

(1998) 06 GAU CK 0044
In the Gauhati High Court
Case No : Civil Rule No. 398 of 1998

Yuithingla Vashum Dr. and Others	Vs	APPELLANT
Manipur Public Service Commission and Others		RESPONDENT

Date of Decision : 19-06-1998

Acts Referred:

Indian Medical Council Act, 1956 — Section 13(3)

Citation : (2000) 1 GLT 588

Hon'ble Judges : W.A. Shishak, J

Bench : Single Bench

Advocate : L. Sharat Sharma, for the Appellant; A. Jagatchandra, for the Respondent

Judgement

W.A. Shishak, J.—This matter has been heard for final disposal at motion stage as ordered by this Court on 25.5.1998.

2. Pursuant to the requisition made by the State Government for recruitment of 175 Junior Medical Officers, Manipur Public Service Commission (MPSC) issued Notification dated 14.7.1997 calling for applications from eligible candidates and the last date of receipt of applications was fixed on 23.8.1997. Two conditions were stated in the said Notification/Advertisement. The first condition concerns the Educational Qualification. It states:

Possession of a recognised Medical qualification included in the First or Second Schedule, or Part-II of the Third Schedule (other than Licentiate qualifications) to the Indian Medical Council Act, 1956. Holders of educational qualifications included in part II of the 3rd Schedule should fulfil the condition as stipulated in Sub-section (3) of Section 13 of the Indian Medical Council Act, 1956.

For brevity it may be stated that as far as this condition is concerned, there is no controversy. The second condition stated in Roman (ii) of the aforesaid Notification is as under:

(ii) Completion of compulsory Rotating internship.

As stated above the last date of receipt of application was fixed on 23.8.1997. These writ Petitioners submitted their applications within time. Their applications were accepted. However, they were undergoing compulsory rotating internship when they submitted their applications. Petitioner Nos. 1 to 10 completed compulsory rotating internship on 1st September, 1997. The Petitioner No. 11 completed the said compulsory rotating internship on 31.3.1998. That means to say that the Petitioner Nos. 1 to 10 completed compulsory rotating internship about 7 (seven) days after the last date of submission of applications.

3. The Manipur Public Service Commission issued Notification dated 7.5.1998 fixing the date of written test examination on 24.6.1998. The Petitioners approached the authority to issue to them Admit Cards to sit for the written test to be held on 24.6.1998. They were informed that although their applications had been received by the office of the Commission, Admit Cards could not be issued to enable them to sit for the test on the ground that they had not completed condition No. 2 of the Advertisement viz., that they had not completed compulsory rotating internship when receipt of application was closed on 23.8.1997.

4. It is contended that after 5 (five) years or so for the first time the State Government is going to fill up such a large number of vacancies (175 in total) by making fresh recruitments. It is also contended that although the last date of receipt of application was 23.8.97, the actual date for written test is going to be held after about 11 (eleven) months. It is, therefore, contended that in such a situation the fact that the Petitioners had not completed compulsory rotating internship before the last date of receipt of application by about 7 (seven) days or so and, therefore, they would not be allowed to sit for the test will be unreasonable and harsh. Mr. L. Sharat Sharma, learned Counsel for the Petitioners submits that in fact such a chance of competing when such a large number of vacancies are available in the State Govt. may not occur in the near future.

5. Counter affidavit has been filed on behalf of the MPSC. Mr. A. Jagatchandra, learned Government Advocate appears on behalf of the Commission and I have heard him. Para 2 of the counter affidavit states:

In response to aforesaid invitation 332 candidates applied for the post. On scrutiny the applications of 19 candidates have been rejected (15 candidates for not possessing essential qualifications, 3 candidates for late receipt of the application form 1 candidate for not enclosing necessary certificates).

