

Tejinder Singh Sidhu v. State of Punjab and others (H. S. Bedi, J.)

there is no other effect consequent on the order of the Commissioner under S. 18(2A) so far as the jurisdiction of the WTO is concerned in the matter of imposition of penalty.-----" A contrary view has however, been taken by our Court in *Anrik Singh vs. Commissioner of Wealth Tax*, (2), where, it was held that in proceedings for penalty initiated under Section 18 (1) (a) of the Act, where the Wealth Tax Officer gives effect to the order of the Commissioner passed under Section 18 (2-A) on the application made before the Commissioner by the assessee, such order of the Wealth Tax Officer is not appealable. We are clearly bound by the judicial precedent provided by our own Court and with respect, we also prefer the view expressed therein.

(5) Both the questions referred are consequently answered in the negative against the assessee and in favour of revenue. This reference is disposed of accordingly. There will, however, be no order as to costs.

R.N.R.

Before : A. L. Bahri & H. S. Bedi, JJ.

TEJINDER SINGH SIDHU,—Petitioner.

versus

STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ Petition No. 8990 of 1991

22nd August, 1991

Constitution of India, 1950—Art. 226—Admission to Post-graduate Courses—Advertisement inviting applications for the Post-graduate Degree/Diploma Courses—Cl. 6 thereof—Challenge to—Petitioner opting for admission to M.D. Course in Psychiatry—Cl. 6 of advertisement providing stipulation entitling a candidate for admission to Post-graduate Degree Course only in the speciality in which Post-graduate Diploma Course studied—Petitioner doing one-year Diploma Course in Clinical Pathology (DCPM), hence, denied admission to M.D. Course in Psychiatry—Minimum qualification for admission to Post-graduate Degree/Diploma Course prescribed as M.B.B.S.—Candidate with higher qualification should not be made ineligible for admission to other subjects for Post-graduate Courses—Petitioner, therefore, cannot be denied admission to M.D. Course in Psychiatry—Creation of additional seat—Direction given by Court.

Held, that the matter in hand is fully covered by the judgments of this Court as referred. Efforts made by the counsel to either distinguish the judgments or to show them as having been wrongly decided have not been fruitful. *Gulshan Kumar v. M. D. University, Rohtak* 1990(4) S.L.R. 398 on which reliance has been placed has no relevance to the facts of the present case inasmuch as the observations in para 6 of that judgment were made as the petitioner in that case wished to drop out of the Diploma Course midway so as to secure admission in another Diploma Course which was contrary to the Rule. While deprecating this effort and upholding the rule, the court observed that it was for the Government to determine the criteria for admission and as such the rule could not be successfully challenged. We are, therefore, of the view that no fault can be found in the earlier judgments of this Court and, as such, the present writ petition has to be allowed.

(Para 7)

Held, that the petitioner and respondent No. 5 should be given admission in M. D. Psychiatry Course forthwith and, whereas, the petitioner will be adjusted against the seat that has been kept reserved, the authorities concerned will ensure the creation of an additional seat against which respondent No. 5 will be adjusted.

(Para 9)

Writ Petition Under Article 226/227 of the Constitution of India praying that the records of the case be sent for and after perusal of the same:—

- (i) *issue a Writ in the nature of Mandamus directing the respondents to consider the petitioner for admission to the Post Graduate Degree Course in accordance with the preference given by him without restricting the petitioner's claim in the same speciality as that in which he has done his Diploma and further that this Hon'ble Court may be pleased to issue a Writ in the nature of Certiorari quashing Clause of the advertisement, Annexure P. 1;*
- (ii) *a Writ in the nature of Mandamus or any other Appropriate Writ, Order or direction directing the respondents to consider the case of the petitioner for admission to Post-Graduate Degree/Diploma Course of three years duration in the 60 per cent quota reserved for in service candidates after giving weightage for the Post-graduate Diploma obtained by the Petitioner, be issued;*
- (iii) *filing of the certified copies of the annexures be dispensed with;*
- (iv) *service of advance notices on the respondents be exempted.*

It is further prayed that the petitioner be given provisional admission in the basis of his standing in the order of merit or, in the

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alternative, one seat be got reserved for him till the decision of the Writ Petition. The result is being declared in the week commencing 10th June, 1991 and in similar C.W.P. No. 7105 (Dr. R. K. Sharma v. State of Punjab and others) the Motion Bench ordered on 5th June, 1991 that the case of the petitioner be considered on merits according to the choice given by him and in case his name figures in the merit list, a seat be kept reserved for him.

H. S. Gill, Sr. Advocate with Ms. Anjai, Rathi, Advocate, for the petitioner.

Shri Puneet Kansal, Advocate, for respondent No. 5.

