
(1989) 08 MP CK 0080
In the Madhya Pradesh High Court
Case No : M.P. No. 584 of 1989

Umesh Kumar Tripathi

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 30-08-1989

Acts Referred:

Citation : (1991) JLJ 167

Hon'ble Judges : T.N. Singh, J;S.K. Dubey, J

Bench : Division Bench

Advocate : C.P. Singh, for the Appellant; Arvind Dudawat, Government Advocate, for the Respondent

Judgement

T.N. Singh, J.—This order shall dispose of three petitions. These are Misc. Petition Nos. 584, 845 and 984, all of 1989. The common cause which links the three petitions is singular in that all of the Petitioners have staked claim for admission albeit in different disciplines, to two years' diploma courses in G.R. Medical College, Gwalior.

2. Petitioner Umesh Kumar Tripathi of Misc. Petition No. 584 of 1989 has not expressed preference for any particular discipline. His counsel has submitted that his claim to admission to any particular discipline may be determined in terms of the relevant rules according to relevant merit of different candidates. Petitioners Dr. Kamlesh Kumar Gupta and Dr. Ashok Kumar Gupta of Misc. Petition No. 845 of 1989 have, however, expressed their preference for the E.N.T. Course and similarly, Dr. Amitabh Shrivastava of Misc. Petition No. 984 of 1989, for Ophthalmology course.

3. Admitted position on facts is that diploma courses for 1988-89 academic year have started on 24.10.1988, but the fact which is also admitted is those students who are pursuing studies in that course are all admitted in one year diploma course. In that regard, the contention of Shri Dudawat, State Counsel, is of substance that those students will be completing their course of studies within a

month or so. Counsel has, therefore, supported the action of the Respondents including the Dean, G.R. Medical College, Gwalior, refusing admission to the Petitioners relying on *Ajay Pradhan Vs. State of Madhya Pradesh and Others*, .

4. Unfortunately, for the Respondents, the controversy does not end that way. Because, the admitted position also is that out of 27 seats in diploma course in various disciplines, only 24 seats had been filled up. Today, before us in Court, two selection lists are produced. Those are captioned respectively (I) "One Year Diploma Course" and (II) "Two Year Diploma Course" for the year 1988. Shri Dudawat has conceded that list-I of One Year Diploma Course was only considered and admission of 24 students whose names figure in that list had been made. We do not understand why the Dean or College Council and the State Government found it necessary not to do anything else in the matter of filling up the other three seats. It cannot be denied that entitlement for admission in the diploma courses in various disciplines for the year 1988 was open to candidates pursuing not only One Year Diploma Course, but also Two Year Diploma Course. It cannot, therefore, be said that the seats had been duly "filled up" for the academic session 1988 and the Petitioners have no standing before us to challenge the action of the Respondents.

5. These petitions had come up before us a number of times and on the last date, we made a direction that we would like to see the proceedings of the meeting of the Selection Committee held on 27.1.1989 because it was contended that some decision was taken thereof in regard to filling up of those three vacancies also. That has not been produced today and it is submitted by Shri Dudawat that the College Council took the view that it has not to fill up those three seats because such an action would have run counter to the decision in *Ajay Pradhan* (supra).

6. We must say that the Dean or the College Council or even the State Government has misconceived the scope of the decision of their Lordships aforecited. We are of the view that in the circumstances of the case, it is difficult to accept the position on facts that the academic session in the diploma courses for the year 1988 did not legally and validly commence at all as the concerned authorities failed to discharge their duties in considering entitlement of candidates of both lists. Cases were considered only of list-I and those who figured in list-II for admission in Two Year Diploma Course remained unconsidered then; and also now. Till today, decision in regard to their entitlement has not been taken in any manner at any time.

6-A. In *Ajay Pradhan*'s case (supra), at para 11, their Lordships extracted a passage from this Court's judgment and observed that they were in "complete agreement with the view" expressed by this Court in that passage. This Court had observed that when a seat is allotted, a date has to be specified by which it has to be availed. It shall not be deemed "filled up" if it is not availed. It would then become the duty of the concerned authority to fill up the same and offer it to any other eligible candidate according to merit. A decision has to be taken to

do so either before the session commences or soon thereafter. If that could be the correct law, and that their Lordships observed, was the law, then there is no escape from the conclusion that the College Council defaulted in its duty in not taking steps to fill up all 27 seats. It was its duty to see that all seats had been duly filled up and none remained vacant and to act in that regard as per guidelines this Court has laid and approved by the Supreme Court. No decision unfortunately was taken prior to commencement of session and even till today, no decision has been taken with regard to entitlement of candidates for Two Year Diploma Course for the academic year 1988.

7. True, 1988 academic session for diploma courses would be over soon, but for that, the Petitioners' claim shall not be deemed lost or washed away by the inaction of the College Council and the Respondents. A fresh academic session would obviously start soon for diploma courses in various disciplines. We are of the view that Petitioners have, no doubt, a case for their claim to be considered even with regard to the fresh academic session that will commence soon. Indeed their cases have to be considered with other similarly situated candidates applying for Two Year Diploma Course. Because none of the candidates whose names appear in list-II applying to the diploma course in 1988 had been considered, it shall be duty of the College Council and Respondents to see that when fresh admissions are made for diploma courses in various disciplines, the claim of the Petitioners on merit in list-II aforesaid is considered along with the fresh candidates. It is submitted that a large number of candidates whose names appear in list-II of 1988 have lost eligibility variously. Some have, it is submitted, taken up employment; Ors. , it is submitted, have started private practice or house-jobs in different disciplines. If that be the case, the College Council and the Respondents shall consider case of only the qualified candidates of list-II of 1988, albeit on merits.

8. In the circumstances, the three petitions succeed partly and are allowed, to the extent herein indicated. We hold all the Petitioners to be entitled for consideration for admission for the next academic session of 1989 in the manner directed herein.

9. We make it clear that the candidates claiming for admission into Two Year Diploma Course are obviously those who have done only Internship, having done no House-jobs. In that regard, we entertain no doubt that the academic session for the diploma course is an annual session though for admission thereto, there are two avenues. Those who have done House-jobs shall pursue the course of one year along with those who have done their Internship though students of the latter category have to hang on for Anr. year as they had not done House-job. This position, as submitted by Shri Dudawat, is indeed not disputed. The Petitioners have been granted limited relief for consideration of their cases for the 1989 academic session along with Ors. as they cannot now, at this stage, be considered for admission in the 1988 academic session which is now to close very soon.

10. In the circumstances, we make no order as to costs. Outstanding amount of security, if any, be refunded to the Petitioner.