

PETITIONER:
DR. NANDJEE SINGH

Vs.

RESPONDENT:
P.G. MEDICAL STUDENTS ASSOCIATION AND ORS.

DATE OF JUDGMENT 14/05/1993

BENCH:
SAWANT, P.B.
BENCH:
SAWANT, P.B.
YOGESHWAR DAYAL (J)

CITATION:
1993 AIR 2264 1993 SCR (3) 909
1993 SCC (3) 400 JT 1993 (3) 515
1993 SCALE (2) 985

ACT:

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Constitution of India, 1950 : Article 136-Appeal-Whether appellant appointed against a teaching post--Non-examination of question by High Court-Positive presumption by High Court- Whether Supreme Court to decide said question.

Constitution of India, 1950 : Article 226-Writ by Association against an individual-Individual dispute whether public interest litigation.

Education-M.D. (Medicine) Examination-Requirements appearance.

University-Examination-M.D.(Medicine)-Appearance --Requirements of.

HEADNOTE:

The appellant was a teacher in the Department of Biochemistry of Rajendra Medical College. He filed an application for his registration as a student in M.D. The University forwarded the application to the Principal of Rajendra Medical College. The Principal objected to appellant's registration as he was not posted in any of the teaching posts in Rajendra Medical College. Though the appellant was attached to the Department of Medicine, was a Biochemist attached to that Renal Unit dealing with the subject of Biochemistry.

The appellant filed a writ petition in the High Court for a direction to the University to permit him to submit his thesis in M.D. (Medicine) examination on the ground that he was a teacher.

The University took the stand that the appellant was not a teacher and he was not eligible for training in M.D. (General Medicine).

The High Court dismissed the appellants writ petition and held that he was not entitled for admission to the examination in M.D. as he did not such it

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his thesis and did not produce a certificate of having undergone satisfactory training. The High Court did not decide on the question whether he held a teaching post or not.

The appellant was granted permission to appear for M.D.

(Medicine) examination after the University was satisfied that the appellant was holding a teaching post

The respondent-Association filed a writ petition before the High Court challenging the permission given to the appellant to appear for the said examination, contending that he was not a teacher and that he did not undergo the necessary training for 2 years and that he did not do housemanship in General Medicine for one year.

The High Court allowed the writ petition on the ground that the appellant did not undergo training for 3 years prior to his application to appear for M.D. (Medicine) examination. In this writ petition also the High Court did not decide whether the appellant was holding a teaching post.

The appellant filed this appeal by special leave against the High Court's judgment.

Allowing the appeal, this Court

HELD : 1.1. On account of the interim order passed by the High Court, the appellant appeared for the examination. The High Court has, however, by the impugned decision restrained the University from declaring his results in the examination. (915-G)

1.2. Since the High Court has not gone into the question as whether the appellant was appointed against a teaching post and has proceeded on the footing that he was appointed, it is not necessary for this Court to go into the said question. (915-F)

2.1. The facts of the case would reveal that this was a dispute relating to an individual and turned on the facts. There was no question of law involved in it. It is not understood how the respondent-Association could convert an individual dispute into a public interest litigation. (915-H)

2.2 Cases where what is strictly an individual dispute is sought to be

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converted into a public interest litigation should not be encouraged. The present proceeding is one of the kind. (915-H)

3.1. The requirement of the relevant regulation is that the candidate must have done one year's housemanship prior to the admission to the Postgraduate degree in the same subject in which he wants to appear for the examination or at least six months housemanship in the same Department and the remaining six months in the allied Department. The period of training thus, shall be 3 years after full registration including one year of the. housejob.(912-B)

3.2. According to the rules, 4 years, (teaching experience in the College and the Hospital (which is always combined. with practice in the Hospital) is considered equivalent to one year's house-job experience. In the face of these facts, it is difficult to understand the stand taken by the State Government in the present proceedings. (916-D)

3. 3. The University bad on the facts of the case accepted the contention of the appellant that he had completed 3 years' training. It is not understood as to what' state the State has in denying the said factual position. (916-B)

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2909 of 1993. From the Judgment and Order dated 5.4.1990 of the Patna High Court in C.W.J.C. No. 1465 of 1989 (R).

