

CWP No. 7016 of 2005

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 7016 of 2005

Date of Decision: 29.11.2006

Rajat Satija

...Petitioner

Versus

Maharishi Dayanand University, Rohtak and others

....Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA.

Present: Shri Puneet Gupta, Advocate, for the petitioner.

Shri P.L. Gupta, Advocate, for respondent No.1.

Shri Madan Gupta, Senior DAG, Haryana, for respondent No.2.

Shri Narinder Hooda, Advocate, for respondent No. 3 and 4.

JUDGMENT

In the present Writ Petition, the petitioner has claimed a writ of certiorari for quashing the action of respondents in admitting respondent Nos. 3 and 4 to Bachelor of Dental Surgery, 2nd year, at Government Dental College Rohtak, on migration, in preference to the petitioner.

The petitioner was admitted to BDS Course at Rama Dental College Hospital and Research Centre, Kanpur, in the year 2003. The said College is recognised by the Dental Council of India.

On 20.11.2004, the respondent-University inserted a public notice inviting applications for filling up two seats in BDS, 2nd Year at Government Dental College Rohtak, on the basis of migration of the students from the recognised institutions. The petitioner applied for migration as he was studying in a College recognised by the Dental Council of India and has qualified 1st Year. The petitioner has also furnished no

objection certificate from the parent institute. On the other hand, respondent Nos. 3 and 4 were also the applicants, but their application forms for migration were found deficient in certain aspects. On 6.12.2004, the Selection Committee constituted for consideration of BDS 2nd year migration found that except the petitioner none of the candidates could submit the proof of recognition of the respective institutes by the Dental Council of India. Even in respect of the petitioner, it was found that he was not medically examined prior to admission in BDS Course in Rama Dental College Hospital and Research Centre, Kanpur. Such medical examination is mandatory in terms of the condition of the Dental Council of India, therefore, even the petitioner was not allowed to be migrated. Consequently, it was decided to issue a fresh advertisement giving adequate time to all the eligible candidates to apply afresh for migration.

Subsequently, another advertisement was published on 10.12.2004 and in pursuance of such advertisement, the petitioner and respondent Nos. 3 and 4 and some other candidates applied for migration to BDS 2nd year course. The Selection Committee in its meeting held on 27.12.2004 found that certain candidates could not submit the proof of mandatory condition of migration to the Government Dental College Rohtak. The petitioner was not considered medically fit as he had not been attending the classes for the last two months due to medical problems. Therefore, the Committee recommended Sonu Kumari respondent No.3 and Namita respondent No. 4 for migration with the remark against the name of respondent No.4 to the effect that 'Principal of Government College Rohtak, has informed that the recognition of the College in which respondent No. 4 is studying, is at final stage with the Dental Council of

India and the formal approval letter by the Dental Council of India is likely to be issued shortly.'

In the written statement, it is the stand of the respondents that the names of respondent Nos. 3 and 4 have been approved for migration on the basis of merit and that the institute in which respondent No. 4 was studying has since been recognized for the grant of degree of Bachelor of Dental Surgery with effect from 5.10.2004, therefore, the migration of respondent Nos. 3 and 4 has been ordered to be effected in terms of the conditions of eligibility advertised. Respondent No. 1 has produced a notification dated 4.1.2005, a copy of which has been attached as Annexure R1/4 wherein the institute in which respondent No. 4 was studying has been recognised for grant of decree of Bachelor of Dental Surgery (when granted on or after 5.10.2004).

Learned counsel for the petitioner has vehemently argued that on 27.12.2004 when the Committee recommended respondent No. 4 for migration, the institute in which she was studying, was not recognised by the Dental Council of India, therefore, on the relevant dates i.e. the date of advertisement or on the last date of submission of the forms or on the date of consideration by the Selection Committee, the respondent No. 4 was not eligible who could be considered for migration to the 2nd year BDS Course at Government Dental College Rohtak.

On the other hand, Shri B.L. Gupta, learned counsel for the respondent-University has relied upon a judgment of the Hon'ble Supreme Court in **Dolly Chhanda Vs. Chairman, Jee and others, 2005(9) Supreme Court Cases 779**, to contend that in terms of the notification dated 4.1.2005, the institute in which respondent No. 4 was a student is a

recognised institute by the Dental Council of India. Mere fact that she could not submit proof of its recognition on the last date of submission of the application or on the date of consideration by the Selection Committee, would not be sufficient to return a finding that she was not eligible for migration. The notification dated 4.1.2005 is clear and categorical that the College in which respondent No.4 was studying, was recognised to grant the degree of Bachelor of Dental Surgery (when granted on or after 5.10.2004) by the Dental Council of India and therefore, keeping in view the said notification, it cannot be said that respondent No. 4 was not eligible for migration.

Though vide notification Annexure P.2, applications were invited from the interested students of the recognised institutes to submit their applications to apply for migration along with recognition proof of the Dental Council of India but the fact remains that the notification dated 4.1.2005 has the retrospective effect i.e. with effect from 5.10.2004. Keeping in view the said notification, respondent No. 4 would be deemed to be eligible for migration to the 2nd year, BDS Course. Since, the admission on migration has been made on the basis of merit, therefore, mere fact, that the notification was not published before the last date of submission of the application forms or on the date of consideration by the Selection Committee would not be sufficient to vitiate the migration. The admission granted to respondent No. 4 cannot be said to be patently suffering from lack of eligibility conditions for the reason that respondent No. 4 was not possessed of a physical copy of the recognition granted by the Dental Council of India.

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Therefore, I do not find any ground to interfere in the present writ petition. Hence, the same is dismissed with no orders as to costs.

29-11-2006
ds

(HEMANT GUPTA)
JUDGE