

State of M.P. and Others

Vs

Dr. (Mrs.) Sumedha Gajendragadkar

Civil Appeal No. 4262 of 1992

(L. M. Sharma, S. Mohan, S. P. Bharucha JJ)

16.12.1992

JUDGEMENT

SHARMA, J.:-

1. Special leave is granted.

2. This appeal by the State of Madhya Pradesh arises out of a writ petition filed by the respondent No. 1, a medical graduate, for a direction to the petitioners to make an appointment of a Reader in Ophthalmology against an existing vacancy and admit the writ petitioner in a consequent vacancy arising in the post graduate degree course. By the impugned judgment the High Court has allowed the prayer for admission after observing that the appellants ought not to have kept a post of Reader vacant.

3. According to the Rules, the number of post graduate students is dependent upon the number of Professors and Readers possessing requisite qualification for teaching in the post-graduate degree course. The State has, however, taken a decision to freeze the strength of such teachers and consequently although the respondent is eligible for studying the P.G. course, she has been refused admission on the ground that no qualified professor or Reader is available for the purpose.

4. Earlier another student similarly seeking admission had moved the High Court against the decision of the State to freeze the strength of the teachers which was dismissed by the High Court. The respondent No. 1, thereafter directly moved this Court under Art. 32 of the Constitution for similar relief, stating that in view of the judgment of the High Court in the earlier case it was futile for her to go to the High Court. This Court did not agree with the stand of the respondent No. 1 and dismissed the writ petition with the observation that she, if so advised, could move the High Court. She, then made an application under Art. 226 of the Constitution, which has been allowed by the judgment under challenge.

5. We have heard the learned counsel for the parties. In our view the High Court was in serious error in issuing a writ to the appellants for making an appointment of Additional Reader on the ground that earlier such a post existed. The State unsuccessfully attempted before the High Court to justify its stand of freezing the strength of the teachers. We do not consider it necessary to go into the merits of the reasons offered by the appellants as in our view it is a matter of policy for the State to take a decision in this regard. The High Court is not justified in making the observations to the contrary merely because an additional seat for post-graduate studies shall become available thereby.

The learned counsel for the respondent could not suggest any reason in support of the observations of the High Court.

6. The learned counsel for the respondent, however, contended that even if no further appointment of a Reader is made, the respondent could be adjusted against a vacancy which is already in existence. Reliance was placed upon the assertion made in her Rejoinder filed before the High Court by way of a reply to the appellants' Counter Affidavit. This assertion of a vacancy where the respondent could have been adjusted, was denied by the appellants in their Supplementary reply. In their earlier Counter Affidavit also the actual position, as it existed, was explained. The respondent's assertion in the Rejoinder is in general terms and does not appear to be correct. We are, therefore, not inclined to agree with her that a vacancy actually existed or exists in which she can be adjusted.

7. The learned counsel for the respondent lastly contended that the respondent has already undergone one and half years of training while doing the Diploma course and since the nature of the training is similar to that for the P.G. degree course, a compassionate view should be taken in her favour. The learned counsel for the appellants, on the other hand, pointed out that the respondent had availed of the alternative of doing the Diploma course during the pendency of this case in the High Court, which she completed successfully after undergoing the aforesaid training. She has, thus taken full advantage of her training. After examining the relevant circumstances, we do not find any merit in any of the arguments of the respondent. Accordingly this appeal is allowed, the impugned judgment is set aside and the respondent's writ petition in the High Court is dismissed. There will be no order as to costs. Appeal allowed.

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