

Dr. Vinod Kumar Razdan Vs. State and ors.

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Court : Jammu and Kashmir

Decided On : Mar-16-1995

Reported in : AIR1995J& K68

Judge : B.A. Khan, J.

Acts : [Evidence Act, 1872](#) - Section 115

Appeal No. : S.S.W.P. No. 10 of 1993

Appellant : Dr. Vinod Kumar Razdan

Respondent : State and ors.

Advocate for Def. : D.C. Raina, Adv.

Advocate for Pet/Ap. : K.S. Johal, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

B.A. Khan, J.

1. Petitioner wants to get into M.D. Course in surgery. His story dates back to August, 1988 when the Competent Authority, Entrance Examinations, issued notification inviting applications for selection/ admission to MD/MS courses in the

two Medical colleges of the State. The relevant eligibility prescribed in this notification was under:

'4. Eligibility

The eligibility of a candidate shall be determined on the basis of the following:--

4.1.1. xx xx xx4.1.2. xx xx xx4.2. xx xx xx4.3. xx xx xx4.4. xx xx xx 4.5. Have completed or will complete one year's house job by 31st July, 1988 in a recognised institution, out of which at least 6 months must be in a concerned subject. The House job completion certificate for those who are due to complete the same after the submission of form must reach the Competent Authority at least by 10th of August, 1988.

OR

has served in the State, Central Government Medical Services for a period of 5 years out of which 3 years should be in rural service.

OR

XX XX XX XX XX XX' Petitioner also applied for selection. The Government, however, issued SRO-3 of 1989 dated 3-1-1989 meanwhile changing the eligibility prescribed for the candidates in some respect. The modified eligibility contained in Clause (iv) of the SRO provided thus:

'4. (iv) have completed one year's House job on or before the date of application for admission to Post-graduate course in a recognised institution out of which, at least six months must be in the subject for which selection to post-graduate course is applied for. However, this condition shall not be applicable to the candidate who--

have served in the Health/Medical Education Department under the State Government for at least five years with at least three years in the rural areas and at least one year in such areas of the State where one year's tenure is prescribed by the Government.'

A comparative reading of the two clauses prescribing the eligibility for candidates would show that under first clause contained in 1988 notification, the candidate was required to possess 5 years service of which 3 years should have been in the rural service in place of a House Job. As against this, the latter modified clause provided that a candidate should have 3 years rural service out of which one year was required to be in such an area as prescribed by the Government. It is this clause which is at the centre of controversy in the present petition.

2. The modified eligibility was brought into force before the entrance examination held by the Competent Authority in March, 1989. The petitioner was issued admit card under Roll No. 18832 and was allowed to take examination. The result was declared in May, 1989 and he was shown to have obtained 163 marks.

3. It is part of history by now that the selection made by the Competent Authority was challenged in a batch of writ petitions before this Court and was quashed by a Single Bench vide judgment dated 18-7-1990. An appeal was taken by the selected candidates against this judgment which was finally disposed of by consent order dated 27-9-1991 passed in leading LPA No. 8/90 titled Dr. (Mrs.) Madhuri Salathia v. State, operative part whereof provides as under:

'..... As agreed to by both the sides the appellants shall be allowed to complete the course and they shall also be permitted to sit in the final examination if they are eligible under University Statutes. Regarding respondents who were writ-petitioners, we direct in the interest of justice that they along with other eligible candidates who had applied during the session 1989 shall be considered for selection to various disciplines of MD/MS courses out of the available vacancies within a period of two months from the date the present sessions will be over. The judgment of learned single Judge is modified to the above extent.'

Pursuant to this some candidates approached this Court in contempt petitions questioning their exclusion despite availability of seats. This resulted in selection of some more candidates from amongst those who had appeared in the entrance examination of 1989 but had not been selected at that time. The final select list in this regard was issued on 5-3-1992 in which respondents 6 to 14 were also granted admission in the discipline of surgery.

