
(2014) 10 MP CK 0057
In the Madhya Pradesh High Court
Case No : Writ Petition No. 10720/2012

Suresh Kumar Aarsay

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 27-10-2014

Acts Referred:

Citation : (2014) 10 MP CK 0057

Hon'ble Judges : A.M. Khanwilkar, C.J; Vandana Kasrekar, J

Bench : Division Bench

Advocate : Devendra Gangrade, Learned Counsel, Advocate for the Appellant; Swapnil Ganguly, Learned Dy. Govt. Advocate and Manish Verma, Learned Counsel, Advocate for the Respondent

Judgement

Vandana Kasrekar, J.—The petitioners have filed this petition for granting exemption from payment of tuition fee in the Engineering College.

2. The facts of the present case are that the petitioner No. 1 has undergone the sterilization operation in the year 2000 and a green card was issued in his favour. The State Government had issued circulars from time to time thereby extending the benefit of exemption from payment of tuition fee for admission of the children of the Green Card holder in Engineering/ Medical education. A copy of that circular is filed by the petitioners as Annexure P/2. The Petitioner No. 2, who is the son of petitioner No. 1 took admission in respondent No. 2/ University in B. Tech Computer Science courses.

3. Learned counsel for petitioners argues that as father of the petitioner No. 2 i.e. petitioner No. 1 being a Green Card holder issued on account of his undergoing operation of sterilization, he is therefore entitled to get exemption from payment of tuition fee. Learned counsel further submits that the father of the petitioner No. 2 had approached the authority by various representations for refunding the tuition fee, but the same were not accepted, therefore, the petitioners have filed the present petition.

4. The notices were issued to the respondents and they have filed their reply.

5. The respondent No. 1 in the reply has stated that the circular Annexure P/2 dated 28/10/2005 is further clarified by issuing a circular dated 04/04/2006. A copy of the said circular is filed as Annexure R/1 with the reply. As per Clause 3 of the said circular, the exemption from payment of tuition fee will be granted in case of the children who are studying in Government Engineering Colleges/ Colleges which are receiving any aid from the Government, Government Polytechnic and Government Industrial Training Institutes. This circular was further clarified on 17/10/2007 and as per Clause 2 of the said circular, the children of Green Card holder shall not be entitled for exemption from payment of tuition fee who are prosecuting the studies in private Medical Colleges, Engineering Colleges, Polytechnic Colleges, Industrial Training Institutes. Respondent No. 1 further stated that as the petitioner No. 2 is not studying in a Government College and therefore he is not entitled to get the exemption from the payment of tuition fee. Respondent No. 1 further relied upon a judgment passed by the Division Bench of this Court in Writ Petition No. 12402/2008 dated 04/02/2009 (GauravJaiswal vs. State of Madhya Pradesh and others). In this petition, similar arguments were raised, however, the Division Bench had dismissed the said writ petition on the ground that the circular will not be applicable to the students who are prosecuting the studies in private colleges.

6. Respondent No. 2 has filed reply and in the reply it is stated that the petitioner No. 2 was studying in B.Tech Computer Science First Year, "Five Years Dual Degree Integrated Post Graduate Course which is self finance course" conducted by respondent No. 2/University. Therefore, the Circulars are inapplicable to such Institutions and in particular for the dual degree courses. The petitioners, therefore, are not entitled to get the benefit of circular issued by the State Government.

7. Heard learned counsel for the parties.

8. Learned counsel for the petitioners argues that petitioner No. 1 has undergone the sterilization operation in the year 2000 and, therefore, as per the Circular dated 28/10/2005, petitioner No. 2 is entitled to get the exemption from payment of tuition fee. He relied upon a judgment passed by the Division Bench of this Court in the case of Satyam Pandey and Others Vs. University Institute of Technology, RGPV and Others, , and stated that the case of the petitioners is squarely covered by the same judgment.

9. On the contrary, the respondents have relied upon a judgment of the Division Bench of this Court in Writ Petition No. 12402/2008 (Gaurav Jaiswal Vs. State of M.P. and others) and submit that as per Clause 4 of the Policy of the year 2007 which was further clarified in the year 2009 and restated the same stand, students will be eligible for exemption for only one degree course. In the present case, the petitioner No. 2 is prosecuting the study in dual degree course and that too in an institution which is a self financed run by the respondent No. 2

University. Therefore, the petitioner No. 2 is not entitled to get the benefit of the said circular.

10. After considering the rival contentions, we find that the issue raised in the present petition will have to be answered on the basis of Circular dated 28/10/2005 and as clarified from time to time by subsequent Circulars. The purport of those Circulars was the subject matter in the case of Gaurav Jaiswal (supra). The Division Bench of this Court after adverting to those Circulars in paragraph 9 observed as follows :

"9. ????. We are disposed to think that clause (2) has been engrafted only to make a clarification that the benefits that were available before 13.5.2003 would be available to the persons who had undergone operation prior to the said date despite their status. But, it would indubitably depend upon entitlement. In view of the aforesaid interpretation which is sought to be placed by Mr. Sanghi, we are afraid, cannot be accepted."

11. In paragraph 10 of the same decision, the Court observed that the terms & conditions in the subject Circulars are not be read in isolation, but, in the context of Circulars in vogue. It then proceeded to observe as under :

"10. ??? If the stipulation in the green card is read in the context of circulars issued, we are afraid, we cannot accept that there was a commitment by the State Government to pay the fee of children of the green card holders who are prosecuting their studies in private colleges.

The learned counsel for the State submitted the State is a welfare one and efforts are being taken to curb the population but there is no reason or justification to give that kind of benefit from the public exchequer in the absence of a clear circular issued by the State. It is urged by him that the circular has classified the two classes, namely, below poverty line and not below poverty line. A cut off date has been provided in Annexure R-1 so that they would not be affected but that does not mean that students prosecuting their studies in private colleges are entitled to get the benefit of exemption from payment of fee."

The dictum in this decision applies on all fours to the case of the petitioners before us.

12. The decision in the case of Satyam Pandey (supra), on the other hand, is on the purport of Circular dated 03/07/2009 issued by the Public Health and Family Welfare Department, Government of Madhya Pradesh. Significantly, clause (3) of that Circular reads thus :

(3) As per the previous arrangement, the students studying/getting admission in private institutions shall not be eligible for fee exemption/reimbursement."

13. This clause restates the position reiterated in the earlier Circulars issued by the Department on that subject. In the case of Satyam Pandey (supra), the Court has found, as of fact, that the petitioners before it were not hit by the exceptions

specified in the Circular dated 03/07/2009. Moreover, it has been found that the petitioners in that case were prosecuting their studies in Government Autonomous Colleges for one degree/course. Admittedly, in the present case, the petitioner No. 2 has been admitted in a self-financed institution and that too in respect of dual degree course conducted by the respondent No. 2/University. Suffice it to observe that the judgment in Satyam Pandey (supra) is inapplicable to the fact situation of the present case. In the light of the aforesaid, the matter in issue having been squarely answered in the case of Gaurav Jaiswal (supra) and applicable on all fours, the petitioners are not entitled for any relief from this Court. Taking any other view would result in re-writing of the Government policy, which ought to be eschewed.

14. Accordingly, the petition filed by the petitioners is hereby dismissed.