

PETITIONER:
RAJIV KAPOOR & ORS.

Vs.

RESPONDENT:
STATE OF HARYANA & ORS.

DATE OF JUDGMENT: 28/03/2000

BENCH:
R.C. Lahoti, Doraiswamy Raju

JUDGMENT:
March 28, 2000.

JUDGMENT

Doraiswamy Rajil. J.
L.....I.....T.....T.....T.....T.....T.....T...J

The method and criteria to be followed in the matter of selection of candidates for admission to Post Graduate Degree and Diploma courses in Medicine from amongst Haryana Civil Medical Service (for short 'HCMS') candidates for the academic session 1997 in Pt. B. D. Sharma Post Graduate Institute of Medical Sciences affiliated to Maharishi Dayanand University is the subject matter of controversy in these appeals. The controversy is limited to admission of 19 and 14 candidates respectively to Post Graduate Degree and Diploma courses, in Medicine during the academic year in

question for HCMS candidates and does not include any consideration of candidates either in open merit category or to be filled up on All India basis.

The petitioners before the High Court claimed that as per the norms and criteria proclaimed in the Prospectus issued by the medical college in question, selection for admission could be made only on the basis of marks obtained by a candidate in the entrance examination held for the purpose. But the contesting respondents, some of whom are the appellants before this court as well as the State of Haryana contended that the marks obtained in the entrance examination only entitled them to be called for interview, being only a qualifying test rendering the candidates eligible for admission and that the final selection of the HCMS candidates against the reserved seats- was required to be made by the Selection Committee constituted for the purpose on the basis of the specified criteria stipulated by the Government from time to time, based on the academic career, experience, rural service, annual confidential reports and marks obtained at the interview.

The claim of the writ petitioners before the High Court found favour with the Division Bench of the High Court, which allowing their Writ Petition directed the cancellation of the admission given to contesting respondents before the High Court and directed selections of HCMS

candidates for admission to PG courses to be made only on the basis of merit, as per the marks obtained in the written entrance examination and to admit the selectees within the stipulated time. In coming to such a conclusion the High Court appears to have been influenced by the fact that the Prospectus, once issued had the force of law and the Government had no right to issue any contrainstructions in the matter. It was found that the orders of the Government dated 21.5.1997 issued in restatement of the pre-existing criteria stipulated by the Government had the consequence of upsetting the entire criteria for selection of HCMS candidates, as prescribed in the Prospectus and was impermissible. Consequently, C.W.P. Nos-8158, 8259 and 833^ of 1997 filed by respondents 4 to 8 in these appeals were allowed by the High Court.

These appeals by special leave have been filed by the affected contesting private respondents before the High Court. The State as well as the University did not file appeals against impugned order but they have supported the stand taken by the appellants, so far as the criteria to be adopted for selection and admission of HCMS Cadre candidates to P.G- courses is concerned.

When the SLPs came up before this court for hearing on 6.2.1998, learned counsel appearing for the State of Haryana stated that the orders of the High Court have been implemented and that the State does not intend to unsettle the position insofar as the already selected candidates are concerned but that the judgment of the High Court needed a second look to settle the law. No interim orders/directions were therefore granted.

The learned counsel for the appellants strenuously contended that the provisions contained in Chapter V of the Prospectus issued by the University for the academic session 1997 related to selection of eligible candidates at two and a half times the number of seats available for the purpose of interview before the Committee constituted for the purpose of admission as against the seats reserved for HCMS candidates in accordance with the policy criteria laid down therefor. This procedure and practice was said to be in vogue and being consistently followed ever since 1988, with modifications, if any, issued from time to time but without dispensing with the requirement of interview by the Committee and selection of candidates according to their assessment of merit on the basis of the criteria so laid down by the Government. To substantiate the same, the relevant Government orders issued from time to time, were referred to in great detail.

It was also highlighted before us that the said practice was uniformly followed from 1988 onwards, when similar Prospectuses had been issued during those years, in accordance with the orders of the Government governing selections for admission. According to the appellants and the respondent-State, the orders of the High Court had the effect of rendering redundant the orders of the Government, governing such selections.

The learned counsel for the other respondents, who were petitioners before the High Court and who had got relief, drawing sustenance from the reasoning of the Division Bench of the High Court, contended before us that

so far as selection for admission to the course in question is concerned.. it is only the Prospectus issued by the University for the academinc year in question which could govern and that the orders of the Government would have no application. Therefore, it was submitted that the High Court did not commit any error in directing results to be finalised and admissions accorded solely on the basis of the procedure proclaimed in the Prospectus.