S.B. Upadhyay for the Appellant.

Uday Sinha, S.K. Verma and Ranjit Kumar for the Respondents.

The following Order of the Court was delivered:
Special leave granted.

The controversy in the present case is whether the appellant was qualified to appear for the M.D. (General Medicine) Examination as a teacher candidates. The High Court by the impugned order has taken the view that he was not, on the ground that he had not completed 3 years training period including one year of the house-job, prior to qualifying himself for appearing for the examination.

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The respondents, P.G. Medical Students Association had challenged the permission given to the appellant to appear for the said examination on two rounds. The first ground was that he was not a teacher and the second ground was that he had not undergone the necessary training for 2 years and had also not done housemanship in General Medicine for one year. The requirement of the relevant regulation is that the candidate must have done one year's housemanship prior to the admission to the Post-graduate degree in the same subject in which he wants to appear for the examination or at least six months housemanship in the same Department and the remaining six months in the allied Department. The period of training thus, shall be 3 years after full registration including one year of the housejob.

The appellant claimed that he was teacher in the Department of Biochemistry in the Rajendra Medical College (R.M.C.) and filed an application for his registration as a student in M.D. The University forwarded the application to the then Principal of Rajendra Medical College-cum-Dean, Faculty of Medicine, Dr. C.J.K. Singh. He objected to his registration on the ground that the appellant was not posted in any of the teaching posts in medical college. The then Head of the Department of Medicine, Dr. S. Sinha also wrote to Dr. C.J.K. Singh that the appellant though attached to the Department of Medicine, was a Bio-chemist attached to the Renal Unit and dealt entirely with the subject of Biochemistry.

The appellant filed a writ petition being C.W.J.C. No. 755 of 1988 praying for appropriate direction to the University to permit him to submit his thesis in M.D. (Medicine) examination. The University contested his claim that he was a teacher and took the stand that since he was not a teacher, he was not eligible for training in M.D. (General Medicine). For this purpose, the University relied upon the letters of Dr. C.J.K. Singh and Dr. S. Sinha. The Court dismissed the said petition on 23rd May, 1988 without deciding the issue as to whether the appellant held a teaching post but recorded a finding that the appellant was not entitled for admission to the examination in M.D. as he had not submitted his thesis and had also failed to produce a certificate of having undergone satisfactory training. The High Court also held that the acceptance of the thesis was a pre-requisite for appearing at the examination.

However, thereafter the present petition was filed by the respondent Association when the appellant was granted permission to appear for the said examination being satisfied that the post which he was holding was a teaching post as pointed out by the State Government. In this petition, the University supported the appellant by asserting that the appellant was appointed against a teaching post

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in the Department of Medicine. The High Court has again not decided the point whether the appellant was appointed against a teaching post in the Department of Medicine. For

not deciding the point, the High Court has given an additional reason, viz., that many persons who were in fact appointed as teachers would be prejudicially affected since they would become junior to the appellant and they were not before the Court. For the purposes of the disposal of the writ petition, the High Court presumed that the appellant was teacher in the Department of Medicine in the Rajendra Medical College. The Court has, however, made it clear that this presumption would be confined to the present case only and the appellant would not be entitled to claim any benefit on the basis of the said presumption. The High Court has, however, allowed the respondents' petition only on the grounds that the appellant had not undergone training for 3 years prior to his application to appear for the said examination. In order to come to the said conclusion, the High Court relied on the fact that although the petitioner was registered with Dr. S.S. Prasad as a trainee on 6th February, 1986, he had not undergone training with him and it was only from 4th February, 1988 onwards that he had undergone the training with another Supervisor, viz., Dr. P.R. Prasad. Hence, on the date he made the application for appearing in the examination, he had not completed the required 3 years' training period. In support of its finding that the appellant had not completed 2 years' training with Dr. S.S. Prasad, the former Supervisor, the High Court has relied upon two facts. The first is that Dr. S.S. Prasad had written to the University that appellant had undergone no training under him. The second circumstance relied upon is that the second Supervisor, viz., Dr. P.R. Prasad was not appointed as appellant's Supervisor as per the suggestion of the Dean of the Faculty of Medicine since respondent No. 7 to the petition who had recommended Dr. P.R. Prasad was not the Dean of the Faculty of Medicine at the time of the recommendation. Hence, according to the High Court even the training of the appellant under Dr. P.R. Prasad was not a valid training.