Smt. Jaysheeri Anand, DAG, Punjab, for respondent Nos. 1 to 4.

JUDGMENT

Harjit Singh Bedi, J.

(1) The facts giving rise to the present writ petition, which has been admitted to be heard by a Division Bench, are stated hereunder :—

(2) The petitioner obtained his MBBS Degree in the year 1979 and was thereafter selected in the PCMS Class II Service in 1981. While in service, the petitioner was selected for the duly completed a One Year Diploma Course in Clinical Pathology and Micro-biology (DCPM) in June, 1990. Respondent No. 3 by its notice dated 22nd February, 1991, Annexure P-1 to the petition, invited applications for admission to the Post Graduate Degree/Diploma Courses in the Government Medical Colleges at Amritsar and Patiala. The Petitioner being fully qualified for being considered against the 60 per cent quota reserved for in-service candidates duly applied for the Degree Course and made the following choice in order of preference :

- (i) M.S. (Surgery)
- (ii) M.D. (Tuberculosis and Chest)
- (iii) M.D. (Psychiatry)

The petitioner did not apply for being considered for admission to the Post Graduate Degree Course in Clinical Pathology and Micro-biology, i.e. the course in which he had already secured a Diploma. The petitioner along with others was interviewed by the selection

committee, but was told at the time of interview that he could not be considered for any of the three specialities in view of clause 6 of Annexure P-1 which is reproduced hereunder :

“The candidate who have already done Post Graduate Diploma Course will only be eligible for admission to Post Graduate Degree Course in the same speciality.”

The Committee basing its opinion on the aforesaid clause was of the view that the petitioner could be considered for a Degree Course only in Clinical Pathology and Micro-biology and in no other speciality. The petitioner aggrieved by the stipulation provided in clause 6 of Annexure P-1 has filed the present writ petition. It is the conceded position that but for the embargo of clause 6, the petitioner would be entitled for admission to M.D. (Psychiatry).

(3) Mr. H. S. Gill, learned Senior Advocate, appearing for the petitioner, has argued that the minimum qualification for the purpose of considering eligibility for admission to the Post Graduate Degree or Diploma Course was MBBS and, as such, all MBBS qualified doctors ought to be treated at par and the securing of a Diploma should not act as a demerit for the purpose of admission to the Post Graduate Courses. He has relied upon *State of Punjab and another v. Dr. Harnek Singh Medical Officer* (1), *Dr. Bhupinder Singh v. State of Punjab* (2), *Dr. Parveen Kumar v. State of Punjab and others* (3), *Dr. Sunita Sharma v. State of Punjab and others* (4), *Dr. Shiva Ji Rai v. State of Punjab and others* (5), *Dr. Sandeep Kumar v. State of Punjab and others* (6), *Dr. Harbhajan Singh Bhatia v. State of Punjab and others* (7).

(4) In *Dr. Harnek Singh's case* (supra) clause 7 of the impugned advertisement was challenged in the High Court. Clause 7 read as under :

“7(1) PCMS (II) Doctors who have done Post-Graduate qualifications whether Degree or Diploma shall be

(1) 1989 (3) SLR 802.

(2) 1990 (2) Curr. L.J. 559.

(3) CWP No. 2335 of 1988 decided on 26th July, 1988.

(4) CWP No. 5646 of 1989, decided on 28th August, 1989.

(5) CWP No. 8381 of 1990 decided on 11th January, 1991.

(6) CWP No. 7378 of 1991 decided on 30th July, 1991.

(7) CWP No. 7379 of 1991 decided on 30th July, 1991.

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selected only for their respective speciality in which they have done Degree or Diploma.”

The Division Bench held that the aforesaid clause was violative of Article 14 of the Constitution and, therefore, void as the securing of a higher qualification had the effect of making a candidate ineligible, whereas, in fact, it ought to have been considered as a merit. It was specifically observed as under :

“A person with higher qualifications in the speciality other than the one in which he is seeking appointment is ineligible whereas the other members of the service having lower qualifications is still eligible for appointment. It is an unreasonable discrimination. The members of the service having higher qualifications have been placed at a disadvantageous position *qua* the other members having lower qualifications. The condition is violative of Article 14 of the Constitution.”

The judgment of the Division Bench which pertained to selection of Registrar/Demonstrator was, however, followed in Dr. Bhupinder Singh's case (*supra*) which was specifically a case pertaining to admission to the Post Graduate Courses. The learned single Bench considering the matter in the light of Dr. Harnek Singh's case, quashed clause 6 which had been impugned before him. It is to be highlighted that clause 6 in Dr. Bhupinder Singh's case (*supra*) is *pari materia* with clause 6 impugned in the present case. A similar view had been taken by this Court in Dr. Sunita Sharma, Dr. Shiva Ji Rai and Dr. Harnek Singh's cases (*supra*) and all these cases also pertained to admission to Post Graduate classes.