We have carefully considered the submissions of learned counsel appearing on either side.

In our view, the High Court tell into a serious error in sustaining the claim of the petitioners before the High Court that selection and admissions for the course in question have to be only in terms of the stipulations contained in Chapter V of the Prospectus issued by the University. Such an error came to be committed in assuming that the Government had no authority to issue any directions laying down any criteria other than the one contained in the Prospectus and that the marks obtained in the written Entrance Examination alone constituted proper assessment of the merit performance of the candidates applying for selection and admission. The further error seems to be in omitting to notice the fact that the orders dated 21.5.1997, which came to be issued after the declaration of results of written Entrance Examination, even if eschewed from consideration the orders dated 20.3.96 and 21.2.97 passed in continuation of the orders of the earlier years, continued to hold the field, since the orders dated 21.5.97 were only in continuation thereof. Those orders dated 20.3.96 and 21.2.97 had, admittedly been forwarded to the University, with a request to make necessary entries in the Prospectus/syllabus.

The High Court.. in allowing the Writ Petitions purported to follow an earlier judgment of the Full Bench of the very High Court reported in Amar

iep Singh Sahota vs State of Punjab. etc. [1993(2) PLR 212]. On carefully going through that judgment we find that the Full Bench did not doubt the competency or authority of the Government to stipulate procedure for admission relating to courses in professional colleges, particularly in respect of reserved category of seats, but on the other hand, it specifically deprecated the decision to do away with the requirement of minimum marks criteria in respect of seats reserved for sports category and that too by passing orders after the examinations were held under a scheme notified in the Prospectus. As a matter of fact the Full Bench, ultimately directed in that case, that selections for admission be finalised in the light of the criteria specified in the Government orders already in force and the Prospectus, after ignoring the offending notification introducing a change at a later stage.

So far as the cases before us are concerned, the High Court, not only held that the Government order dated 21.5.97 issued after the declaration of the results of the entrance examination held pursuant to the Prospectus issued for 1997, could not be followed but went a step further to hold that except the Prospectus in question nothing else could be looked into and that the Government orders had the effect of varying the criteria laid in the Prospectus in the matter of

.selections to the seats reserved for HCMS

candidates. We are unable to appreciate this reasoning. The Government orders dated 21.5.97 did not introduce, for the first time, either the constitution of a Selection Committee or evolving the system of interview for adjudging the merits of the candidates in accordance with the laid down criteria. It merely modified the pattern for allotment of marks under various heads from the total marks. Therefore.. even if the modified criteria envisaged under the orders dated 21.5.97 is to be eschewed from consideration, the earlier orders and the criteria laid down therein and the manner of assessment of merit by the Selection Committee after interview. were still required to be complied with and they could not have been given a complete go-bye, as has been done by the High Court.

Both the orders of the Government dated 20.3.96 and 21.2.97 in unmistakable terms stipulated that after issue of no objection certificate against reserved seats to the HCMS Medical Officers, they had to appear not only in the common Entrance Test and obtain at least 20% of marks or above to become eligible for consideration but the merit of the candidates had to be determined by the Selection Committee constituted for the purpose, as per the criteria specified in Annexure 'A.', thereto after interview. Chapter V of the Prospectus, apart from envisaging the preparation of a

merit list, at two and a half times the number of seats available in each category on the basis of written examination; contemplates also the award of marks and determination of merit in respect of open seats and so far as candidates of HCMS reserved seats are concerned after specifying the marks stipulated for the written examination, leaves the matter for further assessment of merit without specifying any further marks, apparently on account of the applicability of the Government orders notified above, which takes care of the weightage to be given to such candidates in respect of the assessment of their merit before actual selection for admission against the reserved category of seats earmarked for HCMS candidates.

