

Principal King George's Medical College, Lucknow

Vs

Dr. Vishan Kumar Agarwal and Another

Civil Appeal No. 1351 of 1980

(Chandrachud, C.J.)

25.10.1983

JUDGMENT

CHANDRACHUD, C.J. -

1. This appeal, with its long and labyrinthine history, sums up how the process of law can frustrate rather than further the cause of justice. The appeal portrays the resolute story of a medical graduate who has been trying over the past eight years to obtain a post - graduate qualification. Law has both helped and hindered him in that quest. His name is Vishan Kumar Agarwal.

2. This appeal is filed by the Principal, King George's Medical College, Lucknow, against the judgment of the Allahabad High Court dated March 27, 1980. Respondent 1 is Dr. Vishan Kumar Agarwal, while respondent 2 who supports him is the Head of the Department of Physiology of the Medical College. In a writ petition filed by Dr. V. K. Agarwal under Article 226 of the Constitution, the High Court issued a mandamus asking the appellant to declare the result of the examination for the degree of M. D. (Physiology) for which the petitioner had appeared in July 1977. We will refer to Dr. V. K. Agarwal as 'the respondent'.

3. The question which arises in this appeal is whether the respondent possessed the requisite qualification for being admitted to the course of study for the degree of Doctor of Medicine of the Lucknow University. Having passed the MBBS Examination of the Lucknow University in July 1971, the respondent completed one years' rotating compulsory internship, whereupon he was registered as a medical graduate by the State Medical Council. In August 1972, he was appointed as a Medical Officer in the Civil Hospital at Lucknow which is approved by the Medical Council for compulsory internship.

4. In October 1974, the respondent applied to the Principal, King George's Medical College, Lucknow, for admission to the M. D. course in physiology, which was due to commence on January 1, 1975. The Head of the Physiology Department recommend the respondent's candidature, but the Principal rejected the respondent's application on the ground that he did not fulfill the qualification prescribed in paragraph (i) of the second proviso to clause (c) of Ordinance 1 of Chapter III of the Lucknow University Ordinances. The aforesaid Chapter III is entitled "Doctor of Medicine and Master of Surgery."

5. On April 4, 1975 the respondent filed a writ petition in the Allahabad High Court, out of which this appeal arises. The High court passed an interim order on the same date asking the university to admit; the petitioner to the M.D. course in physiology subject to the availability of a seat. The University complied with that direction by admitting the respondent to the M.D. Course. But, on

February, 3, 1976, the Principal of the College filed an application for vacating the interim order dated April 4, 1975 by which the respondent was directed to be admitted to the M.D. course. The application filed by the Principal was rejected on November 12, 1976, with the result that the respondent continued his studies for the M.D. degree in Physiology, uninterrupted. He submitted his thesis, which was approved by the University authorities.

6. The respondent was due to appear for the M.D. examination which was scheduled to be held in December 1976 but, he was refused an admission card without which he could not appear for the examination. Undaunted, he filed a suit in which the trial court passed an interim order directing the University authorities not to obstruct the petitioner from appearing from the examination. The respondent appeared for the written examination but, as if not to be outdone, the University filed an appeal against the interim order which came to be allowed. As a consequence of the appellate order, the appearance of the respondent at the written examination of 1976 became abortive since, it was as if he appeared for the examination without an admission card. Inevitably, he was driven to wait until the next examination which was due to be held in July 1977. He appeared for the examination but, apprehending that the University will not declare his result, he amended his writ petition so as to ask for a mandamus directing the University to declare his result. The High court issued the mandamus which is the subject-matter of this appeal.

7. The contention of the respondent that he was duly qualified to be admitted to the M.D. (Physiology) course has to be examined on the basis of paragraph (i) of the second proviso to clause (c) of Ordinance 1. That Ordinance, to the extent material, reads thus :

1. No candidate shall be eligible to appear at the examination for the degree of Doctor of Medicine or Master of Surgery unless :

(a) he has obtained the degree of MBBS of the University of Lucknow ...

(b) he has, after passing the MBBS examination, completed one year's compulsory rotating housemanship ...

(c) he has, after full registration, done one year's housemanship or equivalent job :

Provided that for basic science, one year's demonstratorship or equivalent job in the subject will be considered equivalent to one years housemanship :

Provided also that work in the following capacities will be considered as equivalent to one year's housemanship :

(i) Three year's work as Medical Officer in a hospital approved by the Medical Council for compulsory internship.

##(ii) * * *(iii) * * *##

(d) He has subsequent to 1(c) put in two years' work in the subject in the department concerned in the college.

