

Dr. Rupesh Modi Vs. the Director of Medical Education, Bhopal and ors.

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Court : Madhya Pradesh

Decided On : Jul-10-1992

Reported in : AIR1993MP9

Judge : A.G. Qureshi and ;S.D. Jha, JJ.

Acts : Madhya Pradesh Selection for Post-Graduation Courses Rules, 1984 - Rule 8.1; [Constitution of India](#) - Article 226

Appeal No. : M.P. No. 310/92

Appellant : Dr. Rupesh Modi

Respondent : The Director of Medical Education, Bhopal and ors.

Advocate for Def. : T.N. Singh, Addl. A.G.

Advocate for Pet/Ap. : Kulshrestha, Adv.

Disposition : Petition allowed

Judgement :

A.G. Qureshi, J.

1. The petitioner in this petition Dr. Rupesh Modi passed the M. B. B. S. Examination from M. G. M. Medical College, Indore in October 1988 and completed internship on 25-12-1988. But for the house-job he could not be

selected in the year 1989, but during the continuation of the house-job, one vacancy of the house-job occurred in medicine. The petitioner was offered this house-job and he joined the same on 15-6-1990. Thereafter he completed the house-job after getting extension on 14-6-1991.

2. According to the petitioner he is entitled to admission in Diploma Course either in the subject of Tuberculosis and Chest Diseases (hereinafter called D.T.C.D.) or Diploma in Anesthesia (hereinafter called D.A.) according to the Rules framed by the State Government in consonance with the Indian Medical Council Rules. Actually the criteria for admission to the diploma course is the same as admission to Post-Graduate Course. Rule 3.1 of the Diploma Rules provides that the criteria shall be the same as that of P.G. Degree Rules and, therefore, selection for admission has to be made according to Rule 8 of the P. G. Degree Rules. The petitioner further avers that the respondent No. 2 and the College Advisory Council considered cases for admission to Post-Graduate Degree and Diploma Courses and on the basis of merit and eligibility of the petitioner, the petitioner was placed at S. No. 12 of the provisional combined list of House Surgeons of Medicine and Surgery. The said list was notified on 2nd November, 1991 (Annexure-C). Another candidate Dr. Prashant Wadewalkar was placed at S. No. 4 in that list. The petitioner expected that he shall be granted admission in P.G. Degree for D.T.C.D. or D.A. because both the subjects are allied subjects of medicine, but he has not been granted any admission although one seat of D.T.C.D. and one seat of D.A. are lying vacant.

3. According to the petitioner candidate at S. No. 11 Dr. Sandhya Agrawal, a candidate from Surgery, who has not completed her house-job in the year 1991 and would be completing her house-job in the calendar year 1992 has been shown selected provisionally in the merit list, but she is not eligible for the admission in view of the fact that she has not completed her house-job in the same calendar year. Therefore, the petitioner is the only eligible candidate for admission to D.T.C.D. and D.A. course. Still the admission is not given to the petitioner violating his fundamental rights. In any case for Diploma in Anesthesia the petitioner is eligible in view of the Rules and for D.T.C.D. also he has to be admitted in view of the fact that there is no other candidate seeking admission in the subject

throughout the State. Therefore, he has sought the issuance of writ directing the respondents to admit the petitioner to D.T.C.D. or D.A. Diploma Course of the College by filing this petition under Article 226 of the Constitution.

4. The petition has been resisted mainly on the ground that the provisional list has been prepared for consideration of admission of the seats in D. A./D. C. P./B. M. R. D. and not for D.T.C.D. as it is not an allied subject. Therefore, the petitioner cannot get admission to D.T.C.D. As regards admission to D.A. course to the petitioner it is stated as the petitioner belongs to an earlier batch, therefore, in accordance with Rule 12-B of the House-Job Rules he cannot be considered along with the present batch. The inclusion of the name of the petitioner in the provisional list is of no consequence because it is not the final list. As regards Dr. Sandhya Agrawal it has been stated that she was deprived of admission to the house-job at the time of the commencement of the house-job because of a fault of the University and, therefore, she could not complete her house-job in the year 1991 but has completed it in March, 1992. Therefore, her case for considering her admission in the present batch has also been referred to the Government.

5. Dr. Sandhya Agrawal has appeared as intervener and according to her the petitioner is not entitled for admission to the course because he does not belong to the same batch which is being considered on merits for admission and the merits of different batches cannot be considered at the time of admission. As to her eligibility, she stated that she belongs to the same batch which is being considered for admission and she cannot be deprived of admission because of the fault of the University in issuing a wrong mark sheet and thereafter correcting it. As such she has to be treated to have completed her house-job in the same calendar year as that of the other candidates.

