

## **Dr. Mrs. Sheela Ashok Patwardhan vs Dean, Dr. V.M. Medical College, ... on 24 November, 1988**

**Equivalent citations: 1989 AIR 382, 1988 SCR SUPL. (3) 959, AIR 1989 SUPREME COURT 382, 1989 (3) SCC 362, 1989 (1) UPLBEC 442, 1988 4 JT 513, (1988) 4 BOM CR 374, (1989) 1 UPLBEC 442, 1989 BOM LR 91 21**

**Author: M.M. Dutt**

**Bench: M.M. Dutt**

PETITIONER:

DR. MRS. SHEELA ASHOK PATWARDHAN

Vs.

RESPONDENT:

DEAN, DR. V.M. MEDICAL COLLEGE, SOLAPUR, & ORS.

DATE OF JUDGMENT 24/11/1988

BENCH:

DUTT, M.M. (J)

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DUTT, M.M. (J)

NATRAJAN, S. (J)

CITATION:

1989 AIR 382                      1988 SCR Supl. (3) 959

1989 SCC (3) 362              JT 1988 (4) 513

1988 SCALE (2) 1460

ACT:

Professional Colleges--Rules regulating appointment of Housemen and House-Surgeons at the hospitals attached to the Govt. Medical Colleges in State of Maharashtra--Rule X(2)--M.D. Course--Admission to Eligibility of M.B.B.S. graduate from A.P. State.

HEADNOTE:

Rule X(2) of the Rules regulating the appointments of Housemen and House-Surgeons at the hospitals attached to the Government Medical Colleges in the State of Maharashtra provides that the Government may sanction supernumerary posts to allow spouses of Government servants on transfer to undertake studies, if standing high in merit, from another

college.

The appellant married to a Government Medical Officer working in the State of Maharashtra after having passed M.B.B.S. examination and completing one year internship from a college situated in the State of Andhra Pradesh. On her application, the Government of Maharashtra in exercise of its power under rule X(2) created a Housepost in Obstetrics and Gynaecology w.e.f. July 15, 1986 specifically and categorically stating that the supernumerary Housepost was created to enable the appellant to complete her post-graduate studies at Dr. V.M. Medical College, Solapur, respondent No. 2. The appellant joined the Housepost and duly completed the same. However, she was refused admission in the M.D. Course by respondent No.2 inasmuch as she was not even issued an application form.

Being aggrieved, she filed a writ petition in the High Court challenging the legality of the action of the respondent refusing to admit her in the said post-graduate M.D. Course. The High Court dismissed the writ petition holding, inter alia, that no inference could be drawn that everybody who completed the house-job was entitled to get admission to the post-graduate course ipso facto and that granting of registration for house-job would not amount to admission to the post-graduate course in a Medical College. Hence this appeal by special leave.

Allowing the appeal,

PG NO 959

PG NO 960

HELD: (1) All the seats in the post-graduate degree course for Obstetrics and Gynaecology are not reserved for the candidates passing the M.B.B.S. examination from the said Dr. V.M. Medical College. It is not disputed that certain percentage of seats are reserved for the students of the College. But, no application form was issued to the appellant and accordingly, the question of not admitting the appellant on the ground of institutional preference or institutional reservation of seats does not arise. [964F-G]

(2) The State of Maharashtra is entitled to refuse to admit any student passing the M.B.B.S. examination from any Medical College in the State of Andhra Pradesh as that State has not reciprocated in the matter of admission to post-graduate degree courses in Medical Colleges of that State. [964G-H]

(3) The State of Maharashtra after considering all facts and circumstances including the high merit of the appellant specifically created a supernumerary Housepost for the appellant. After creating the supernumerary Housepost specifically for the appellant so as to enable her to become eligible for the post graduate degree course, the respondents are not at all justified in refusing her even an application form and in not considering her case for admission in the post-graduate degree course on the ground of failure of reciprocity by the Andhra Pradesh State. It

was, therefore, unreasonable and unjust for the respondents to refuse admission to the appellant on a ground which is not at all tenable in the facts and circumstances of the cases. [965C-F]

(4) Normally the Supreme Court does not interfere in the matter of admission of students in an educational institution. Even if it interferes, it generally directs the authorities concerned to consider the question of admission in accordance with the rules of the institution. But, in the peculiar facts and circumstances of the case, particularly the fact that the appellant had to lose two years of her academic career for no fault of hers, it is directed that the respondents shall issue to her an application form for admission in the post-graduate M.D. Course in Obstetrics and Gynaecology and that after the submission of the application form and compliance with other formalities by the appellant, she shall be admitted in the post-graduate course in Obstetrics and Gynaecology in Dr. V.M. Medical College, Solapur, in the 1989 session, provided she is not otherwise unfit. [966B-D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4128 of 1988.

PG NO 961 From the Judgment and Order dated 3.8.1988 of the Bombay High Court in W.P. NO. 28 of 1987.

V.N. Ganpule and Mukul Mudgal for the Appellant. A.S. Bhasme, B.R. Agarwala and Mrs. Sushma Manchanda for the Respondents.

