

Prasanth Vs. State of Kerala

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Court : Kerala

Decided On : Jun-12-2006

Reported in : 2006(3)KLT276

Judge : C.N. Ramachandran Nair, J.

Appeal No. : W.P.(C) No. 6078 of 2006

Appellant : Prasanth

Respondent : State of Kerala

Advocate for Def. : Sojan James, Government Pleader,; K.P. Dandapani and; Su

Advocate for Pet/Ap. : A. Mohammed, Adv.

Judgement :

C.N. Ramachandran Nair, J.

1. The Petitioners are House Sergeants who are undergoing internship after successfully completing M.B.B.S. course from the 4th respondent-college under the management of the third respondent. The W.P. is for direction to the third respondent to immediately refund the interest free deposit made by the petitioners at the time of admission to the M.B.B.S. course or to make payment to the various Banks from where some of the petitioners have availed loans against the security of deposit and on undertaking by the third respondent to make payment to the

creditor institution. While the case of the petitioners is that they are entitled to refund of the interest free deposit after completion of the course, which according to them do not include the internship, counsel for the third respondent referring to the Medical Council Regulations contended that internship or house sergeancy is part of the M.B.B.S. course and so much so, petitioners having not completed the internship cannot be said to have completed the course making them eligible for the refund. Even though it is an accepted position that successful completion of house sergeancy after passing the M.B.B.S. examination is an essential requirement for obtaining the degree and to make a person eligible for registration as a doctor and the same is the scheme under the Medical Council Regulations, I do not think there is any need to go into the same because arrangement between the petitioners and the third respondent is governed by the prospectus which contains the terms of the interest free deposit taken at the time of admission and the undertaking furnished by the third respondent before the Banks, a specimen copy of which is produced as Ext.P4 in the O.P. Clause V of the prospectus states that

Deposit paid at the time of admission will be refunded (without interest) only after completion of the course, after adjusting dues if any.

Therefore, what has to be looked into is the duration of the course which as given in Clause III of the prospectus issued by the 4th respondent-college is as follows:

Duration of MBBS Course is four and a half years. After successful completion of this, the students have to undergo compulsory rotating internship for twelve months.

It is obvious from the above that internship is not treated as part of the course which students will have to undergo after successful completion of the 'course' which is stated therein to be for four and a half years. Even though the contention of the counsel for the 3rd respondent that internship is part of the MBBS degree course and without successful completion of the same after passing the MBBS examinations, nobody is entitled to MBBS degree is correct, internship is not taken as part of the course by the third respondent in their prospectus wherein duration of MBBS course is specifically mentioned as four and a half years which obviously

is from the commencement of the course. It is conceded that all the petitioners have successfully completed four and a half years MBBS course, passed the examination and are presently undergoing the internship (house sergeancy). In the circumstances and in view of the specific definition of duration of course covering only four and a half years as above given in the prospectus, the respondents cannot contend by reference to Medical council Regulations that internship is part of the MBBS course. It is not as if the management was not aware of the internship as integral part of MBBS degree course at the time of publishing the prospectus based on which deposits were taken. It is obvious from the prospectus that the management consciously limited the duration of course only for four and a half years. This is more clear that candidates discontinuing studies will have to pay tuition fee for subsequent years and in that event, interest free deposit will be returned after four years after adjusting the dues if any which obviously means dues includes all fees for the whole course for which the student joined. Therefore, the latter part of Clause V of the prospectus makes it clear that eligibility for refund does not require successful completion of MBBS course including internship and award of degree to the candidate. A student discontinuing at any time of the course or failing in the examination thereby prolonging his internship is entitled to refund of security deposit after four and a half years from the commencement of the course. It is seen from Ext.P4 which is a specimen copy of undertaking given by the third respondent to the Ernakulam District Co-operative Bank in the case of one student that the third respondent undertook to pay deposit amount after four and a half years from the date of execution of the agreement or on completion of the course whichever is later. According to counsel for the third respondent, the completion of the course includes completion of internship and so long as it is not completed, the Bank is not entitled for payment now for credit in the students' loan-account. I am unable to accept this because the agreement has to be read in line with the prospectus which defines duration of course. Therefore, what is meant by the use of the term 'whichever is later' in Ext.P4 agreement is that even if a student discontinues, he is entitled to refund after four and a half years from commencement of the course which is contemporaneous with execution of undertaking. In the circumstances, maximum period for which the deposit can be retained by the third respondent based on the prospectus and other terms of

admission is four and a half years irrespective of whether the candidate actually completes the course or not. In the circumstances, W.P. is allowed directing the third respondent to refund all the deposit amounts to the petitioners or otherwise, to make payment of the amounts to the creditor Banks within a period of one month from the date of production of copy of this judgment by the petitioners. In the normal course this Court would have ordered payment of interest from due dates from which petitioners were entitled to refund, but having regard to the financial hardship of the third respondent highlighted by its counsel and since it is a unit in the co-operative sector running hospitals also charging moderate rates from public, I decline to grant any interest to petitioners. However, there will be direction to the third respondent to grant refund to every eligible student on completion of course as stated above instead of dragging every student to this Court or elsewhere.

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