Pre-PG Medical Sangharsh Committee And Another
Vs
Dr Bajrang Soni

CASE NUMBER

Civil Appeals Nos. 7256 to 7264 of 1999

EQUIVALENT CITATION

2001-(008)-SCC-0694-SC
2001-AIR-SCW-3020-SC
2001-(005)-SCALE-0205-SC
2001-AIR-2743-SC
2001-(SU1)-SCR-0506-SC
2001-(006)-JT-0466-SC
2001-(006)-SUPREME-0130-SC
2001-(005)-SLT-0822-SC
2001-(003)-SCJ-0541-SC
2001-(008)-SRJ-0159-SC
2001-(003)-SLR-0716-SC

CORAM

Doraiswamy Raju
S Rajendra Babu

DATE OF JUDGMENT

14.08.2001

JUDGMENT

RAJU, J.-

These appeals involve a challenge to the powers as well as the right of the State Government to provide for reservation of seats for admission to postgraduate medical courses for in-service candidates and the reasonableness or otherwise of the extent up to which such reservations could be made. Before the learned Single Judge, challenge was made to the decision of the Government/university fixing 33% to be the qualifying marks for in-service candidates to render

them eligible for admission to the postgraduate courses. The second ground of challenge was to the decision of the Government to increase the reservation of seats for admission into postgraduate courses for in-service candidates from 25% to 50% out of the remaining 75% of the seats after excluding 25% of the seats reserved for central quota.

The learned Single Judge by his order dated 22-2-1998 repelled the challenge based on the first ground and held that the State, which is authorized to regulate the admissions to postgraduate courses of Medicine by prescribing minimum qualifying marks in the entrance examination therefor, is entitled, as in this case, to fix a minimum of 33% for the in-service candidates, and that this could not be said to be illegal. So far as the second ground of challenge was concerned, it met with the acceptance of the learned Single Judge, who came to the conclusion that there was no justification made by placing materials on record for directing such an increase in the matter of reservation from 25% to 50% and the same was liable to be set aside as excessive, while maintaining, at the same time, the earlier prescribed reservation up to 25%.

Aggrieved, the State of Rajasthan as well as some of the in-service candidates filed appeals before a Division Bench and the Division Bench by its judgment dated 13-7-1999, set aside the order of the learned Single Judge insofar as he interfered with the increase in the percentage of reservation made for in-service candidates from 25% to 50% on the ground that not only the State had such powers to prescribe on such matters as a matter of policy, but the learned Single Judge, who sustained such powers to inhere in the State, could not have interfered with the policy decision of the State Government necessitating such increase from 25% to 50% for in-service candidates for admission to postgraduate courses in the medical colleges of the State, particularly when the policy decision was based on reasons which had nexus with the objects sought to be achieved. In the light of the above, the Division Bench thought it unnecessary to examine further whether the increase of seats from 25% to 50% for in-service candidates pertains to the area of reservation or fixing the source of admission. The appeals were accepted and allowed.

Hence, the above appeals by the petitioners before the learned Single Judge and others permitted to file appeal by this Court. Heard learned counsel on either side.

The very question was considered by this Court in a decision reported in State of T.N. v. T. Dhilipkumar ((1995) 5 Scale 208 (2) : (2001) 8 SCC at p. 700) and it was held as follows :

"4. Insofar as the additional mark awarded to in-service candidates serving in rural areas is concerned, the judgment of this Court in Dinesh Kumar (Dr.) (II) v. Motilal Nehru Medical College ((1986) 3 SCC 727 : (1986) 3 SCR 345) is the answer to the argument that in-service candidates serving in rural areas will, after acquisition of postgraduate degrees, return to rural areas. The observations in this behalf have been cited by the High Court and in our view, rightly.

* * *

6. In our view, the High Court was right in the view that it took, that no reservation beyond fifty per cent is ordinarily contemplated and this percentage is what the High Court allowed. In

striking down the additional mark for in-service candidates serving in rural areas, the High Court followed the decision of this Court."

In Ajay Kumar Singh v. State of Bihar ((1994) 4 SCC 401) this Court held that the Indian Medical Council Act, 1956 did not empower the Council to regulate or prescribe qualifications or conditions for admission to postgraduate courses and that regulation and admission to such medical courses is not only incidental but an integral part of the power of the States, which establish and maintain such institutions out of public funds and the State could always regulate the admission policy while adhering to the standards determined by the Medical Council. The learned Judges, who delved into the matter at length, also highlighted the vital fact that mere academic performance is no guarantee of efficiency in practice in the field of Medicine and consequently, it is wrong to presume that a doctor with good academic record is bound to prove a better doctor in practice. In yet another decision reported in K. Duraisamy v. State of T.N. ((2001) 2 SCC 538 : JT (2001) 2 SC 48) though rendered in the context of working out the reservations and the manner stipulated therefor, by the Government, the very question about the power of the Government also came up for consideration and one of us (Raju, J.), speaking for the Bench, while applying the earlier decision in Dhilipkumar ((1995) 5 Scale 208 (2) : (2001) 8 SCC at p. 700) observed as follows : (SCC p. 545, paras 8-9)

"8. That the Government possesses the right and authority to decide from what sources the admissions in educational institutions or to particular disciplines and courses therein have to be made and that too in what proportion, is well established and by now a proposition well settled, too. It has been the consistent and authoritatively settled view of this Court that at the superspeciality level, in particular, and even at the postgraduate level reservations of the kind known as 'protective discrimination' in favour of those considered to be backward should be avoided as being not permissible. Reservation, even if it be claimed to be so in this case, for and in favour of the in-service candidates, cannot be equated or treated on par with communal reservations envisaged under Articles 15(4) or 16(4) and extended the special mechanics of their implementation to ensure such reservations to be the minimum by not counting those selected in open competition on the basis of their own merit as against the quota reserved on communal considerations.

