
(1992) 09 RAJ CK 0003

In the Rajasthan High Court

Case No : Civil Special Appeal No's. 288, 290, 369, 391 and 587 of 1992

State of Rajasthan and Others

APPELLANT

Vs

Prakash Chand Vyas and Others

RESPONDENT

Date of Decision : 03-09-1992

Acts Referred:

Citation : (1992) 2 RLW 484 : (1992) 3 WLC 402 : (1992) WLN 527

Hon'ble Judges : S.C. Agrawal, C.J; V.K. Singhal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

V.K. Singhal, J.—The dispute in these special appeals is with regard to the eligibility of the candidates for admission in B.Sc. (Nursing) Part III Examination.

2. Number of writ petitions have been filed in the High Court at Jodhpur and at Jaipur Bench. The first of the judgments, which was given in the matter was of Prakash Chand v. State of Rajasthan, S.B. Civil Writ Petition No. 442/92 decided on 17.2.1992, in which the requirement of educational qualification prescribed under the Notification dated 11th June, 1991 was challenged on the ground that such Notification is contrary to Ordinance No. 299-V-3. The advertisement required that for the eligibility of B.Sc. (Nursing) Part III examination, the candidate should have passed the 1st Year Science Examination of Three Years Degree Course of the University or the examination recognised by the University as equivalent thereto in all compulsory subjects and the optional subjects of medical (Physics, Chemistry and Biology) including English as one of the compulsory subject with a minimum 45% marks (40% for SC/ST) besides the other conditions.

3. The Ordinance No. 299-V-3 with regard to the admission of in-service candidates in Clause (d) provides as under:

A candidate who after passing the General Nursing Course and Registered Nurse with a recognised body (State Nursing Council) having a minimum of five years

regular nursing experience is also eligible for admission to B.Sc. (Nursing) Part-II Examination producing N.O.C. from State Government. Their Merit will be calculated on the basis of the Marks obtained in General Nursing (Final) Year Exam, together with Bonus Marks of one for every 2 years of completed Regular Service in Nursing exceeding than five years of minimum regular nursing Services upto last 1-1/2 years of his last services. Provided such candidates have not completed age above 40 years on or before 31st December of the year of his/her admission.

Note : That the candidates for B.Sc. (Nursing) Examination 1989 will be examined according to the syllabus which has been proposed by the COC in Nursing at its meeting held on 27th April, 1988. The candidates for the B.Sc. Nursing Part II and Pdrt III and Part IV examination will be examined in accordance with the Syllabuses already notified for the respective examinations of 1990. The candidates who will now be admitted directly to the B.Sc. Nursing Part-III after passing the General Nursing Course will be examined in accordance with the Syllabuses which has been laid down by the COC for the B.Sc. Nursing Part III examination 1990 and not according to the B.Sc. Nursing Part III Exam. 1989 and 1990 and Part IV examination 1989 and 1990 in their cases.

4. Learned Single Judge after taking into consideration the specific language of the ordinance referred to above came to the conclusion that there is no such requirement of educational qualification in the Ordinance as has been given in the advertisement and the advertisement cannot override the specific language of the Ordinance without there being any amendment in it. By the administrative actions, the Ordinance could not have been amended and accordingly, it was held that the requirement of educational qualification as contemplated by the advertisement is not valid and effective. Learned Counsel for the appellant has also agreed with this proposition of law and we also feel that in terms of the specific language of the Ordinance, the authority which has issued the advertisement was not justified in deviating with regard to the qualifications for admission to B.Sc. (Nursing) Part-III examination.

5. Subsequently, number of writ petitions have been filed at Jodhpur and Jaipur Bench and directions have been given for admission to the various candidates while disposing of the writ petitions or by way of provisional admissions.

6. Twenty writ petitions have been disposed of by the learned Single Judge in the case of Tara Chand v. State of Rajasthan, S.B. Civil Writ Petition No. 1586/92 and Ors. decided on 26th May, 1992 wherein the following directions have been given:

(i) A fresh select list of 26 candidates as per the merit shall be prepared as discussed earlier, by the Principal, College of Nursing Rajasthan, for admission in B.Sc. (Nursing) Part-III Course for Trained and Registered Nurses. The List shall be prepared within 7 days from today and all the selected candidates shall be intimated telegraphically as well as by registered post about their admission in the Course, so that they may take admission without further loss of time in case

they desire.

(ii) The admission of 18 candidates who were given admission by the Principal, as per the select list prepared in accordance with notification dated 11.6.1991, shall remain undisturbed and they shall be allowed to continue their studies in B.Sc. (Nursing) Part-III Course.

(iii) The admission of the candidates who have got admission in the course on the final decision in the writ petitions filed by them, shall also remain undisturbed, subject to any order that may be passed by a Division Bench before whom the appeals filed by the Department are pending.

Similarly, five candidates whose writ petitions have been allowed by the Hon'ble Single Judge, but, who have not taken admission as yet, will have to be given admission in pursuance to the decisions, provided in appeal/appeals the Division Bench does not stay or set aside the order of the Single Judge.

(iv) The candidates who have been given provisional admission in pursuance to the orders of the High Court, shall be given admission in the course if their names are included in the fresh select list, otherwise, their provisional admission shall stand cancelled.

(v) The writ petition of Shri Shyam Babu is disposed of in the manner that if his name finds place in the fresh select list, he shall be given admission.

