

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.3362 of 2016
and
W.M.P.No.2756 of 2016

Dr.Alok Pandey

... Petitioner

Vs.

1. The Mahatma Gandhi Post Gradutate
Institute of Dental Sciences (MGPGI),
rep. by Chief Secretary to Government-cum-Chairman,
Chief Secretariat,
Puducherry.
2. The Mahatma Gandhi Post Graduate
Institute of Dental Sciences (MGPGI),
Rep. by its Registrar,
Gorimedu,
Puducherry-605 006.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the respondents to permit the petitioner to write the Post Graduate Dental Entrance Examination PGDEE-2016 to be held on 31.01.2016 at 9.00 pm to 12.00 noon, without insisting to submit a residential proof issued by a competent authority.

For Petitioner : Mr.R.Jothimanian

For respondents : Mr.M.Govindaraj, GP (P)
assisted by Mr.A.Tamilvanan,
Government Advocate (P).

ORDER

This writ petition has been filed by the petitioner praying for issuance of a Writ of Mandamus, directing the respondents to permit the petitioner to write the Post Graduate Dental Entrance Examination PGDEE-2016 to be held on 31.01.2016 at 9.00 pm to 12.00 noon, without insisting to submit a residential proof issued by a competent authority.

2.In the affidavit filed in support of the writ petition, it has been averred by the petitioner as follows:-

2-1.The petitioner got the admission to the B.D.S. Course during September 2008, under the All India Quota. The petitioner completed B.D.S. course during October, 2013 and he got the B.D.S.Degree. The 2nd respondent has issued admission notification to the post graduate courses (MDS) on 14.12.2015. As per the said notification, the petitioner had applied for the PGDEE-2016 examination scheduled to be held on 31.01.2016 at 9.00 am to 12.00 noon.

2-2.Earlier, the 2nd respondent-Institution had issued a circular dated 27.05.2010 stating that B.D.S. student admitted under All India Quota in the 2nd respondent-institution might not be permitted to appear in the post graduate dental entrance examination conducted by the 2nd respondent-Institution and the same was challenged before this Court in W.P.No.18326 of 2010. The said circular was set aside by this Court, with a direction to the respondents-Institution to permit the students, who are all studied under the All India Quota, to appear for the post graduate dental entrance examination to be conducted by the 2nd respondent for admission to MDS course. As per the order of this Court, the 2nd respondent issued a notification along with information bulletin-2012 and All India Quota students like the petitioner were permitted to write the post graduate dental examination, which was conducted by the 2nd respondent.

2-3.While so, on 24.01.2016, the 2nd respondent issued eligible applicants list for PGDEE0-2016. But, the petitioner's name was not included in the said list, on the ground that he has not produced the residential certificate from the competent authority. But, it is stated by the petitioner that the petitioner was staying in the Hostel of the 2nd respondent-Institution for more than five years and this Court has also issued a direction to the respondents that persons studied under the All India Quota shall also be permitted to write the PGDEE examination for MDS Course. Therefore, according to the petitioner, he is eligible to write the PGDEE-2016 examination, as per the order of this Court dated 04.01.2011 in W.P.No.18326 of 2010. The action of the 2nd respondent is against the order of this Court 04.01.2011. Hence, the petitioner has come forward with the present writ petition before this Court.

3.When the matter came up on 29.01.2016, this Court has passed the following interim order_

"2.The learned counsel appearing for the petitioner would submit that there is an ensuing entrance

examination scheduled to be held on 31.01.2016.

3. In such view of the matter, without prejudice to the contention of the parties, a direction is issued to the respondents to permit the petitioner to write the entrance examination scheduled to be held on 31.01.2016. However, it is made clear that this order will not create any equity in favour of the petitioner and it is subject to the further orders to be passed. It is further made clear that the results of the petitioner shall not be published until further orders."

