

**Dr. Neeta Sharma and Others Vs. State of U.P. and Others**

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**Court :** Allahabad

**Decided On :** Sep-08-1989

**Reported in :** AIR1990All93; (1990)1UPLBEC324

**Judge :** U.C. Srivastava and ;S.H.A. Raza, JJ.

**Acts :** [Indian Medical Council Act, 1956](#) - Sections 33

**Appeal No. :** Writ Petns. Nos. 5357, 5502, 5503, 5512 and 5864 of 1989

**Appellant :** Dr. Neeta Sharma and Others

**Respondent :** State of U.P. and Others

**Advocate for Def. :** Chief Standing Counsel and K.B. Sinha, Adv.

**Advocate for Pet/Ap. :** Shiv Prasad Shukla, Adv.

**Judgement :**

ORDER

**U. C. Srivastava, J.**

1. By means of these writ petitions, the petitioners have prayed for their selection in the diploma courses in various specialities in G.S.V.M. Medical College, Kanpur.
2. In Writ Petition No. 5502 of 1989, Dr. . Ajai Kumar has prayed for admission in the diploma course in paediatrics department. In Writ Petition No. 5864 of 1989,

Dr. Naresh Chandra Agarwal has made similar prayer and he has questioned the admission of the private opposite parties, six in number, who, according to the petitioner, were not eligible for admission in diploma course in the subject. In Writ Petition No. 5503 of 1989, Dr. Davendra Kumar Yadav has also prayed for admission in diploma course in the same department.

3. Dr. Neeta Sharma and others in Writ Petition No. 5357 of 1989 have prayed admission in the diploma course in Obstetrics and Gynecology course and have questioned the selection of opposite parties Nos. 4 to 8 to the said writ petition.

4. In Writ Petition No. 5512 of 1989, Dr. Vijai Kumar has claimed admission in diploma course in Orthopaedics and has questioned the selection of opposite parties Nos. 4 to 7 in the said diploma course.

5. Notices have been taken on behalf of all the opposite parties by Sri K. B. Sinha, Advocate and we have heard learned counsel for the parties.

6. The claim of these petitioners is that they have done housemanship in accordance with rules and directions issued by the Medical Council of India and those who have been admitted have not done at least six months housemanship in the department of paediatrics and yet they have been admitted. Similar grievance has been raised in other two writ petitions. The very same grievance has been raised in respect of admissions in Obstetrics and Gynecology and Orthopedics departments. It has been stated that as the candidates who have been selected have not done even six months housemanship in the course in which they have been admitted and in case their admission is cancelled, the petitioners would be entitled to the admission in the said diploma courses.

7. The recommendations of the Medical Council of India, which have been adopted in the State of U.P. provide that for admission to the degree courses and diploma courses, the candidates must have done one year Housemanship in the same subject or at least six months in the same subject and the remaining six months in an allied department. In the recommendations made by the Medical Council of India, which have been approved by Section 33 of the Indian Medical Council Act, criteria for the selection of candidates is provided which are as

follows:--

'Criteria for the Selection of Candidates:

(a) Students for post-graduate training should be selected strictly on merits judged on the basis of academic record in the undergraduate course. All selection for post-graduate studies should be conducted by the Universities.

(b) The candidates should have obtained full registration i.e. they must have completed satisfactorily one year of compulsory rotating internship after passing the final M.B.B.S. examination and must have full registration with State Medical Council.

(c) They must subsequently have done one year's housemanship prior to admission to the post-graduate degree or diploma course. Housemanship should preferably be for one year in the same subject or at least six months in the same department. Provided that in departments Like Radiology; Anaesthesiology/ Physical Medicine and Rehabilitation where suitable candidates who have done housemanship in the respective subject for the respective speciality are not available, then the housemanship in Medicine and/or in Surgery may be considered as sufficient.

Work done by the District Epidemiologists in the P. Falciparum Containment Programme (PFCP) for a period of one year may be considered at par with the requirements of house jobs required for admission to postgraduate course in Social and Preventive Medicine.

ALTERNATIVELY

(i) Must have worked as a full-time postgraduate student in a manner equivalent to housemanship requirements, in the department concerned before taking up the postgraduate, courses.

OR

(ii) Worked in State Medical Services, Armed Forces Medical Services or other equivalent services of public undertakings, local bodies, etc. for a period of three

years after full registration provided that one year of these three is spent in a hospital which is compulsory rotating internship or in a command hospital, failing which the aforesaid period of three years would be increased to five years.

Provided, that in case of service in Armed Forces this period shall be in addition to one year of: compulsory rotating internship required for purposes of obtaining the M.B.B.S. degree and full registration.

(d) Other, conditions being equal, weight-age may be given to persons who have worked in the rural areas or the Armed Forces Medical Services for at least two years. At page 18 of the publication admission in the diploma courses has been specifically provided even though in the earlier part along with the 'Degree' diploma has been mentioned. It is provided 'Criteria for the Selection of Candidates: (a) to (b).....(c) They must subsequently have done one year's housemanship or as alternative thereof worked in any of the three capacities, described earlier.'

8. Thus, so far as diploma courses are concerned, Clause (c), referred to above, specifically provides that the candidates must subsequently have done one year's housemanship, which necessarily does not mean that housemanship in the same subject or at least for six months in the same subject. The Division Bench of this Court applied the principles of the maxim 'Generalia speciali bus non derogant', and held that so far as the diploma course is concerned, what is laid down for the degree-course will not apply to the diploma course and it is not necessary that the candidate must have done housemanship in that subject itself. This Bench has also taken similar view in several cases relying on the principles laid down in the case *Dr. Archana Rohatgi v. State of U.P.*, 1985 UPLBEC 809 : (1985 All LJ 1231). Consequently, the plea taken by the petitioners that persons who have been admitted in the diploma courses have not done one year or six months housemanship in the same subject is to fail. Accordingly the writ petition has no force and deserves to be dismissed.

9. In the result the writ petitions are hereby dismissed. There will be no order as to costs.

10. Petition dismissed.

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