that appropriate orders in this regard have already been issued by the college authorities.

15. The special appeal is allowed in the manner indicated above and relief granted to the petitioner by the learned Single Judge is further modified as mentioned above. In the facts and circumstances of the case parties shall bear their own costs.