9. Properly speaking, in these cases, we are concerned with the allocation of seats for admission in the form of a quota amongst in-service candidates, on the one hand, and non-service or private candidates on the other and the method or manner of working out in practice the allocation of seats among the members of the respective category. Could the State Government have legitimately made a provision allocating 50% of seats exclusively in favour of the in-service candidates and keep open the avenue for competition for them in respect of the remaining 50% along with others, denying a fair contest in relation to a substantial or sizeable number of other candidates, who are not in service and who fall under the category of non-service candidates, will itself be open to serious doubt. One such attempt seems to have been put in issue before the Madras High Court which held that reservation in favour of the in-service candidates for the

academic year 1992-93 should be confined to 50% and awarding of two additional marks, instead of one additional mark for each completed year of service in primary health centres was unconstitutional and when the matter was brought to this Court, in the decision reported in State of T.N. v. T. Dhilipkumar ((1995) 5 Scale 208 (2) : (2001) 8 SCC at p. 700) the decision of the High Court has been upheld. This Court also further observed that the Government should appoint a highly qualified committee to determine from year to year what, in fact, should be the percentage-wise reservation required for the in-service candidates, having regard to the then prevailing situation and that the percentage of fifty per cent shall if found appropriate be reduced."

It is permissible for the Government to fix such a source or classification of candidates from which selection for admission to the postgraduate colleges in the State had to be made for yet another genuine, relevant and reasonable cause and purpose, which has, in our view, sufficient nexus with the larger goal of equalization of educational opportunities and to sufficiently prefer the doctors serving in the various hospitals run and maintained from out of public funds by the Government or government departments, in the absence of which there would be serious dearth of qualified postgraduate doctors and experts to meet the requirements of such hospitals run by the State and State departments, the only avenue open for treatment of the large body of the ordinary common man, all over the State. This larger public interest, unlike reservations envisaged for SC/ST with a different and laudable purpose to assist educationally backward classes, is a distinct and vitally important public purpose in itself absolutely necessitated in the best of public interest. The decision reported in Narayan Sharma (Dr.) v. Dr. Pankaj Kr. Lehkar ((2000) 1 SCC 44) is not directly on the point with which we are concerned in this case. Similarly, the observations made and dicta laid down in what is known as Mandal case reported in Indra Sawhney v. Union of India (1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385) also has no relevance or application to the case on hand.

The learned counsel for the appellants, who filed the appeals with the permission of the Court, also sought to challenge the conclusion arrived at by the learned Single Judge in repelling the challenge made to the reduction of the minimum cut-off marks for selection of the in-service candidates from 50% to 33%. Apart from the tenability of the objection taken by Shri Sushil Kumar Jain, learned counsel appearing for the respondent private candidates, that if there was no challenge made to this reasoning before the Division Bench of the High Court, it is not permissible to take such a stand in this Court. We are also of the view, on the merits of the claim itself, that there is no substance in the same. It is not in controversy that during the academic years in question, there was no stipulation by the Medical Council of India of any minimum eligibility marks to be secured in the entrance examination for admission to postgraduate courses. Though it is said that in 2000 such a stipulation has been made, for the obvious reason that during the years under our consideration there is no such stipulation, the challenge in this regard does not merit our consideration or acceptance, leave alone the question as to the efficacy or binding nature of the said stipulation, which we do not propose to adjudicate upon in these cases. That apart, as rightly pointed out in one of the judgments of this Court noticed above, mere theoretical excellence or merit alone is no sufficient indicia of the qualitative merits of the candidates in the

field of actual practice and application. The doctors, who are in-service candidates in various medical institutions run and maintained by the Government or Government departments, have wide area and horizon of exposure on the practical side and they may not have the required extra time to keep themselves afresh on the theoretical side like an open candidate who may have sufficient time at his disposal to plod through books. The in-service candidates in contrast to the fresh or open candidates have to spend much of their time on attending and treating the patients in the hospitals they serve gaining excellence on the practical side and, in our view, they would constitute a distinct class by themselves to be given a special treatment and no grievance can be made out on the ground that the minimum eligibility marks for their selection in respect of seats earmarked for them should also be the same as that of the fresh or open candidates. We could see no discrimination or arbitrariness involved in the special provision made to meet a just and appropriate need in public interest.

For all the reasons stated above, these appeals fail and shall stand dismissed. No costs.