The Judgment of the Court was delivered by DUTT, J. Special leave granted. Heard learned Counsel for both the parties.

The appeal is directed against the judgment of the Bombay High Court whereby the High Court dismissed the writ petition of the appellant challenging, inter alia, the legality of the action of the respondents refusing to admit the appellant in the post-graduate M.D. Course in Obstetrics and Gynaecology for the 1987 session.

The appellant passed the MBBS examination from the Kakatiya Medical College under the University of Kakatiya, Warangal, in the State of Andhra Pradesh. She obtained 72%, 66.63% and 67.5% marks in the first, second and third MBBS examinations. She was awarded Governor's Gold Medal by the State of Andhra Pradesh for her consistent high merit at the MBBS examinations. In August, 1985, she completed her one year internship.

She married one Dr. Ashok Patwardhan, a Government Medical Officer working in the State of Maharashtra. He was transferred to Solapur in January, 1985. The appellant had to come to Solapur in October, 1985 and since then she has been residing there with her husband.

After coming to Solapur, she intended to prosecute her studies in the post-graduate M.D. Degree Course in Obstetrics and Gynaecology in Dr. V.H. Medical College, Solapur, under the Shivaji University, the respondent No. 2. Rules X(2) and (3) of the Rules regulating the appointments of Housemen and House-Surgeons at the hospital attached to the Government Medical Colleges in the State of Maharashtra, hereinafter referred to as 'the Rules'. provide as follows:

"X.....

PG NO 962 Government have from time to time sanctioned supernu- merary posts--

(1).....

(2) to allow spouses of Government servants on transfer to undertake studies, if standing high in merit (which means not less than 55% at first attempt in the subject) from another college;

(3) to allow students of other colleges in Maharashtra to compete on merit for posts so as to conduct post-graduate course for which facilities are not existant or very meagre in their own college. These supernumerary posts should be awarded after fullest consideration of these principles in the above order and on merit and it is not incumbent to fill all of them or to reserve them .....

It is understood that granting of registration does not absolve a candidate from competing on merit and if he cannot earn post on merit, his registration would lapse for failure to compete housemanship requirements ..... " The appellant made an application to the Government of Maharashtra praying for the creation of a Housepost in Obstetrics and Gynaecology under rule X(2) so as to enable her to do post-graduate studies in Dr. V.M. Medical College, Solapur. As she fulfilled and requirements of rule X(2), namely, that she is the wife of a Government servant on transfer and that she stood high in merit securing more than 55% marks in Obstetrics and Gynaecology in her MBBS examination, the Dean of the College specifically recommended her case for the creation of such a supernumerary Housepost. While the application of the appellant was under consideration, the appellant was selected for a Housepost in Surgery in the said College. She joined the Housepost in Surgery in January, 1986 and completed the same in July, 1986. But, in order to be eligible for post-graduate studies in Obstetrics and Gynaecology, she was to join another Housepost in Obstetrics and Gynaecology.

On July 2, 1986, the Government of Maharashtra in exercise of its power under rule X(2) created a Housepost in Obstetrics and Gynaecology with effect from July 15, 1986 specifically and categorically stating that the PG NO 963 supernumerary Housepost was created to enable the appellant to complete her post-graduate studies at Dr. V.M. Medical College, Solapur. The

Government resolution dated July 2, 1986 is extracted below:

"Government hereby grants permission for creation of one supernumerary non-stipendary post of Houseman with effect from 15.7.1986 for a period of six months at Dr. Vaishampayan Memorial Medical College, Solapur, to enable Dr. Mrs. S.A. Patwardhan to complete her Post Graduate Course in the subject of Gynaecology and Obstetrics.

Mrs. Patwardhan should join the said post within 10 days from 15.7.1986. In the event of her not joining the said post will be treated as abolished.

By order and in the name of the Governor of Maharashtra.

Sd/-

J.P. Budhwant Deputy Secretary Govt. of Maharashtra"

The Dean of the College called upon the appellant to join the Housepost and not to quit the same before completing the term inasmuch as the Housepost was specifically created to enable the appellant to complete her post-graduate studies at Dr. V.M. Medical College, Solapur. The appellant joined the Housepost and duly completed the same. The Dean of the College issued an advertisement inviting applications for the post-graduate seats in various disciplines for January, 1987 batch. The appellant made an application praying for the issuance of an application form for the M.D. Course in Obstetrics and Gynaecology, but no such form was issued to her. In other words, the appellant was refused admission in the M.D. Course at Dr. V.M. Medical College, Solapur.

Being aggrieved by the action of the Dean of the College, the appellant filed a writ petition in the Bombay High Court. The High Court, as stated already, dismissed the writ petition holding, inter alia, that no inference could be drawn that everybody who completed the house-job was entitled to get admission to the post-graduate course ipso PG NO 964 facto and that granting of registration for house-job would not amount to admission to the post-graduate course in a Medical College. Hence this appeal.