7. Learned Counsel for Tara Chand has submitted that the directions which have been given by the learned Single Judge are discriminatory in so far as the petitioner is concerned and he has already been given provisional admission and undergone course for a period of more than 3 months. It is also submitted that no proper select list has been prepared. It is admitted that the advertisement was issued for 26 seats and the candidates who are having 5 years' experience are eligible, to which the appellant fulfils. The exclusion of the name of the appellant in the list prepared is not in accordance with law as all conditions of the Ordinance are fulfilled by him. It is also submitted that the persons who have been given provisional admission in accordance with the orders of this Court cannot be discriminated and should be treated at par with the person who have been given admission finally while disposing of the writ petitions.

8. The submission of the learned Counsel appearing on behalf of the Principal, College of Nursing is that the College has no facility to accommodate more than 26 persons and the admission has to be given to the eligible candidates only in accordance with the merit list, which has already been prepared in the light of the decision given by this Court in the Case of Prakash Chand v. State of Rajasthan, referred to above. Similar directions have been given in 4 merit petitions at Jodhpur. It is submitted that admissions to 20 persons have already been given and they have not been made as parties, so even if they are not entitled for admission, any adverse order could be passed against them.

9. Mr. Rastogi appearing on behalf of Om Prakash, Vinod Kumar and Anil Kumar

has submitted that initially, information for admission to 22 candidates was given and 15 out of them have joined. Thereafter, the admissions have been given by the order of the Court. It is submitted that Shri Lalit Kumar has obtained only 57.2% marks and has been given admission and no appeal has been filed against the order in his favour. It is also submitted that the examinations are likely to be held from 26th October, 1992 and the various candidates who have been given provisional admission and have studied and for which leave has been sanctioned by the State Government, it would be a loss to the State Government if they are denied further studies. It has also been submitted that if the candidates having higher merits have not approached the Court, then they are not entitled for any relief and that the court has power to give directions for increase of the seats and the matter should be considered of the various students sympathetically as no fraud has been committed by them and even wrong admission should be regularised.

10. We have considered the arguments of the learned Counsel for the parties and we are of the following view:

1. that the list which was initially prepared and on the "basis of which the admissions were given to the candidates and which have not been made as parties in the writ petitions/appeals, no adverse orders can be passed against such candidates and, therefore, the admissions which have already been given to them cannot be disturbed by this court;

2. That a person who has been given admission provisionally by the order of this court, does not acquire any right and the matter has to be examined in the light of the eligibility on the basis of the merit list which is said to have been already prepared. If that candidate is in the merit list, only then the Principal, College of Nursing would be under obligation to give him admission. No legal rights can be said to have accrued to them merely on the basis of the directions of this Court to give them provisional admissions and the allegation that they have been discriminated is not well founded in accordance with law;

3. This Court has no jurisdiction to direct increase in number of seats as has been directed by the learned Single Judge in the judgment dated 26.15.1992 and the directions to this extent are not in accordance with law. It is for the Government to consider as to whether they are in a position to increase the number of seats of a particular College or not, as so many factors have to be taken into consideration besides accommodation, equipments, teaching staff etc. Since it has been informed that the Government is not in a position to provide facilities to more than 26 students, we are of the view that no directions could be given for increase in the number of seats.

4. It has been informed that the merit list in accordance with Ordinance No. 299-V-III (d) and the decision of this Court dated 17.2.1992 has already been prepared and the four candidates who have filed writ petitions in the High Court at Jodhpur are within the merit list and entitled for admission. It those

candidates turn up for admission, the. Principal, College of Nursing would be under an obligation to give them admission since it has been admitted on behalf of the Principal that they stood in the merit list.

5. With regard to the seats, after taking into consideration, as referred in para 1 (candidates whose admissions have not been challenged and are not arrayed as respondents in the writ petition) and the 4 candidates referred in para 4 who are said to be entitled for admission on account of being in merit, the remaining seats have to be filled on the basis of fresh merit list, which is now prepared and a copy of which has been placed on record. No other candidate shall have any right to claim admission unless he falls in the merit list. The Principal of the College will be obliged to fill up the remaining seats so as to make total number of students up to 26 within a period of one month from the date of this order. The merit list shall be pasted on the notice Board of the College and the persons in the merit list shall also be informed individually stating the number, so that the total admissions upto 26 number may be completed.

6. The persons who are not given admission on the basis of the above principle, will have to report back to the place from where they have come and the period spent by them shall be treated as on duty.

7. The principle of law that if the candidates of the higher merit has not approached this court, would not be entitled for any relief, would be applicable only in respect of the vacancies now to be filled in and would not disturb the admissions of those candidates who have already been given admissions and such admission is not challenged and they have not even made as respondents.

8. The question of any equity of sympathetic consideration on account of studying for 3 months or more than that cannot be considered in view of the clear position of law that the educational qualification as prescribed under the Ordinance alone is applicable and not as given in the advertisement and the Principal Nursing College is bound to give admissions on merit alone.

9. That Government should take action against the person/persons responsible for issuing the advertisement contrary to the Ordinance in accordance with law. The enquiry should be completed within six months.

10. Respondents Sarvashri Prakash Chand, Om Prakash, Vinod Kumar, Anil Kumar, Ramesh Chand and appellant Tara Chand Jain not being in merit will not be entitled for admissions.

11. The result of the above discussion is that Special Appeals No. 288/92, 290/92, 391/92 and 587/92 (def.) filed by the State Government succeed and are allowed and the special Appeal No. 369/92 filed by Shri Tara Chand Jain stands dismissed.

12. No order as to costs.