##(e) * * *##

8. There is no dispute that the respondent satisfied the requirements of clauses (a) and (b) of

Ordinance 1. He had obtained the degree of MBBS of the University of Lucknow as required by clause (a) and, after passing that examination, he had completed one year's compulsory rotating housemanship as required by clause (b). The narrow dispute between the parties is whether, after full registration, the respondent had done one year's housemanship or equivalent job on the material date. Under paragraph (i) of the second proviso to clause (c) of the Ordinance, three years' work as a Medical Officer in a hospital approved by the Medical Council for compulsory internship, can be considered as equivalent to one year's housemanship. The respondent passed his MBBS examination in July 1971 and after completing one year's compulsory rotating housemanship, he obtained full registration with the State Medical Council. In August 1972, he started working as a Medical Officer in the Civil Hospital, Lucknow, which is approved by the Medical Council for compulsory internship. He had not done one year's housemanship after full registration but, by virtue of paragraph (i) of the second proviso to clause (c) of the Ordinance, three years' work as a Medical Officer in the Civil Hospital at Lucknow would be equivalent to one year's housemanship.

9. When the respondent appeared for the M.D. examination in July 1977, he had evidently completed three years' work as a Medical Officer in the Civil Hospital, Lucknow, which as stated earlier, is approved by the Medical Council for compulsory internship. According to the Principal of the Lucknow Medical College, the impediment in the way of the respondent was that on the date on which he applied for admission to the M.D. course, that is to say, in October 1974, he had not completed three years' work as a Medical Officer in the Civil Hospital, having started working in that capacity in August 1972 only. Thus, the question which arises for consideration is whether the qualification prescribed by paragraph (i) of the second proviso to clause (c) of Ordinance 1 is required to be fulfilled by the candidate on the date on which he applies for admission to the M.D. course of studies or whether, as contended by the respondent, it is enough if that qualification is fulfilled on the date of the examination.

10. Ordinance 1 begins with the words : "No candidate shall be eligible to appear at the examination for the degree of Doctor of Medicine or Master of Surgery, unless ..." The respondent derives sustenance to his contention from the words which we have underlined. It is argued on his behalf that Ordinance 1 prescribed conditions of eligibility for appearing at the examination and not for making an application for admission to the M.D. course of studies. Therefore, the material date for determining whether the conditions of eligibility are fulfilled is the date of examination and not the date of application. This contention is difficult to accept. Clauses (a) to (e) of Ordinance 1 are parts of an integrated scheme and therefore it will be wrong to apply different criteria to the interpretation of those clauses. Clause (a) of the Ordinance requires that the candidate "has obtained" the degree of MBBS. It is inarguable that a candidate who has not yet obtained the MBBS degree can apply for admission to the M.D. course of studies in anticipation of or on the supposition that he will pass that examination before the M.D. examination is held. He must hold the MBBS degree on the date on which he applies for admission to the course of studies leading to the M.D. examination. Clause (b) requires that the candidate "has... completed" : one year's compulsory rotating housemanship after passing the MBBS examination. As in the case of clause (a), this qualification must also be possessed by the candidate on the date on which he applies for admission to the M.D. course of studies. It is not enough that the candidate has completed one year's compulsory rotating housemanship after making the application and before the date of the examination. The language of clause (c) is, in material respects, identical with the language of clause (a) and (b). Leaving aside for a moment the equivalence prescribed by paragraph (i) of the second proviso to clause (c) of the Ordinance, the substantive provision of clause (c) requires that the candidate "has, after full registration, done one year's housemanship or equivalent job". There is no justification for applying to the interpretation of this clause a different test than the one which has to be applied to the

interpretation of clauses (a) and (b). Neither the language of clause (c) nor the requirement of justice and fairplay warrants such a course. Therefore, the condition prescribed by clause (c) must also be shown to have been fulfilled by the candidate on the date on which he applies for admission to the M.D. course of studies and not later. Clause (d) of the Ordinance points in the same direction. It requires that subsequent to obtaining the qualification prescribed by clause 1(c), the candidate "has.. put in two years' work in the subject in the department concerned in the college." The verbs used in clauses (a) to (d) are : "has obtained", "has completed", "has done" and "has put in" respectively,. Giving to those words their natural meaning, we are of the view that the requirement of every one of these clauses has to be fulfilled by the candidate on the date on which he applies for admission to the M.D. or M.S. course of studies. It is not sufficient that he fulfills the requirements of these clauses on the date of the examination.