The record shows that admittedly the appellant was registered as a trainee under the former Supervisor, Dr. S.S. Prasad on 6th February, 1986 and he continued to be the trainee under him till 4th February, 1988 on which date he was changed as a Supervisor at the request of the appellant. In his place Dr. P.R. Prasad was appointed as the appellant's Supervisor on 17th December, 1988. The appellant, thereafter continued to be the trainee under Dr. P.R. Prasad from 19th December, 1988 to 3rd August, 1989. Thus the petitioner was registered for M.D. (General Medicine) examination of the University on 6th February, 1986 and by the 3rd August, 1989 when he was due to appear for the examination he had completed 3 years' training under the two Supervisors.

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Coming to the respondent-Association's contention that the earlier Supervisor, Dr. S.S. Prasad had denied that the appellant had received any training under him, the University has stated that for the purpose of training, the Supervisor has nothing more to do than guide the candidate for writing thesis. But more than that, the letter written by Dr. P.V.P. Sinha, the Principal of RMC and Dean, Faculty of Medicines of the Ranchi University to the Registrar of the Ranchi University on 4th July, 1989 speaks volumes on the attitude adopted by Dr. S.S. Prasad towards the appellant. This letter is Annexure-11 to the rejoinder of the appellant. The letter makes a complaint that Dr. S.S. Prasad by bypassing the office of the Principal, RMC had addressed directly to the Registrar of the University two

letters on 4th May and 3 1st May, 1989. The Principal then states that he examined the original letter meaning thereby the letter dated 4th May, 1989 and the connected matter and found that Dr. S.S. Prasad had been telling lie to the University and trying to mislead and that is why he had sent the letter directly to the University. Dr. Prasad had written another letter to the University on 16th May, 1988 regarding the appellant and in that letter he had written that the appellant had been prevented from doing research work connected with his thesis. The Principal then proceeds to write that when he asked Dr. Prasad in writing vide his letter dated 21st June, 1989 to give him the letter of the Principal or the Dean or the University which had authorised him to prevent the appellant from doing his research work, Dr. Prasad failed to produce any letter. Thus according to the Principal it became very clear that Dr. Prasad had written the letter dated 16.5.1988 directly to the University to harm the appellant's career. The Principal then proceeds to write to University that he would like to bring to the attention of the University that Dr. Prasad had signed the thesis and certificate of another doctor, viz., Dr. Ashok Kumar Singh on 16.10.1984 when that doctor was registered as an M.D. student in General Medicine only on 26.7.1984 and when Dr. Prasad was not his guide. It was Dr. R.C.N. Sahai who named the guide for the said Dr. Ashok Kumar Singh. The Principal then writes that from the perusal of the records as well as from the reply to the explanation sought by him from Dr. Prasad, it had become clear that Dr. Prasad was not made the guide of Dr. Ashok Kumar Singh either by the University or by the Dean or by the Principal and yet he had signed the thesis of Dr. Ashok Kumar Singh barely after 3 months and 11 days of his registration. The Principal then points out in that letter that a comparison of the two events made it apparent that Dr. Prasad had favoured Dr. Ashok Kumar Singh by violating all the norms statutes of the University and of the Medical Council of India and that even after the University had appointed Dr. P.R. Prasad as the guide of the appellant, Dr. S.S. Prasad was bent upon harming the career of the appellant. The Principal then adds that there was no record in his office to show that the appellant was ever suspended by the University for doing his M.D. General Medicine. He had asked Dr. S.S. Prasad to produce any notification of the University regarding the alleged

