Dr. Preet Kanwal Singh and Another Vs State of Punjab and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Feb. 10, 2000

Acts Referred: Constitution of India, 1950 â€" Article 226

Citation: AIR 2000 P&H 156 : (2000) 126 PLR 166 : (2000) 2 RCR(Civil) 270

Hon'ble Judges: Swatanter Kumar, J

Bench: Single Bench

Advocate: Deepak Sibal, for the Appellant; A.S. Grewal, DAG, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Swatanter Kumar, J.
Dr. Preet Kanwal Singh and Dr. Pradeep Mahajan have filed this petition under Articles 226/227 of the constitution

of India praying for issuance of an appropriate writ, order or direction directing the respondents to pay stipend to both the petitioners for complete

period of three years, when they were undergoing the courses of their respective specialties at the institutions alloated to them, by the respondents

for that purpose.

2. Petitioner No. 1 passed his B. D. S. course in June, 1993 and applied for the post of House Surgeon in Dentistry Department of P. G. I.

Chandigarh. He claims that he stood first in the examination and was accordingly selected to work as House Surgeon where he worked till

December, 1994 in that capacity. Similary, petitioner No. 2 completed his B. D. S. examination in 1994 and worked as Demonstrator in Christain

Medical College, Ludhiana.

3. Punjabi University, Patiala, conducted an entrance test for admission to post-graduate courses in dentistry commencing from the academic year

1995-96. Both the petitioners were eligible to appear in the entrance test for 40% seats belonging to non-PCMS group. The entrance test result

was declared and petitioner No. 1 secured 7th position. While petitioner No.2 secured 9th position in merit. In terms of Clause 1.5 of the

prospects the allocation of college and subject was to depend upon the merit of the candidate. 11 seats were to be filled up under the 40 %

category of the total seats to which the petitioners belonged.

4. Petitioner No. 1 had given his preference for oral surgery whereas petitioner No. 2 gave his preference to operative dentistry. However, the

petitioners were informed that no such seats were available and, therefore, they could opt for some other speciality. Petitioners, thus, opted for M.

D. S. in Periodontia. The respondents had declared that only 9 seats will be filled up due to nonavailability of the concerned teachers in the

respective specialities.

5. The petitioners had joined their respective courses but later on after the interview the petitioners came to know that not only the two remaining

seats in the higher, specialties were filled up, but even seats were increased from 11 to 14. In other words, five seats had become available and

they were being offered to the candidates who were lower in merit to the petitioners. Dr. Mahijeet Puri, who was son of former principal of

Government Dental Medical College. Patiala and was at Sr. No. 11 was being favoured to give the seat of the specialty requested for by the

petitioners. Thus, petitioner No. 1 was complied to file a writ petition in this Court being Civil Writ Petition No. 8517 of 1996. This writ petition

was disposed of by the Court vide its order dated 26-3-1998 granting the following relief to the petitioners :--

The learned counsel for the University State, newly added private respondents and the interveners have not been able to dispute that the

petitioners ranked higher in merit In the Entrance Test and as per conditions prescribed, it will be worthwhile to mention here that there were in all

11 seats out of which only nine were filled and two remained vacant. The two seats could not be filled up as the teaching staff was not available

and now since the teaching staff has been made available, the number of seats has risen from 11 to 14. The petitioners could not give their option

at the time of their earlier admission for newly created seats as the seats were then not available for want of teaching staff. The specialty in which

two seats have now been made available is in high command and popular. In this view of the matter, it is ordered that all the seats which have now

become available he filled up as per merit of the candidates in the entrance test.

As already mentioned in the earlier part of judgment, the petitioners have already been interviewed per this Court''s order dated June 4, 1996.

Their result be declared along with other candidates per their merit.

This writ petition is disposed of in the above terms. Copy of the order be given to the parties Dasti on payment of requisite fee.

6. In furtherance to the order of the High Court the petitioners were offered admission in August, 1996. Petitioner No. 1 was admitted to oral

surgery, while petitioner No. 2 was admitted to operative dentistry. In terms of Clause 1.8 of the prospectus the petitioners were to get stipend for

the entire period of three years but they were not paid any stipend from December, 1998. Due demand was raised by the petitioners for payment

of the said amount and they also made a reference to the judgment of this Court in C. W. P. No. 16289 of 1997, Dr. Kishan Dev v. State of

Punjab, but of no avail, compelling the petitioners to file the present petition.