11. As a result of the interpretation which we have placed upon clause (c) of Ordinance 1, the writ petition filed by the respondent in the Allahabad High Court is liable to be dismissed. But, in view of the circumstances which we will immediately mention, it would be unjust to deny the relief sought by the respondent. We have already mentioned that after appearing for the July 1977 examination, the respondent amended his writ petition and asked for a writ of mandamus directing the University to declare his result. The respondent made a specific averment in the amended writ petition that two candidates, Dr. (Miss) Rashmi Saxena and Dr. (Mrs.) Ratna Prabha Gupta, were admitted by the University to the same course of post - graduate studies, even though they did not possess the requisite qualification on the date on which they applied for admission. Learned counsel who appeared for the Principal of the Medical College in the High Court, produced the necessary papers before it relating to the admission of the two candidates. The High Court has observed in its judgment that the papers relating to Dr. (Miss) Saxena show that she had passed the four-and-half-year course of MBBS examination in December 1972, that she completed the pre-registration one year compulsory housemanship on January 11, 1974 that she did the post-registration housemanship from January 18, 1974 to August 8, 1974 and that on May 9, 1974 she joined as a demonstrator in Physiology. she applied for admission to the M.D. (Physiology) course on October 18, 1974. That application was accepted on December 30, 1974. As held by the High court, it is clear from these dates that on the date on which Dr. (Miss) Saxena applied for admission to the M.D. course, she had completed a period of 9 months only in her house - job as a Demonstrator, whereas she ought to have completed one year as prescribed by clause (c). In fact, the requisite period of one year was not completed even on December 30, 1974 when her application for admission was accepted by the University. She had sought admission to the course which was to commence on January 1, 1975 but she had started her post-registration housemanship on January 18, 1974. Thus, she had not completed the requisite period of one year's housemanship even on the date on which the course commenced.

12. The papers relating to the admission of Dr. (Mrs.) Ratna Prabha Gupta to the course of studies in M.D. (Physiology), disclose the same state of affairs. Though she was not qualified under the first proviso to clause (c), she was admitted to the course by the University. It has to be borne in mind that the University granted this concession though, under clause (c), no power is conferred upon it to relax the requirement of the period of one year which is permissible under the third proviso to clause (d).

13. We agree with the High Court that the papers relating to the admission of Dr. (Miss) Saxena and Dr. (Mrs.) Gupta show that the requirement of clause (c) was not invariably insisted upon by the University or by the college. They did not regard that requirement as mandatory. We consider it unfair that the respondent should be picked up for a differential treatment, though situated similarly

in the matter of the application of clause (c). If the requirement of clause (c) could be relaxed in the case of the other two candidates in regard to their admission to the M.D. course of studies, it would not be permissible to the University to regard that requirement as mandatory in the case of the respondent when he applied for admission to the very same course of studies. Clause (c) does not apply differently to men and women.

14. There is no substance in the contention of the University or of the Principal of the Medical College that the University authorities committed an error in the case of the two women -candidates. Neither the University nor the Principal of the Medical College filed any counter-affidavit to the amended writ petition, with the result that the averments made by the respondent in regard to the relaxation made in favour of those two candidates remained uncontroverted. It is therefore not open to the University authorities to contend that the relaxation in favour of the two candidates was inadvertent or that it was made under a misconception.

15. In all future cases the interpretation put by us on Ordinance 1 must hold good. In so far as the case of the respondent is concerned, his writ petition succeeds on the ground that the University and the College authorities must apply the same yard-stick all the students who apply for admission to the post-graduate course of studies.

16. Whether the rules contained in the Ordinance governing admission to the post-graduate course of studies are mandatory or directory is a matter which the University shall have to consider after taking all relevant factors into account like the nature of the requirement, its purpose and the consequences of its relaxation on educational excellence. We have not gone into that question because, no contention in that behalf was made either before us or in the High Court. One thing, however, must be made clear that if the University considers that any provision is not mandatory, its relaxation in particular cases has to be governed by objective considerations. No public authority, least of all a University which is entrusted with the future of the student community, can pick and choose persons for receiving the benefit of relaxation of the rules. In the first place, the rigour of a rule can be relaxed provide such relaxation is permissible under the rules or if the rule is directory and not mandatory. Secondly, even if it is permissible to relax a rule, such relaxation, as stated above, must be governed by defined guidelines.

17. For these reasons, we confirm the judgment of the High Court and dismiss the appeal with costs in favour of the respondent Dr. Vishan Kumar Agarwal.

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