

PETITIONER:
MAHARSHI DAYANAND UNIVERSITY

Vs.

RESPONDENT:
DR. ANTO JOSEPH & ORS.

DATE OF JUDGMENT: 29/07/1998

BENCH:
S.P. BHARUCHA, K. VENKATASWAMI

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

BHARUCHA, J.

The order under challenge was passed upon the writ petition of the first respondent in the following circumstances. On 12th October, 1993 the first respondent joined the M.D. course in Anaesthesia of the appellant University. The examination for that course was to be conducted on 27.9.96. The first respondent having fallen short of the minimum training period requirement, applied to the University for an exemption. The application having been turned down, the first respondent moved a writ petition for writ directing the University to allow him to appear at the examination. On 21.8.96 the High Court passed an interim order on the writ petition directing the University "to admit the petitioner to the examination provisionally subject to the final decision of this Court." When the writ petition reached hearing, this is the order that the High Court passed:

"Heard counsel appearing on either side.

Petitioner joined Post Graduate degree course, namely M.D. Anaesthesia on 11.10.1993. Final examination started on 27.9.1996. By virtue of an interim order of this court, he took that examination. The short question that arises for consideration is whether the result of the examination is to be directed to be published or not.

On the peculiar facts and circumstances of this case, since he has undergone course for nearly three years except for few days and also secured more than 80 per cent of the attendance in the course, we do find any justification for not declaring the result of the examination taken by him.

Under the above circumstances, not to be treated as a precedent, we direct the University to declare the result of the examination taken by the petitioner. In case he has come out successful, the University is directed to confer on him the Master's degree.

Writ petition is disposed of in the above terms."

At an interim stage this Court stayed the operation of the aforementioned order. consequently, the result of the first respondent has not been declared.

Learned counsel for the University drew our attention to the requirements of the Medical Council of India with regard to the period of training. The read thus:

"MD/MS

From the year 1993 onwards, the minimum period of training for obtaining these degrees shall be three calendar years and the candidates can be admitted to this training after their full registration with the Medical Council(s).

No exemption shall be given from this period of training of 3 years either for doing Housemanship or for any other experience or diploma."

In its Prospectus the University had said this in relation to the duration of the course:

"Duration of Course: Duration of MD/MS course will be of three years and that of various diploma courses will be of two years. This is obligatory on the part of the Institutions covered under the scheme to have three years P.G. Degree course and two years P.G. Diploma course from the Academic Session 1993, as per the Hon'ble Supreme Court judgment. There will be no relaxation in the duration of the course of a study on any ground and on the ground of having done house job or any other professional experience including experience in respect of HCMS doctors.

It should be clearly understood that no student (who is admitted) shall be eligible to appear in the examination before actually completing the prescribed period of course (s). Those who will be admitted under exceptional circumstances after 30 days from the start of the course shall be eligible to appear only in one of the subsequent examination and not with the regular batch."

Learned counsel for the appellant submitted that the first respondent joined the course 15 days late and he had taken leave for 42 days so that he was short of the requirement of three years training by 57 days. Learned

counsel submitted that, having regard to the Medical Council of India's requirements and the University's Prospectus, there was no justification for the interim order which had been passed by the High Court or for the final order, whose only basis was the interim order. learned counsel pointed out that the leave that had been sanctioned to the first respondent had been sanctioned expressly on the basis that the first respondent would have to repeat the training before appearing in the final examination. Learned counsel submitted that although the order under challenge stated that it was not to be treated as a precedent, there were many matters of students in the same situation who had been granted the same relief based upon the judgment under challenge and that had been done not only by the High Court but also be courts subordinate thereto.

Learned counsel for the first respondent submitted that the fact that the first respondent had joined the course 15 days short should not be taken into account. He submitted that the University had the power to grant an exemption for a period of 30 days and this should be taken into account. For the purposes of argument we will accept all this. The question still is in relation to the 12 days that the first respondent fell short of. Learned counsel submitted that first respondent had now completed the period of 3 years training, though subsequent to the examination.

We might not have interfered has this been an isolated case but we find from reading the orders which have been placed on the record that though the impugned order stated that it was not to be treated as a precedent it has been followed repeatedly by the High Court and by courts below. It appears then that it is necessary to interfere to uphold the sanctity of the requirements of the Medical Council of India and the University. These requirements are laid down to ensure that the full period of training necessary for acquiring the qualification is completed and it is in the public interest that they are not lightly deviated from.

The University was not obliged to give the first respondent exemption for 30 days absence because the leave it gave the first respondent contemplated a full training period by having to repeat it. The first respondent fell short of the required training period at least by 42 days. He must, therefore, appear and pass the next examination.

The appeal is allowed. The judgment and order under appeal is set aside. The writ petition filed by the first respondent is dismissed.

No order as to costs.