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suspension and Dr. S.S. Prasad had failed to do so. He then concludes the letter by stating that he would, in the circumstances, recommend the University to consider the desirability of removing Dr. S.S. Prasad from all examination work of the Ranchi University. It is thus apparent that Dr. S.S. Prasad, the former Supervisor of the appellant had become hostile to him and was apparently not cooperating with him in his thesis. Yet the appellant had proceeded to write a thesis and when it became unbearable, he requested for the change of his Supervisor on 4th February, 1988 pursuant to which the new Supervisor, Dr. P.R. Prasad was appointed on 17th December, 1988. However, till the new Supervisor was appointed on 17th December, 1988, he continued to be registered with Dr. S.S. Prasad and there is no dispute that under the new Supervisor, viz., Dr. P.R. Prasad he completed his training from 17th December, 1988 to 4th August, 1989. There is further no dispute that the appellant submitted his thesis prior to the examination. As regard the qualification of the 7th respondent to make the appointment of Dr. P.R. Prasad as the guide, although

the record before us does not show as to who the 7th respondent was, we take it that it is the then Principal, Dr. P.V.P. Sinha who was probably added later as the 7th respondent to the writ petition to whom the High Court has referred to in its judgment. It is asserted from the Bar on behalf of the appellant that Dr. P.V.P. Sinha was both the Principal and the Dean of the Faculty of Medicine of the University from a date much prior to 17th December, 1988. That statement is not controverted nor does the counter filed by the 1st Respondent make any such point. If that is so, then on the date that Dr. P.R. Prasad was appointed as a Supervisor he was so appointed by a duly qualified person. Since the High Court has not gone into the question as to whether the appellant was appointed against a teaching post and has proceeded on the footing that he was so appointed, it is not necessary for us to go into the said question.

The appellant was thus fully qualified for appearing in the said examination and in fact on account of the interim orders passed by the High Court he has appeared for the examination. The High Court has, however, by the impugned decision restrained the University from declaring his results in the examination.

The facts narrated above would reveal that this was a dispute relating to an individual and turned on the facts. There was no question of law involved in it. We have, therefore, not understood how the respondent-Association could convert an individual dispute into a public interest litigation. We are of the view that cases where what is strictly an individual dispute is sought to be converted into a public interest litigation should not be encouraged. The present proceeding is one of the

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kind. The learned counsel appearing, for the respondent-State wanted to support the respondent-Association. We did not think it necessary to hear the State since the dispute was essentially with regard to the interpretation of the facts relating to the training of an individual medical officer, viz., the appellant. The University had on the facts of the case accepted the contention of the appellant that he had completed 3 years' training. We have not been able to understand as to what stake the State has in denying the said factual position.

It must be remembered in this connection that the State Government itself by its letter of 17th September, 1984 written to the Principal, RMC and had asserted that the post which the appellant was holding, viz., that of Bio-chemist in the Artificial Kidney Unit of RM College and Hospital, was a teaching post and that the appellant was posted to that post since 12th February, 1982. The letter further proceeded to state that the Principal and the Head of the Department of Medicine of RM College and Hospital has also given written certificate that the appellant was posted on a teaching post and therefore his teaching experience would be counted with the Kidney Unit. A request was, therefore, made in the letter that the appellant's application for his registration as M.D. General Medicine candidate [Teacher] be forwarded to the University and further action in that regard be intimated to the Regional Additional Commissioner-cum-Principal Secretary. There is no dispute further that according to the rules, 4 years teaching experience in the College and the Hospital [which is always combined with practice in the Hospital] is considered equivalent to one year's house-job experience. In the face of these facts, it is difficult to understand the stand taken by the State Government in the present proceedings. There is no doubt in

our mind that some forces are at work to obstruct the appellant's career on one ground or the other. The State Government should not become a party to this case.

In the circumstances, we allow the appeal, set aside the decision of the High Court and hold that the appellant was qualified to appear for the M.D. (General Medicine) examination as a teacher candidate. Hence, we direct the University to declare his results in M.D. (General Medicine) examination for which he has appeared, forthwith. There will be no order as to costs.

Appeal allowed.

VPR
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JUDIS