4. This seems to have provided a cause to the petitioner for approaching this Court in the present petition. His case initially was that since he possessed superior merit to respondents 6 to 14, he could not be denied admission and that the Competent Authority had failed to consider his representation in this regard. During the pendency of this petition, it appears, this representation was disposed of and he was informed that he lacked in eligibility as he did not possess the requisite rural service of one year in the area prescribed by the Government. He thereafter amended his petition taking the plea that this condition could not have been enforced against him, once he was allowed to take the entrance examination in 1989 when the same was in force and alternatively that the condition prescribed was irrational, unreasonable and liable to be quashed.

5. The amended writ petition and the reply of the Competent Authority was considered on 24-5-1994 and on consideration of the matter this Court directed the Chairman of the Competent Authority, Entrance Examination (CAEE) to consider the petitioner's case for admission to the M.D. course in the discipline of surgery in light of the peculiar facts and circumstances and the observations made by the Court and further required him to complete the process of consideration within one month. This order was passed without prejudice to the rival contentions raised in the matter. In compliance to the direction the Chairman submitted his report informing the Court that the petitioner lacked in eligibility and, thus, could not be granted admission. This is how the matter is back to square one for determination of the issues raised.

6. Petitioner's case is founded on two planks, viz. (i) that he admittedly possessed superior merit than respondents 6 to 14 and thus could not be excluded from the selection vis-a-vis them, and, (ii) that he could not now be stopped on the plea that he lacked in eligibility when the respondents had treated him as eligible for all intents and purposes by issuing him the admit card and by allowing him to take the entrance examination. In short, it is submitted that the respondents were estopped from enforcing the new eligibility condition as they had acquiesced by allowing the petitioner to take examination in which he had admittedly obtained more marks than the selected respondents (Nos. 4 to 16). It is alternatively urged that the condition of eligibility which is sought to be enforced, i.e., one year's rural service

in the area prescribed by the Government, is un-reasonable, irrational, incapable of being fulfilled and violative of the constitutional guarantees available to the petitioner under Arts. 14 and 16 of the Constitution. To buttress this, it is contended that the Government had not adopted any criteria to post (of) Doctors in the prescribed rural area and that it was impossible for the petitioner to satisfy this condition which was capable of being used as a leverage to confer favour on favourites. Learned counsel for the petitioner, Mr. Johal, cited AIR 1976 SC 376 in support of first contention and AIR 1989 J & K 37 for the second.

7. The stand is resisted by the respondent authority on the plea that the petitioner's appearance in the examination could not cure his ineeligibility prescribed under the rules. Distinction is sought to be drawn between 'taking the Entrance Examination' and the 'Selection' and it is urged by Mr. Raina, learned counsel representing the CAEE that a candidate may be allowed to sit in the examination and yet not selected subsequently, if found ineligible. He has also urged that no estoppel or acquiescence can be attributed to the Competent Authority in the face of a statutory bar rendering the petitioner ineligible.

8. On the other issue of the validity of the eligibility clause, it is submitted that it had been upheld by a Single Bench of this Court in a batch of writ petitions by a judgment dated 18-7-1990 and that in case this Court took a contrary view now, it would result in upsetting the judgment of a Court of co-ordinate jurisdiction. No detailed arguments were addressed by either side on this aspect nor was the judgment of learned single Judge dated 18-7-1990 placed on record to show whether the challenge to the eligibility clause in those petitions proceeded on the lines as in this petition. Therefore, much as I would have liked to test the validity of the controversial eligibility clause but I feel handicapped for want of requisite material, assistance and the submission of Mr. Raina that it stands upheld by a judgment of this Court. It is not known if that judgment deals with the nature of the challenge thrown to the clause in this petition but that was for the petitioner and his counsel to project and make out. Resultantly I leave this aspect to rest at that. The judgments cited for and against on this point also need not be referred to.

