

(2004) 11 AHC CK 0026

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 48456 of 2004

S.P. Jauhari and Others (Dr.)

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 20-11-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 141
Dentists Act, 1948 — Section 10A, 10B(3)

Citation : (2005) 5 AWC 4110 : (2005) 1 ESC 414 : (2005) 1 UPLBEC 1018

Hon'ble Judges : Dilip Gupta, J;B.S. Chauhan, J

Bench : Division Bench

Advocate : Murlidhar and Maneesh Singh, for the Appellant;

Final Decision : Dismissed

Judgement

B.S. Chauhan, J.—This writ petition has been filed seeking direction to the respondents to grant admission to the petitioners pursuant to their nominations by the State of Uttar Pradesh vide Notification dated 6.10.2004 on the reserved seats for Provincial Medical Services" Doctors.

2. It is submitted by Shri Murli Dhar, learned Senior Counsel appearing for the petitioners that 104 seats are reserved for the officers of the Provincial Medical Services in Post Graduation course in the seven Medical Colleges of the State of Uttar Pradesh. Academic session starts in the June-July every year, but the officers of the Medical Services had been selected for the Post Graduation course at a belated stage and the said Notification subsequently had been withdrawn as the Medical Colleges were not prepared to admit the petitioners being recommended at a belated stage. Therefore, the direction should be issued to the respondents to admit the petitioners. More so, in some Medical Colleges, some of the persons nominated along with the petitioners had been given admission even at the belated stage. Therefore, respondents cannot give hostile treatment to the present petitioners.

3. On the contrary, learned Standing Counsel appearing for the respondents had submitted that as the academic session had started long back, the practice of admission in mid-academic session should not only be deprecated by the Courts, but a direction should also be issued not to admit such a candidate. He has further submitted that if by some mistake similarly situated persons had been given admission, that does not become a ground for interference as Article 14 of the Constitution envisages only positive equality and not negative equality. As such the petition was liable to be dismissed. If the petitioners are so aggrieved, they may ask for nomination in the next year.

4. We have considered the rival submissions made by the learned Counsel for the parties and perused the record.

5. In *Medical Council of India Vs. Madhu Singh and Others*, , the Hon"ble Supreme Court observed that it is not permissible for the Court to issue direction for fresh admission in mid-academic session. Time schedule is to be fixed for duration of the course and the period during which admission can take place. In this regard, as the Medical Council of India Regulations had to be enforced, and the Court could not issue a direction in violation thereof.

6. Similar view of has been reiterated in *Dr Pramod Kumar Joshi Vs. Medical Council of India and Others*, ; *State of Uttar Pradesh and others Vs. Dr. Anupam Gupta, etc.*, . Their Lordships had given the reason that such admission would disturb the course and also work as a handicap to the candidates to achieve the excellence. It was observed that in such cases, the Court must take a pragmatic view of the matter in order to maintain excellence in the courses which had commenced long ago and the schedule was likely to be completed. Where the students did not have the opportunity to complete the full course, such a direction should not be issued.

7. In *State of Punjab and others Vs. Renuka Singla and others*, , the Hon"ble Supreme Court deprecated the practice adopted by High Courts issuing direction for mid-academic admission and observed as under :-

"The admission in medical course throughout India is governed by different statutory provisions, including regulations framed under different Acts. During last several years efforts have been made to regulate the admissions to the different medical institutions, in order to achieve academic excellence. But, at the same time, a counter-attempt is also apparent discernible, by which the candidates, who are not able to get admissions against the seats fixed by different statutory authorities, file writ applications and interim or final directions are given to admit such petitioners. We fail to appreciate as to how the High Court or this Court can be generous or liberal in issuing such directions which in substance amount to directing the authorities concerned to violate their own statutory rules and regulations, in respect of admissions of students. It cannot be disputed that technical education, including medical education, requires infrastructure to cope with the requirement of giving proper education to the

students, who are admitted. Taking into consideration the infrastructure, equipment, staff, the limit of the number of admissions is fixed either by the Medical Council of India or Dental Council of India. The High Court cannot disturb that balance between the capacity of the institution and number of admissions, on "compassionate ground". The High Court should be conscious of the fact that in this process they are affecting the education of the students who have already been admitted, against the fixed seats, after a very tough competitive examination. According to us, there does not appear to be any justification on the part of the High Court, in the present case, to direct admission of respondent 1 on "compassionate ground" and to issue a fiat to create an additional seat which amounts to a direction to violate Section 10A and Section 10B(3) of the Dentists Act referred to above."

