

Rohit Bhardwaj and ors Vs. Army College of Medical Sciences and ors.

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Court : Delhi

Decided On : Sep-27-2013

Judge : V. K. Jain

Appellant : Rohit Bhardwaj and ors

Respondent : Army College of Medical Sciences and ors.

Advocate for Def. : Mr. Ashish Kumar, Mr. Mukul Talwar, Mr. Sradhananda Mohapatra, Mr. Vipin Singh, Mr. Sumit Chander

Advocate for Pet/Ap. : Mr. Sanjay Kumar Dubey, Ms. Shuchi Singh

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of Decision:

27. 09.2013 + W.P.(C) 6156/2013 & CM No.13548/2013 (Directions) ROHIT BHARDWAJ & ORS Petitioners Through: Mr. Sanjay Kumar Dubey & Ms. Shuchi Singh, Advs. versus ARMY COLLEGE OF MEDICAL SCIENCES & OR..... Respondents Through: Col. (Retd.) R. Balasubramanian, Adv. for R-1 & 2. Mr. Ashish Kumar, Adv. for R-3. Mr. Mukul Talwar, Mr. Sradhananda Mohapatra & Mr. Vipin Singh, Advs. for R-5. Mr. Sumit Chander, Adv. for R-6. CORAM: HON'BLE MR. JUSTICE V.K. JAIN V.K. JAIN, J.

(ORAL) The petitioners before this Court are the students of Army College of Medical Sciences being run by Army Welfare Education Society. As part of their

course requirement, the petitioners are required to do internship. The said internship, according to the petitioners, is being done at Army Base Hospital, Delhi Cantt. Vide Office Memorandum dated 30.6.2008, Government of India, Ministry of Health & Family Welfare, enhanced the stipend in respect of interns in the Central Government institutions/hospitals W.P.(C) No 6156/2013 including bodies wholly financed by the Central Government to Rs.6,430/- per month w.e.f. 1.1.2005 and to Rs.7,276/- per month w.e.f. 1.1.2007.

2. The grievance of the petitioners is that though they are doing internship at Army Base Hospital, which is a Government Hospital they are not being paid any stipend in terms of the aforesaid Office Memorandum.

3. A perusal of the decision of the Supreme Court in Indian Medical Association Vs. Union of India & Ors. 2011 (7) SCC179 would show that in the aforesaid case a learned Single Judge as well as the Division Bench of this Court inter alia held that Army College of Medical Sciences is not an instrumentality of the State nor is the said college an aided educational institution. The Apex Court refused to interfere with the finding returned by the learned Single Judge as well as by the Division Bench observing that such determination presented issue of fact and law. The view taken by this Court in the above referred case is binding on me and accordingly, it must necessarily be held that Army College of Medical Sciences is not State within the meaning of Article 12 of the Constitution of India. As noted earlier the aforesaid Office Memorandum dated 30.6.2008 applies only to the Central Government Institutions/Hospitals as well as statutory/autonomous bodies which are wholly financed by the Central Government. Since Army College of Medical Sciences is not one of the organisations covered by the said Office Memorandum dated 30.6.2008, the petitioners cannot claim any benefit of the said Office Memorandum.

4. This is also the contention of the learned counsel for the petitioners that the students of Armed Forces Medical College (AFMC), who do their internship in the Army Base Hospital are getting Rs 55,000/- as stipend, while not a single penny is being paid to the petitioners. According to him, all the Government institutes/hospitals as well as private institutes are paying monthly stipend to

MBBS interns as per the State Government/Central Government Regulations/Directions. He further submits that two medical colleges affiliated to IP University, namely, Vardhman Mahavir Medical College and Safdarjung Hospital are paying stipend to their interns and therefore, there is no reason why the petitioners should not get such a stipend. The argument, in my view, is wholly misconceived in law. Since the Army College of Medical Sciences is not State within the meaning of Article 12 of the Constitution, it is not amenable to the writ jurisdiction of this Court and consequently, no writ petition against the said college is maintainable for the purpose of payment of stipend to its students. There is no legal bar even on private colleges paying stipend to their interns and, therefore, the Army College of Medical Sciences, if it so decides, can also pay stipend to its interns. But, if the said college chooses not to pay stipend to its interns, no direction for such payment can be given by this Court in exercise of its writ jurisdiction under Article 226 of the Constitution. As far as payment of stipend by Government colleges/hospitals are concerned, since Army College of Medical Sciences is not a Government college/hospital, the instructions issued by the Government for payment of stipend to Government institutions/hospitals shall not apply to the said college.

5. As regards the contention that the petitioners are doing their internship at a Government hospital, that, in my view, would be immaterial considering that admittedly they are the students of Army College of Medical Sciences. They do not become students of a Government hospital merely because they are doing internship at the said hospital. For the reasons stated hereinabove, I find no merit in the writ petition and the same is dismissed. SEPTEMBER 27 2013 V.K. JAIN, J.

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