9. This leaves me to deal with the first and the last issue i.e., whether the modified eligibility condition could be enforced against the petitioner after he was allowed to take the entrance examination when the condition was existing and in force? It appears to me futile to look for a precedent or to dilate on the doctrine of 'equitable estoppel' or 'acquiescence' to answer this position. This is so because the answer lies in the facts and circumstances of the case itself and no other extra or outside support or guidance is required.

10. A look back at the history of this case would show that the petitioner can trace his right of reconsideration from the consent order of the Division Bench of this Court dated 27-9-1991 which provided for according of consideration for selection to 'writ petitioners along with other eligible candidates who had applied during the session 1989'. The use of the expressions 'other eligible candidates' is significant and postulated that only eligible candidates i. e. candidates fulfilling conditions laid down in SRO-03 of 1989 were liable to be considered and selected. The eligibility was obviously de-terminable by the Competent Authority afresh under the Court order and it was of little or no consequence that a candidate who had otherwise been declared as failed but was getting a fresh consideration under the Court order had taken the Entrance Examination despite his ineligibility. In other words, the crucial Court order left it open to the Competent Authority to re-examine the eligibility prescribed under SRO-03 of 1989, Clause (iv)whereof required the petitioner to possess rural service of one year in the area prescribed by the Government and in the event he was found short of requirement, he could not be credited with any claim to admission to the M.D. course in the discipline of surgery despite his superior merit which could not cure his ineligibility. In the circumstances it was inconsequential that the petitioner had been issued the admit card and allowed to take the entrance examination way back in 1989 when the controversial condition of eligibility existed and was in force.

11. Looking at it from the other angle, distinction is also required to be made between taking of the examination' and the 'consequent selection'. The process obviously contemplates two stages viz. participation in examination and the ultimate selection. A candidate may as well be allowed to sit in the examination despite his ineligibility and yet be not selected because of it. Mere appearance in

the examination or being in possession of the admit card cannot clothe him with any right overriding a bar imposed by law and the rules against him. Cases are conceivable where candidates may manage to obtain Admit Cards or even participate in the examination irrespective of their satisfying the conditions of prescribed eligibility. But, in such cases it would be far-fetched to treat them selected on the specious plea of acquiescence of any infirmity by the concerned authorities. That would be stretching the things too far and could lead to disastrous and absurd consequences.

12. I have gone through the judgment of the Supreme Court in AIR 1976 SC 376 which I find wholly distinguishable both on facts and law. It proceeds on the fact of acquiescence by the authorities concerned and is not attracted in the present case in which the plea of acquiescence could perhaps be urged if the petitioner had been excluded from selection at the first stage despite being allowed to take the examination. It is the admitted position that he did not make the grade at that stage. He received a fresh lease of life under the orders of the Division Bench of this Court dated 27-9-1991 passed in a batch of LPAs including LPA No. 8/90 which undoubtedly envisaged a fresh examination of his eligibility by the Competent Authority. If he failed to fit in the bill that should end the matter and the question of 'estoppel' and 'acquiescence' did not arise.

13. I find myself in near agreement with the view taken by a Division Bench of the Patna High Court in AIR 1990 Pat 205, in which the Supreme Court judgment supra has also been noticed. It appears to me laying down a correct position by holding that there could be no estoppel against a statutory bar and that want of circumspection by the authorities could not override a candidate's eligibility.

14. In the premises I hold that the eligibility condition prescribed by SRO-03 of 1989 and enforced against the petitioner, could not be held to have been waived of by the Competent Authority against the petitioner or any other candidate for that matter who derived the right of consideration from the Division Bench order dated 27-9-1991 providing for consideration of eligible candidates only. Since, petitioner's eligibility for selection/admission was subject to fresh scrutiny by the Competent Authority, it was for him to satisfy the requirements and if he failed he

could fall back to invoke the doctrine of equitable estoppel or acquiescence to make up his shortfall. Because the doctrines of Estoppel or Acquiescence do not operate against a statutory bar nor can higher merit of a candidate be pleaded to cure his ineligibility under the statute or the rules.

15. In the result this petition fails and is accordingly dismissed. There shall be no order as to costs.

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