

Randhir Singh

Vs

State of Haryana and Another

Civil Appeal No. 1823 of 1977

(A. C. Gupta, P. N. Shinghal JJ)

30.08.1977

JUDGMENT

SHINGHAL, J. -

1. This appeal by special leave is directed against the summary dismissal of the appellant's writ petition by the High Court of Punjab and Haryana on June 1, 1977 and the rejection of his review application on the following day.

2. The admitted facts of the case are enough for its disposal. Appellant Randhir Singh is an Ex-Emergency Commissioned Officer of the Indian Army. He was employed as Tehsildar at Ambala which was stated to be his "correspondence" address for purposes of the present controversy. His son Vikash, aged about 5 1/2 years, appeared in a competitive test for admission to Class I of the Kamala Nehru School (Junior Wing) against the seats reserved for children of Armed Force personnel and ex-servicemen. In all 25 children were to be admitted for the term which was to start in July 1977. Vikash passed all the tests, and the respondents have clearly stated in their counter-affidavit that, if he was found by the Medical Board, he was "eligible for admission as the son of an ex-serviceman". A letter dated May 5, 1977 was sent to the appellant to make his son available for medical test on May 12, 1977 but it was returned undelivered on May 11, 1977 with the endorsement that the appellant had left the place. Another letter dated May 7, 1977 was also sent by the school authorities, but it was delivered to the appellant only on May 13, 1977. In the meantime, the school authorities sent an express telegram on May 11, 1977. The telegram was however sent to the appellant's permanent address in a village, and not to his Ambala address. The appellant thereupon sent a telegram on May 13, 1977, along with a registered letter, requesting the authorities concerned to fix another date for the medical examination of his son Vikash. He in fact appeared before the Principal and Director of the school on the following day, along with his son Vikash, and requested him to arrange for his son's medical examination because of the belated intimation regarding the date of the medical examination, and offered to defray all the expenses of the Medical Board. The Principal and Director of the school turned down the request. The appellant then approached the Secretary concerned for a redress of his grievance, but to no avail. He therefore, applied to the High Court for an appropriate writ. The respondents opposed the writ petition and it was dismissed in limine as aforesaid.

3. It will thus appear that the appellant's son Vikash has passed all the necessary tests and is eligible for admission to the Kamala Nehru School against the seats reserved for ex-servicemen if he is found medically fit by the Board. The medical examination was fixed for May 12, 1977, but it so happened that intimation thereof reached the appellant only on May 13, 1977. We have made a reference to the circumstances in which the intimation was delayed, but there can be no doubt that

the appellant was no to blame for it. He was in fact anxious to secure his son's admission in the school, and had done all that he could in that direction. There is therefore no justification for the stand taken by the respondents in their counter-affidavit to the contrary.

4. The respondents have annexed a copy of their letter dated May 5, 1977, which conveyed the intimation regarding the holding of the medical examination on May 12, 1977. They have placed considerable reliance on paragraph 3 of that letter. It reads as follows -

Please note that another date for Medical Examination will not be given on any account and the child must appear for Medical Examination on the date and time given above. In case, the child fails to report on the above date and time, he/she will not be considered for admission at the school. Parents/Guardians must come prepared to stay at the school from 0800 to 1400 hours.

It has been urged by Mr. Naunit Lal that the medical examination could be held only on May 12, 1977, and that the appellant was informed of it "within a week" of the date of the medical examination. Counsel has invited our attention to paragraph 7 of the prospectus of the school for 1977-78 in support of his contention. A reading of aforesaid paragraph 7 shows however that the parents of the eligible boys or girls were to be informed "one week before the date of test by post". But even the first letter which was posted on May 5, 1977 did not give one week's intimation, for it could not obviously have reached the appellant at Ambala the same day. As has been shown, the intimation reached on May 13, 1977 when the medical examination had already been held a day earlier. In these facts and circumstances it cannot be said that the appellant was to blame for not producing his son Vikash for medical examination on May 12, 1977, and the stand taken by the respondents is quite untenable and unjustified. If they wanted to adhere strictly to the "intimation" in paragraph 7 of the prospectus that the intimation regarding the medical test would be given one week before the date fixed for it, they should have themselves complied with it. As this was not done, we see no reason why the career of child should be allowed to suffer when he his father were not to blame for his non-appearances before the Medical Board on May 12, 1977.

5. Mr. Naunit Lal tried to get out of the infirmity in the case of the respondents by urging that the writ petition was not maintainable under the amended Article 226 of the Constitution. We do not think there is any merit in this argument for there is no reason why only the appellant's son should have been subjected to such an unjustified treatment when all the other successful boys and girls were given adequate opportunity for appearing before the Medical Board.

6. The appeal is allowed with costs. The respondents are directed to arrange for the medical examination of the appellant's son Vikash in as short as time as possible and to admit him to the school if he passes the test. As the appellant has expressed some apprehension about the composition of the Medical Board, we direct that the State Government shall appoint three Professors of the Rohtak Medical College to constitute the Board.

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