4. The respondents have filed a counter, inter alia, contending that it is incorrect to state that All India Quota Students were permitted as per Court Order for the academic year 2011-12. Thereafter, the seats were filled up purely by the Puducherry Domicile for 50% of the total sanctioned strength, after surrendering 50% of All India Quota. As such, in the Information Bulletin of PGDEE-2016, one of the criteria for getting PG Courses (MDS) admission should be an Indian National and domiciles/residents of Puducherry and the nativity/resident certificate issued by the Competent Authority should be furnished along with the application. Since the petitioner has not produced the required Residence Certificate, from the Competent Authority, he is not eligible to appear for PGDEE-2016 and as such, his name was not included in the eligibility list. The petitioner has not been given any permission to stay in the hostel and he left the institution on 16.10.2013. Moreover, he has registered his Registered Certificate in Bihar State Dental Council vide No.5262A, dated 09.09.2014. Further, in his application itself, he has stated his permanent address for communication as 'House No.3, Nutan Vihar, Sonari, Jambshedpur, Jharkhand-831 011'. Hence, the contention of the petitioner that he was deprived of being granted permission to appear in PGDEE-2016 by the respondent-Institution, does not arise as he is a resident of Jharkhand. Further, the direction given by this Court in W.P.No.18326/2010, dated 04.01.2011, was to permit the petitioner to appear in the PGDEE to be conducted by the respondent-Institution for the admission to MDS Course, for the academic year 2011-2012 only. Hence, he was permitted during that academic year. Thereafter, 50% of the seats remaining to the domicile were filled up purely by Pondicherry Domicile. It is further stated by the respondents that a resident of Puducherry is a person, who intends to reside permanently at Puducherry and not those come to Puducherry, on transfer or to study. A resident shall reside for five years continuously, on the date of making the application. Admittedly, the

petitioner who is a native of another State has gone back to his own State and registered at his own State Dental Council. Just because he happened to be at Puducherry for his education, it will not make him a resident as he had no intention to settle down. The benefits given to the residents of Puducherry cannot be taken away against the object. The respondents-Institution is already surrendering 50% of the sanctioned strength of PG Courses to All India Quota (DGHS, New Delhi), from the academic year 2005-2006. Thus, the respondents sought for dismissal of the writ petition.

5. Heard the learned counsel for the petitioner and the learned Government Advocate (Puducherry) appearing for the respondents.

6. As pointed out by the learned counsel for the petitioner, in a similar situation in the case of Vineet Kashyap and The Mahatma Ghandi Post Graduate Institute of Dental Sciences and another in W.P.No.18326 of 2010, by order dated 04.01.2011, the learned single Judge of this Court, by relying upon the decision of the Hon'ble Supreme Court in Saurabh Chaudri Vs. Union of India [2003 (11) SCC 146], has allowed the writ petition with a direction to the respondents to permit the petitioner therein to write the examination. The relevant portion from the decision of the learned Single Judge of this Court is extracted hereunder—

"24. Thus, it is well established by the writ petitioner that all along, the second respondent had not adopted reservation, on the basis of domicile, in the matter of admission to Postgraduate medical courses in the Union Territory and Pondicherry and only recently, the Board of Governors of the second respondent institution, in the meeting held on 25.08.2010, have taken a decision has been taken not to permit the students, earlier admitted to the Institution Under All India Quota, to appear in the examination conducted for admission against 50% seats other than reserved for all-India quota. In view of the above, the contention of the learned counsel for the respondents that on earlier occasions, preference has been given on the basis of domicile, is factually incorrect and not supported by materials.

25. The contention of the respondents that it is always open to the petitioner, to appear for the entrance examination as against the seats earmarked for All India Quota and that he cannot be permitted to compete against 50% seats, earmarked for the two categories viz., 1)

Puducherry domicile/residence and 2)NRI quota is unconstitutional, impermissible and against the law of the land.

26.In the light of the law laid down by the Hon'ble Supreme Court in the above referred cases, in the matter of admission to postgraduate courses reiterating that merit is the only criteria for admission to the abovesaid courses, de hors residence/domicile or region, the decision of the Board of Governors of the second respondent institution in the meeting held on 25.08.2009, prohibiting students admitted under All India Quota in the above said institution to appear for the entrance examination and the consequential impugned circular, are contrary to the law laid down by the Hon'ble Supreme Court, and violative of Article 14 of the Constitution of India. The impugned circular has no legal basis. As rightly contended by the learned Senior Counsel, there cannot be any answer to the judgments of the Hon'ble Supreme Court.

27.In view of the above, the impugned circular is set aside. Consequently, there shall be a direction to the respondents to permit the petitioner to appear in the Post Graduate Dental Entrance Examination to be conducted by the second respondent for admission to MDS Course for the academic year 2011-2012. The writ petition is allowed."

7.The dictum laid down in the above said judgment is squarely applicable to the present facts of the case also. Hence, by following the above said judgment, this Writ Petition is allowed as prayed for. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1. The Chief Secretary to Government-cum-Chairman,
Mahatma Gandhi Post Graduate
Institute of Dental Sciences (MGPGI),
Chief Secretariat, Puducherry.

2. The Registrar,
Mahatma Gandhi Post Graduate
Institute of Dental Sciences (MGPGI),
Gorimedu, Puducherry-605 006.

+1cc to Mr.R.Jothimanian, Advocate, S.R.No.16618
+1cc to the Government Pleader for Puducherry, S.R.No.16627

W.P.No.3362 of 2016
and
W.M.P.No.2756 of 2016

SCD(CO)
CA(18/03/2016)



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