These 11 Petitioners are out of the 15 candidates whose applications are stated to have been rejected for not possessing essential qualifications, i.e. that they had not completed compulsory rotating internship on the last date of receipt of applications. Para 3 of the counter affidavit of the Commission further states that at time of submission of the applications the Petitioner Nos. 1 to 10 submitted certificates issued by the Director, RIMS that they would complete their

compulsory rotating internship course on 1.9.1997. As stated above, Petitioner Nos. 1 to 10 completed compulsory rotating internship after 7 (seven) days of the last date of receipt of applications. This fact is accepted in para 3 of the counter affidavit of the Commission. However, the Petitioner No. 11 completed the said compulsory rotating internship only on 31.3.98. According to the affidavit of the Commissioner, the Petitioner No. 11 completed the condition No. 2 seven months and eight days after the last date of receipt of application. Mr. Jagatchandra submits that since conditions were clearly stated in the advertisement, non-fulfilment of the said conditions will automatically entail rejection of the applications. Mr. Jagatchandra refers me to 1995 Supp (4) SC 706 wherein para 2 it was held among other things:

It is to be seen that when the recruitment is sought to be made, the last date has been fixed for receipt of the applications. Such of those candidates who possessed all the qualifications as on that date alone are eligible to apply for and to be considered for recruitment according to rules.

Mr. Jagatchandra further relies on 1997(2) SLR 409 SC . In the said case in para 6 among other things it was held:

The proposition that where applications are called for prescribing a particular date as the last date for filing the applications the eligibility of the candidates shall have to be judged with reference to that date and that date alone, is a well established one. A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all.

In the light of the decisions of the Supreme Court Mr. Jagatchandra submits that there is no room for this Court to interfere with the order of rejection issued by the Commission.

6. Relying on AIR 1998 SC 101 with particular reference to para 13 Mr. Sharat Sharma, learned Counsel for the Petitioners submits that it would be an act of cruelty if the Petitioners are not allowed to sit for the written test simply on the ground that they completed compulsory rotating internship seven days after the last date of receipt of applications inasmuch as seven days would be so insignificant when the written test is actually to be taken 10 months after the last date of receipt of applications. In the above case the Court further said:

The precedents apart, the circumstances of this case justify an humanitarian approach and indeed, the Appellants seem to deserve justice ruled by mercy.

In fact the learned Counsel has made a submission that this case may be approached with a sense of mercy and justice. Strictly speaking the fact that the Petitioners completed compulsory rotating internship seven days after the last date of receipt of applications cannot be denied. Prima facie, therefore, there is non-compliance of the second condition in the Advertisement issued by the Commission. Therefore, in my view, this Court cannot really find fault with the Commission which has refused to issue Admit Cards to the Petitioners on the

ground that they had not fulfilled the second condition stated above on the last date of receipt of application.

7. I have given a very serious thought to the submissions made on behalf of the parties. As far as Petitioner Nos. 1 to 10 are concerned they completed compulsory rotating internship seven days after the last date of receipt of applications. Normally test ought to have been conducted soon after the last date of receipt of applications. As I have stated above the test is going to be taken after ten months of the last date of receipt of applications. Further as stated in the Commission's affidavit, the writ Petitioner Nos. 1 to 10 had clearly stated by furnishing a certificate issued by the Director, RIMS that they were yet to complete compulsory rotating internship. This would go to show that the Petitioner Nos. 1 to 10 had really submitted their applications with clean hands having sole desire to compete with other eligible candidates for recruitment of such a large number of Junior Doctors in the State of Manipur after so many years. Further it is common knowledge in Manipur that inspite of existence of Recruitment Rules in various Government Departments, no recruitment exercise is made regularly and in fact such regular recruitment takes place once in a while. The Petitioner Nos. 1 to 10 fulfilled the second condition barely after seven days of the last date of receipt of applications. Taking the above factors into consideration, I am of the opinion that if justice coupled with mercy is at all called for in any given situation, it is the present situation as respects the Petitioner Nos. 1 to 10. I am of the further view that in view of the circumstances that I have stated above a very humane approach is called for. This would mean that this Court must show some amount of compassion in the best interest of justice. In my view compassion will never be a bad precedent in a given situation such as the present one. However, I am also further of the view that this Court cannot stretch too much and extend the same amount of mercy and compassion to Petitioner No. 11 who completed/fulfilled condition No. 2 of the Advertisement, viz. that compulsory rotating internship was completed only after seven months of the last date of receipt of applications.

In the result, in the premises aforesaid, Petitioner Nos. 1 to 10 shall be allowed to sit for the written test to be conducted on 24.6.1998.

Accordingly this petition is disposed of.