The fact that the list to be prepared on the basis of marks in written test had to be two and a half times the number of seats available in each category also is an indicator that it was not by itself, the final list of selection for admission to professional courses in a college. Even if there had been any default on the part of the University in properly specifying this aspect despite communication of the Government orders every time to the University with a direction to incorporate them in the Prospectus/syllabus, the efficacy and binding force of the Government orders and the necessity to apply the criteria laid down therein to finally determine the merit of the

candidates to be selected for admission against the seats reserved for HCMS candidates in terms of the criteria laid down in those orders cannot be overlooked or given up once for all. The Prospectus as well as the orders of the Government in our view have to be construed in such a manner that the merits of the sendee candidates are properly assessed on the basis of their credentials and performance in service and not merely of theoretical knowledge of the subject as in the case of non-service candidates belonging to the other categories. The

construction placed by the High Court, if accepted may result in discrimination on account of applying different criteria of total marks for open candidates and in service candidates without noticing the distinguishing features relevant for the purpose of assessment of merit in the case of HCMS candidates. We find no reason or justification to allow any deviation from the method of assessment uniformly followed in all the previous years for such selection. For all the reasons stated above, we have no hesitation in holding that the High Court committed a serious error in tills regard which vitiates its judgment and the same is accordingly set aside. We hold that the merits of the HCMS candidates are required to be adjudged in terms of the criteria contained in the Government orders noticed above and the selections can be made for admission against the reserved

seats, as per the determination of merit by the Selection Committee constituted for the purpose.

The next question to be considered is about the relief which may be granted in these appeals. Reliance has been placed by learned counsel for the appellants on the decision reported in *Punjab Engineering College Chandigarh vs. Sajay Gulati* AIR 1983 SC 580 and an unreported judgment of this court in Civil Appeal No. 6896 of 1997 dated 29.9.1997 (*R. Nithyapriya vs Revenue. Divisional Officer & Ors.*), wherein consequential directions were found to have been issued for admitting those students who had succeeded before the court, in the subsequent academic year, if need be by creating additional seats. Leaving aside the fact that in those decisions the students who had succeeded before the Court were found to be victims of irregularities and illegalities committed by the authorities entrusted with the task of selections for admissions or on account of some wrong done to the candidate by an officer of the State in refusing to issue a certificate which disabled the concerned candidate from joining the course to which the candidate concerned was actually selected for admission in those cases the court gave interim orders by issuing a direction to reserve one seat to facilitate her admission. It was an entirely different fact situation. So far as

the case on hand is concerned, the authorities concerned with selection for admission could not be found fault with in any manner. It was due to the wrong interpretation placed on the rules governing admissions by the court that they could not get admission for the academic year in question in time. We are unable to persuade ourselves to accord a similar treatment to the appellants in these appeals, as was granted to the appellants in those cases relied upon before us.

We are not, at this point of time, inclined to accede to the claim of the appellants for issuing any direction to the respondent authorities to accord admission to the appellants to the Post Graduate Degree course in question for more than one reason.

The dispute relates to the academic session of the year 1997 and we are in 2000. To utilise the seats meant for the next academic year, by accommodating those candidates of 1997 vintage, would amount to deprivation of the legitimate rights of those who would be in the fray of contest for selection, on the basis of their inter se merit

for the session of 2000, taking into account the performance of the candidates of 1997 in that year. The suggestion to create additional seats, apart from the objections

from the State, cannot also be acceded to for the purpose of admitting only the appellants in as much as any additional seats even if allowed to be created during a particular year must be filled up only on the basis of the standards and merit performance of the candidates participating in the contest for the said year. That apart, some of the appellants appear to have got admitted into Diploma courses, having not been selected for degree courses and there is no scope for adjusting the period of study put by them while pursuing Diploma course, as one spent for PG Degree course. There is also a positive prohibition for a candidate pursuing PG Diploma course in a particular discipline to claim to do PG Degree course in a different discipline.

The mess that has occurred leading to the present litigation seem to be more on account of the inept drawing and publication of the Prospectus by the University and not properly carrying out the binding orders of the Government and of too many orders passed from time to time, being allowed to stand piecemeal independently. The Government would do well in future to publish at the beginning of every academic year, even before inviting applications a compendium of the entire scheme and basis for selection carrying out amendments up-to-date and the Prospectus also specifically

adopting them as part of the Prospectus, to avoid confusion in the matter of selections, every year.

Consequently, though the appeals are allowed to the extent of setting aside the judgment of the High Court and settling the principles which should govern the selection of candidates for admission to the PG Degree/Diploma courses in Medicine in respect of seats reserved for candidates of HCM Services; the appellants cannot be granted any relief in their favour. In view of the statement made at the stage of SLP by learned counsel on 6.2.1998, the admission of the respondents, however, is not interfered with. Having regard to the role of the University in the matter which only lead to all these confusions, the appellants would be entitled to costs in a sum of Rs. 10,000/- (one set) from the University.