

Abhijit

Vs

Dean, Government Medical College, Aurangabad and Another

Civil Appeal No. 1159 of 1987

(K. N. Singh, O. Chinnappa Reddy JJ)

01.05.1987

JUDGMENT

CHINNAPPA REDDY, J. -

1. Special leave granted.

2. The appellant who secured the first rank in order of merit in the III MBBS examination of the Marathwada University in May 1985 and who also stood first in Surgery and ENT/Ophthalmology, sought admission to the MS degree course commencing in July 1986. Though the selection to the MS degree course was on the basis of the merit the appellant was not selected as a deduction of 5 per cent was made from the marks obtained by him on the ground that he had passed the subject in his second attempt. The basis from holding that the appellant had passed in the second attempt was that in the III MBBS final term, the appellant suffered from infectious hepatitis and was, therefore, unable to attend classes and clinics. He applied to the Dean to 'cancel third MBBS final term' and to permit him to attend classes and clinics regularly with the next batch. This was done and he passed the III MBBS examination, as already stated, creditably by securing the first rank. It is not disputed that the appellant was seriously ill and was hospitalised and that he was unable to attend classes and clinics. It is also not disputed that he did not even submit his application form for the III year MBBS examination in 1984. It is also not disputed that he appeared for the III MBBS examination at the first opportunity that was available to him yet a deduction of 5 percent was made from the marks obtained by him on the ground that he passed the III MBBS examination in the second attempt. There appears to be no justification for holding that the appellant passed the III MBBS examination in the second attempt.

3. On behalf of the respondent, it was submitted that though the rules relating to admission to the post-graduate course did not define what a second attempt was the rules for appointment of Residents under the III year Residency programme at the Government Medical Colleges defined what was a second attempt and since those admitted to the MS degree course were necessarily to be appointed to Residencies the rule applicable to Residencies were made applicable to those seeking admission to the MS degree course. In the first place, we do not see how the rule relating to appointment to Residencies could be made to regulate admission to the MS degree course. In the second place, we do not think that even the rule on which the respondents rely justifies the deduction of 5 per cent marks. A note under Rule IV. 5(e) of the Rules relating to appointment to Residencies is to the following effect :

For the purpose of the reductions, non-appearance at any examination when due, is deemed as an attempt at the said examination.

We may at once say that the appellant was not 'due' to appear at the examination as he had not put in the necessary attendance of the classes and clinics and had not even submitted his application form for the examination. We are also of the view that if the rule has the effect of treating failure to appear at the examination because of serious illness as non-appearance at the examination so as to make the candidate liable to a deduction of 5 per cent of marks when seeking admission to a post-graduate course the rule is indeed arbitrary.

4. In the circumstances, we think that there was no justification for making the deduction of 5 percent of marks. The appellant was entitled to have been admitted to the post-graduate course in which he sought admission in July 1986. Since that has not been done, the respondents are now directed to admit him in the course, commencing in July 1987. The appeal is allowed accordingly with costs. In view of what we have said no orders are necessary in the writ petition.

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