6. Now, as regards the criteria for admission to the Diploma Courses it is not in dispute that the Rules for Selection to Post-Graduation Courses of 1984 shall be applicable to these admissions. According to Rule 8.1 of the M. P. Selection for Post-Graduation Courses Rules, 1984 the merit candidates in clinical subjects shall be selected from out of those who are completing their house-jobs within that calendar year. A Division Bench of the M. P. High Court at Jabalpur in the case of

Dr. (Ku.) Arifa Alma v. State of M.P., AIR 1991 MP 29, had an occasion to consider and interpret the ambit and scope of Rule 8.1 and it has held that for admission to P. G. Medical Courses it would be sufficient if a candidate had completed or would be completing his or her house-job within the calendar year of selection. The Court in para 16 of its judgment has taken a very strict view in respect of relaxation in the period of completion of house-job and has held that according to the long practice so far followed for all content and purposes the calendar year of selection of the merit candidates for admission to clinical subjects in the Post-Graduate Courses, it cannot be accepted that the calendar year should be completion of one year from the date of commencement of the house-job. The calendar year has to be from January to December. As such the persons who are completing or have completed house-job on or before 31st December of the selection year would be entitled to admission for the courses in that year. Considering the case of Dr. (Smt.) Namrata Seth it was found that she had joined her house-job on 16-8-1988. But she absented from 12-10-1988 on the ground of pregnancy. Thereafter she resumed her house-job again on 29-6-1989. But factually she completed her house-job in April, 1990. Therefore, she was not found eligible for admission to Post-Graduate Course with those persons who had completed their house-jobs in the year 1989. The Court refused to consider the fact of her pregnancy being the reason for her absence from the course thus delaying the completion of her house-job for holding that she will be covered by Rule 8.1 of the Post-Graduate Admission Rules. As such the aforesaid view of this Court was that thus for admission, the year of completion of the house-job is most relevant and if a person has completed the house-job in that particular year he or she should be considered for admission in the same calendar year.

7. This Court in M. P. No. 360 of 1991 (Dr. Satish Suman v. Director of Medical Education, Bhopal) decided on 15-4-1991 has also followed the aforesaid decision and had also considered the scope of Rule 12-B of the Rules framed for selection of candidates for admission as House Officers in the Medical Colleges wherein it has been provided that a person who has been admitted to house-job will be considered for post-graduate admission with his or her original batch. The Court repelling the argument that Rule 12-B of the Rules for admission to house-jobs shall govern the admission of the Post-Graduation Admission has held that the

Rules for allotment of house-jobs cannot govern admission to the Post-Graduate Courses especially in view of Rule 8.1 of the Post-Graduation Rules, 1984 and have agreed with the view expressed in Dr. Arifa Almal's case (supra) by the Jabalpur Bench. As such in view of the aforesaid two decisions, with which we respectfully agree, we hold that Rules of house-job do not govern the admission to the Post-Graduate and Diploma Courses, but the admissions are governed by Rule 8.1 of the Post-Graduate Admission Rules, 1984.

8. In view of the aforesaid it is manifest that Dr. Rupesh Modi, who has completed his house-job in the same year in which he is seeking admission to diploma course is eligible for admission to the diploma course, if otherwise on merit he is found fit to be admitted vis-a-vis other candidates. His admission cannot be denied only on this ground that in M.B.B.S. he belonged to a different batch than the batch which is being considered for admission because the batch for admission which has to be considered is of those persons who have completed the house-job in that calendar year.

9. Now, as regards the intervener Dr. Sandhya Agarwal she is placed above Dr. Rupesh Modi in the order of merit. Dr. Modi while seeking preference over Dr. Sandhya Agarwal has not made her a party. Although her name was above him in the provisional list. Therefore, no direction against Dr. Sandhya Agarwal could be given on the basis of the present writ petition in which Dr. Sandhya Agarwal has herself appeared as an intervener and challenged the right of Dr. Modi for admission and had staked her claim. According to her she is better in merits than Dr. Rupesh Modi and she has completed her house-job late only because of the fault of the mistake of the University. We agree with the basic principle of law that no man should be allowed to suffer for no fault of his/her part and we are told that the matter has already been referred by the authorities to the State Government on that issue. Therefore, if Dr. Agarwal approaches the Government or authorities concerned the case of Dr. Sandhya Agarwal may also be considered on merits wherein she could be admitted without excluding any of the candidates eligible for admission in the calendar year. However, if the admission of Dr. Sandhya Agarwal may result in the exclusion of any eligible candidate, then case of her admission has to be considered after taking into consideration the facts and

circumstances which led to the delay in the completion of her house-job.

10. In the result this petition filed by the petitioner is allowed. The respondents are directed to consider the case of admission of the petitioner to D.T.C.D. or D.A. course in the Medical College holding him eligible to be considered for admission in the batch of 1991. Similarly the case of the intervener be also considered in view of the observations made above. There shall be no order as to costs.

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