7. Upon notice the respondents filed a reply. The basic facts are hardly in dispute. It is not disputed that some seats had become available after the

petitioners were interviewed and secondly the seats given to the petitioners after the judgment of the Court was considered to be shifting of courses

by the petitioners of change of specialty by them. It is the case of the respondents that though later five seats became available in the faculties

because of promotion/transfer of the members of the staff, but as the petitioners had changed the specialty which they had already joined for more

than six months, there was no obligation upon the respondents to give them stipend in excess of three years in toto. As the petitioners had already

received stipend nearly for seven months, they were not entitled to get any stipend for the later 6-7 months of their course, which they were

undertaking now.

8. It is also stated that the petitioners had filed affidavits at the time of their admission into the second courses stating that they would not claim any

benfit for the studies of the previous specialty. As such according to them petitioners are estopped from claiming the stipend.

9. The first and the foremost question that falls for determination before the Court is whether any fault is attributable to the petitioners for joining the

course in other specialties than the ones in which they wanted to join. The order dated 26-3-1998 referred above settles the things beyond

questionable limit. The respondents had specifically stated that there were 11 seats and it was so declared in the brochure. What has been

declared in the brochure is binding on the authorities as well as the applicants applying in furtherance to such notifications. At the time of selection

seats were reduced and the petitioners were forced to take up some other specialty in dentistry than the one which they would have got if the

prescribed number of seats were filled up in order of merit. The judgment is self-explanatory and needs no further reasoning. The respondents

subsequently increased the seats and according to the petitioners it was done with a specific intention to benefit particular candidates who were

lower in merit than the petitioners. Adopting the reasoning given in the judgment of the Court dated 26-3-1998 and in view of the additional facts

given I have no hesitation in coming to the conclusion that the petitioners were not at fault and had joined the courses obviously for reduction of

declared seats by the respondents at best for their mismanagement.

10. The learned counsel for the respondents has heavily relied upon the affidavits given by the petitioners while joining the changed courses in the

specialties of their respective choices in the year 1996. In order to Judge the merits of this contention reference to the affidavit filed by the

petitioners on 7-8-1996 would be relevant. The affidavit of petitioner No. 2 reads as under :--

Affidavit

I, Pradeep Mahajan S/o Sh. P. K. Mahajan resident of Dehatsudhar Mills, Sarna do hereby solemnly affirm and declare as under :-

1. That I, was admitted to the MDS course session 1995 in the specialist of Periodontology at Amritsar, which I joined on 1-12-1995.

2. That now on my own free will and option. I have opted to get admission to the MDS course session 1995 in the specialty of conservative at Pb.

Govt. Dental College and Hospital Amritsar.

3. That I will complete the prescribed three years duration of courses and curriculum of MDS Course in the specialty of Conservative with effect

from of my joining the changed specialty, before I am allowed to appear in the relevant University Examination.

4. That I will not claim any benefit whatsoever of having studied in the MDS course of my previous specialty.

5. That I will complete all the requirements and fulfil all the conditions for the MDS examination laid down by the concerned authorities.

6. That I will not claim any scholarship/ stipend beyond a total period of 36 months from my date of joining the MDS course in my previous

speciality i.e. Periodontology.

Sd/- Pradeep Mahajan

Deponent.

Verification :

Verified that the contents of the above said affidavit are true and correct to the best of my knowledge and belief and nothing has been concealed

therein.

Sd/- Pradeep Mahajan.

Deponent.

Place : Amritsar.

Dated : 7-8-1996.

11. Emphasis was placed on Clauses (4) and (6) of the affidavit which said that the deponent would not claim any benefit of the previous studies in

the MDS course nor would they claim stipend beyond a total period of 36 months from the date of Joining the MDS course, for studies rendered

in the previous course. These affidavits were signed and sworn by the deponents at the time when they were granted admission to the subsequent

courses which the petitioners wanted to pursue as their first choice. Learned counsel for the petitioner has contended that the affidavits were the

result of coercion to which the petitioners were subjected to by the respondents and but for submission of the affidavits the petitioners could not

have been given the seats in better specialty. As such they had no choice, and the affidavits, to say the least, are not voluntary.

12. The Hon''ble Supreme Court of India in the case of AIR India Vs. Nergesh Meerza and Others, , while considering the effect of even a

settlement upon the rights of the employees of Air India found contention on behalf of the management that the employees were estopped from

challenging the correctness of the settlement having taken benefit thereunder and were estopped from raising any contrary pleas as no assistance to

the management. The Court held as under (Para 76 of AIR) :-

In view of the authorities indicated above assuming that the two awards are binding on the petitioners, the serious question for consideration is

whether the agreement, which may be binding on the parties, would estop them from challenging the Regulations on the ground that the same are

void as being violative of Article 14 or 19 of the Constitution. It is well settled that there can be no estoppel against a statute much less against

constitutional provisions. If therefore, we hold in agreement with the argument of the petitioners that the provisions for termination and retirement

are violative of Article 14 as being unreasonable and arbitrary, the Awards or the agreements confirmed by the Awards would be of no assistance

to the Coroporations.