(5) Mrs. Jaishree Anand, learned Deputy Advocate General, appearing for the respondent-State, has argued that in view of clause 7 of Annexure P-1 it was incumbent on the petitioner to have exercised three options towards his choice of speciality, but one of the options was required to be of Clinical Pathology and Micro-biology and he not having done so, could not be considered for any speciality. This argument is misplaced as clause 7 is not attracted in this case. Moreover, even if it was held to be applicable, even then in view of the clear stipulation in clause 6, the petitioner would not have been entitled to be selected against any speciality other than the one in which he had secured a Diploma.

(6) Shri Puneet Kansal, Advocate, appearing for the private-respondent, has stressed that the aforesaid judgments do not lay down the correct law inasmuch as the courts have not appreciated that it is for the State Government to lay down the requisite criteria for the purpose of eligibility for admission to the Medical Courses as it is the Government which incurs expenditure for imparting this education. He has also argued that it is in the public interest that a person who has secured a Diploma in a particular speciality and has, therefore, achieved a measure of expertise in that speciality, should be confined to securing a degree also in the same speciality. He has referred to a Division Bench judgment of this Court reported as *Gulshan Kumar v. M.D. University, Rohtak* (8), in support of the argument.

(7) We have heard the learned counsel for the parties in the light of the judgments cited above and are of the view that the matter in hand is fully covered by the judgments of this Court, referred to above. Mr. Kansal's efforts to either distinguish the judgments to show them as having been wrongly decided have not been fruitful. Gulshan Kumar's case on which reliance has been placed by Mr. Kansal has no relevance to the facts of the present case inasmuch as the observations in para 6 of that judgment were made as the petitioner in that case wished to drop out of the Diploma Course midway so as to secure admission in another Diploma Course which was contrary to the Rule. While deprecating this effort and upholding the rule the court observed that it was for the Government to determine the criteria for admission and as such the rule could not be successfully challenged. We are, therefore, of the view that no fault can be found in the earlier judgments of this Court and, as such, the present writ petition has to be allowed.

(8) We are, however, of the view that keeping in view the facts and circumstances of the present case, it will be inequitable to deprive respondent No. 5 of the seat against which he had been selected, but could not be admitted because of the interim order of this Court. Admittedly, the notice inviting applications Annexure P-1 was issued on 22nd February, 1991, and the results of selection for the Post Graduate Courses were declared on 14th June, 1991, in which respondent No. 5 was selected for the M.D. Course in Psychiatry. However, before the actual admission could be made, the interim order was made in the present writ petition reserving a seat against which respondent No. 5 had been selected. There

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is undoubtedly some delay on the part of the petitioner in approaching this Court but he cannot be non-suited on this short ground as clause 6 which has been impugned in the present writ petition has been specifically struck down by this Court in a number of cases and yet the State Government persisted in re-introducing the said clause for admission in the 1991 Post Graduate Courses.

(9) Keeping in view the facts and circumstances of the case, we are of the view that the petitioner and respondent No. 5 should be given admission in M.D. Psychiatry Course forthwith and, whereas, the petitioner will be adjusted against the seat that has been kept reserved, the authorities concerned will ensure the creation of an additional seat against which respondent No. 5 will be adjusted.

(10) In view of the observations made above, the present writ petition is allowed but with no order as to costs.

R.N.R.

Before I. S. Tiwana, A.C.J. & Jawahar Lal Gupta, J.

OM PARKASH,—Petitioner

versus

THE STATE OF HARYANA AND OTHERS.—Respondents.

Letters Patent Appeal No. 260 of 1991.

26th August, 1991.

Punjab Police Rules, 1934—Rls. 13.7 & 19.22—Eligibility to be deputed for Lower School Course—Completion of three years' period of deputation is necessary for being considered for admission to the Lower School Course—Appellant not fulfilling this condition—Claim for being deputed to Lower School Course cannot be based solely on date of appointment or length of service.

Held, that we are of the view that this rule contains an enabling provision. It authorises the Principal to admit Drill and Physical Training Instructors working in the institution to the Lower School Course after they have completed three years' period of deputation. This is subject to the condition that the Principal finds that they are sufficiently educated and their service at the college had been satisfactory. (Para 3)

Held further, that the appellant and respondents No. 5 and 6 being posted in different districts do not, as such, have any inter-se