8. In Medical Council of India (supra), the Apex Court issued the following directions :--

- (i) there is no scope for admitting students midstream as that would be against the very spirit of statutes governing medical education;
- (ii) even if seats are unfilled that cannot be a ground for making mid-session admissions;
- (iii) there cannot be telescoping of unfilled seats of one year with permitted seats of the subsequent year;
- (iv) MCI shall ensure that the examining bodies fix a time schedule specifying the duration of this course, the date of commencement of the course and the last date for admission;
- (v) different modalities for admission can be worked out and necessary steps like holding of examination if prescribed, Counselling and the like have to be completed within the specified time;
- (vi) no variation of the schedule so far as admissions are concerned shall be allowed;
- (vii) in case of any deviation by the institution concerned, action as prescribed shall be taken by MCI."

9. Petitioners are entitled to take any benefit of the judgments of the Hon'ble Apex Court in Shalini Vs. Kurukshetra University and Another, ; Shailaja Shivajirao v. President, Honble Khasdar U.G.S. Sanstha and Ors., (2002) 2 LLJ 813SC ; and of this Court in Rajeev Kumar Vs. State of U.P. and Another, , for the reason that in these cases it has been held that where the educational institution is at fault, it cannot be permitted to take the benefit of its own mistake, and admission can be given at a later stage. The said view stands fortified by the earlier judgments of the Apex Court in G.S. Lamba and Others Vs. Union of India (UOI) and Others, ; Narender Chadha and Others Vs. Union of India and Others, ; Ashok Kapil Vs. Sana Ullah (Dead) and Others, ; and T.

Srinivasan Vs. T. Varalakshmi (Mrs), .

10. The admission in mid-academic session is not permissible for the reason that academic excellence has to be maintained, and for that purpose study of the full course is required. The admission in mid-academic session has the tendency to work as a handicap to achieve the excellence.

11. There can be no dispute in the settled legal proposition that the law laid down by the Apex Court is binding on all Courts of this country and no direction can be issued in contravention of the law laid down by the Lordships.

12. In Nand Kishore Vs. State of Punjab, , the Hon"ble Supreme Court has observed as under :--

"Under Article 141, the law declared by it is of a binding character and as commandful as the law made by the legislative body or an authorised delegates of such body..... Their Lordships" decision declare the existing law but do not enact any fresh law, is not in keeping with the plenary function of the Supreme Court under Article 141 of the Constitution, for the Court is not merely the interpreter of law as existing but much beyond that. The Court, as a wing of the State, is by itself a source of law. The law is what the Court says it is."

13. Thus, we are not in a position to issue any direction in favour of the petitioners for providing admission in the mid-academic session.

14. Article 14 of the Constitution provides only for positive equality and not for negative equality. Article 14 is not meant to perpetuate an illegality. This view stands fortified by the judgments of the Hon"ble Apex Court eg., Smt. Sneh Prabha etc. Vs. State of U.P. and Another, ; Secretary, Jaipur Development Authority, Jaipur Vs. Daulat Mal Jain and Others, ; State of Haryana and Others Vs. Ram Kumar Mann, ; and M/s. Faridabad Ct. Scan center Vs. D.G. Health Services and others, .

15. In Finance Commissioner (Revenue) v. Gulab Chandra and Anr. 2001 AIR SCW 4774, the Hon"ble Apex Court rejected the contention that as other similarly situated persons had been retained in service, the petitioner could not have been discharge during the period of probation observing that if no action had been taken in a similar situation against similarly situated persons, it did not confer any legal right upon the petitioner therein.

16. In Jalandhar Improvement Trust Vs. Sampuran Singh, ; and Union of India and Others Vs. Rakesh Kumar etc., , the Hon"ble Supreme Court held that Courts cannot issue a direction that the same mistake the perpetuated on the ground of discrimination or hardship.

17. Any action/order contrary to law does not confer any right upon any person for similar treatment. [Vide State of Punjab and Others Vs. Dr. Rajeev Sarwal, ; Yogesh Kumar and Others Vs. Government of NTC, Delhi and Others, ; and Union of India (UOI) and Another Vs. International Trading Co. and Another,].

18. Thus, in view of the above, we are not in a position to issue any direction to the Medical Colleges to admit the petitioners even if other Medical Colleges had granted admission to the similarly situated persons.

19. We, therefore, find no force in the petition. It is, accordingly, dismissed.