There can be no doubt that there is no question of automatic admission in the post-graduate course, simply because one has completed the house-job or housemanship. It is not the case of the appellant that as she completed the housemanship, she has acquired a right of automatic admission to the post-graduate degree course in the said College. Her complaint is that she was not even given an application form for the post-graduate degree course. The College authorities or the University did not at all consider her case for admission. The High Court has not considered this aspect of the appellant's case.

It is contended by the learned Counsel appearing on behalf of the respondents that in view of the provision in the Rules giving institutional preference in the matter of admission, the appellant could not be admitted. The other ground that has been urged on behalf of the respondents is that as the

appellant passed the MBBS examination from the Kakatiya University in the State of Andhra Pradesh and as there is failure on the part of the State of Andhra Pradesh to reciprocate with regard to reservation of 25% of the total number of seats in the matter of admission to post-graduate degree course in Medical Science, the respondents were justified in refusing admission to the appellant.

So far as the first contention is concerned, we do not think that there is any merit in the same. All the seats in the post-graduate degree course in Obstetrics and Gynaecology are not reserved for the candidates passing the MBBS examination from the said Dr. V.M. Medical College, Solapur. It is not disputed that certain percentage of seats are reserved for the students of the College. But, no application form was issued to the appellant and, accordingly, the question of not admitting the appellant on the ground of institutional preference or institutional reservation of seats does not arise. In our opinion, the first ground founded on institutional preference seems to be a mere plea. The real ground for refusal to issue even an application form for admission to the appellant is the failure of reciprocity on the part of the State of Andhra Pradesh. The State of Maharashtra, in our opinion, is entitled to refuse to admit any student passing the MBBS examination from any Medical College in the State of Andhra Pradesh, as that State has not reciprocated in the matter of admission to post-graduate degree courses in Medical Colleges of that State. But, in the facts and circumstances PG NO 965 of the present case, the respondents are not at all justified in refusing to admit the appellant in the postgraduate degree course. The most glaring fact in this respect is that on the prayer of the appellant a supernumerary Housepost was created so as to enable the appellant to become eligible for the post-graduate degree course. It is not the case of the respondents that they were not aware of the fact that the appellant had passed her MBBS examination from a Medical College in the State of Andhra Pradesh. Indeed, it has been categorically averred by the appellant that in her application for the creation of a supernumerary Housepost, she disclosed all facts including the fact of her passing the MBBS examination from the said Medical College in the State of Andhra Pradesh. The State of Maharashtra after considering all facts and circumstances including the high merit of the appellant specifically created a supernumerary Housepost for the appellant. After the appellant had completed her house-job and applied for the issuance of an application form for the post-graduate degree course, she was refused an application form, presumably on the ground that she had passed her MBBS examination from a Medical College in the State of Andhra Pradesh. In our opinion, the appellant could be refused at the very outset, that is to say, her application for creation of a supernumerary Housepost could be turned down on the ground of failure to observe reciprocity by the State of Andhra Pradesh. But, after creating the supernumerary Housepost specifically for the appellant so as to enable her to become eligible for the post-graduate degree course the respondents, in our opinion, are not at all justified in refusing her even an application form and in not considering her case for admission to post-graduate degree course, on the ground of failure of reciprocity by the Andhra Pradesh State. We fail to understand how the College authorities and the Government could take this attitude so far as the appellant is concerned. In our opinion, it was unreasonable and unjust for the respondents to refuse admission to the appellant on a ground which is not at all tenable in the facts and circumstances of the case.

It is not disputed that the appellant has all the requisite qualifications for admission in the post-graduate degree course. She applied to admission in the session commencing from January,

1987, but she was not admitted. The 1988 sessions has also passed, as the appellant had to file a writ petition before the High Court of Bombay which, as noticed already, was dismissed by the High Court. The appellant prays that she may be admitted in the post- graduate course in Dr. V.M. Medical College in the 1989 session.

PG NO 966 The facts stated above reveal that the appellant has been harassed to a great extent. She was misled by the fact of the creation of a supernumerary Housepost for her by the State of Maharashtra. She has already lost two years of her academic career. Normally, this Court does not interfere in the matter of admission of students in an educational institution. Even if it interferes, it generally directs the authorities concerned to consider the question of admission in accordance with the rules of the institution. But, in the peculiar facts and circumstances of the case, particularly the fact that the appellant had to lose two years of her academic career for no fault of hers, we direct the respondents to issue to her an application form for admission in the post-graduate M.D. Course in Obstetrics and Gynaecology and we further direct that after the submission of the application form and compliance with other formalities by the appellant, she shall be admitted in the post-graduate course in Obstetrics and Gynaecology in Dr. V.M. Medical College, Solapur, in the 1989 session, provided she is not otherwise unfit. The learned Counsel appearing on behalf of the Indian Medical Council also supports the case of the appellant for her admission in the 1989 session.

The judgment of the High Court is set aside and the appeal is allowed. There will, however, be no order as to costs.

M. L. A.

Appeal allowed.