Still in another case titled Olga Tellis and Others Vs. Bombay Municipal Corporation and Others, , the Court held as under (Para 28) :--

There can be no estoppel against the Constitution. The Constitution is not only the paramount law of the land but, it is the source and substance of

all laws. Its provisions are conceived in public interest and are intended to serve a public purpose. The doctrine of estoppel is based on the

principle that consistency in word and action imparts certainty and honesty to human affairs. This principle can have no application to

representations made regarding the assertion or enforcement of fundamental rights. No individual can barter away the freedoms conferred upon

him by the Constitution. A concession made by him in a proceeding, whether under a mistake of law or otherwise, that he does not possess or will

not enforce any particular fundamental right, cannot create an estoppel against him in that or any subsequent proceeding. Such a concession, if

enforced, would defeat the purpose of the Constitution. Were the argument of estoppal valid an all-powerful State could easily tempt an Individual

to forgo his precious personal freedoms on promise of transitory, immediate benefits.

13. It is not in dispute that the petitioners actually worked in the hospital while pursuing their courses under the earlier specialty when they had

received stipend. Stipend has to be given for pursuing the course but inevitably it includes working in the hospital. It is a matter of common

knowledge that post graduate studies in medicines are not mere academic courses but the doctors pursuing their post graduations in different

specialties work as junior residents or in any case they render services to the patients. The courses are patient oriented and require the said

doctors to discharge their duties and obligations vis a vis their patients on day to day basis,

14. One these petitioners have functioned in the hospital and persued their courses they can hardly be blamed for changing their course which they

were entitled to in view of their high merit. They were forced to take specialties other than of their choice for no fault of their own, but for the

confusion created by the department itself. The department cannot be permitted to wriggle out of its own creation and that too to the disadvantage

of the petitioners. Their compulsion in submitting the affidavits to the authorities concerned at the nick of time for admissions apparently clear from

the attendant circumstances of the case and to permit such documents to be construed as a"" bar to their bona fide claim which they were entitled to

even as per the rules, would be unfortunate.

15. The purpose of the clause in the affidavit must be construed while keeping its object in mind. A candidate normally would be entitled to receive

stipend for the period of three years for which he has to pursue the course. This indicates that if a candidate is unable to clear his examinations or is

unable to clear his master''s degree in the prescribed period of the course, he would not be able to claim stipend beyond the period of three years.

That appears to be the true spirit behind the clause contained in the affidavit which was filed by the petitioners and even subsequently. Addition of

Clause 6 primarily intended to exercise an unfair advantage over the petitioners who were left with no choice. If they had to pursue their courses of

a superior specialty, they had to sign the documents at the dictum of the respondents. The Hon''ble Supreme Court of India in the case of Shri

Krishnan Vs. The Kurukshetra University, Kurukshetra, held as under (Para 9) :--

But as the respondent was bent on prohibiting him from taking the examination he had no alternative but to writ a letter per force. It is well settled

that any admission made in ignorance of legal rights or under duress cannot bind the maker of the admission. In these circumstances we are clearly

of the opinion that the letter written by the appellant does not put him out of Court, if only the University authorities would have exercised proper

diligence and care by scrutinising the admission from when it was sent by the Head of the Department to the University as far back as December,

1971 they could have detected the defects or infirmities from which the form suffered according to the University Statute."" .

16. Fairness in State action is a condition precedent to healthy State administration and to achieve the ultimate goal of public good. It is nobody''s

case that the petitioners could not have got the seats in the specialties in which they have been subsequently allotted the seats in order of their own

merit. Merit being the sole key to the allotment of seats, the Court fails to see any reason for depriving the petitioners of the seats in the specialties

in which they could have got otherwise, but for some confusion created by the respondents contrary to their own brochure. The respondents

(petitioners) would be entitled to stipend for the complete course of their subsequent specialties i.e. three years despite the fact that they had

received the stipend for some months while, pursuing their course under the earlier specialty.

17. For the reasons aforestated, this petition is accepted to the limited extent that respondents shall pay to both of the petitioners stipend for the

period in question in the light of the above observations. However, there shall be no order as to costs.