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instance of the Commissioner of Income-tax was declined on the ground of finding of fact. In that case the Tribunal had declined to levy penalty under section 271(1)(c) of the Income-tax Act on the ground that the Revenue had failed to prove that there was conscious concealment.

(21) After giving due consideration to the cases referred to above, in our view each case is to be decided on its own facts. No doubt, findings arrived at by the Tribunal on facts are to be accepted while deciding the question of law referred, however, when such findings are irrelevant or otherwise based on no evidence, the question of law formulated can be decided on the basis of onus and implication of the provisions of law. The finding in paragraph 6 in the order of the Tribunal that present is not a case of the detection of the assets on the part of the Department and that the case related to disclosure of the value of the house voluntarily by the petitioner, being there, in such a case penalty provisions could be resorted to only if the Revenue had further to prove existence of *mens rea* on the part of the assessee in the matter of deliberate or conscious concealment of the wealth. The case is not covered by the Explanations. Since the Revenue did not produce any evidence in this respect, consideration of the evidence produced by the assessee or discarding the same will not prove that the Revenue has established case of concealment for imposition of the penalty. The reference is, therefore, answered in favour of the assessee that in the facts and circumstances of the present case the Income-tax Appellate Tribunal was not right in law in sustaining the penalty of Rs. 50,000. No costs.

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J.S.T.

Before : A. L. Bahri & V. K. Bali, JJ.

DR. MOHAMAD SHABIR, ETC.,—Petitioners.

*versus*

STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ Petition No. 18403 of 1991

Dated April 9, 1992

*Constitution of India, 1950—Art. 226—Admission—Advertisement issued for admission to M.D.S. course on existing rules—Petitioner eligible for admission under eligibility clause—Participated in interview conducted by selection Committee—Thereafter fresh advertisement issued changing course from 2 years to 3 years—Eligibility*

*criteria also changed—Petitioner debarred under eligibility clause—Such action of respondents arbitrary—Rights of petitioner not to be hampered—Not to be deprived of chances in gaining excellence in field of medicine.*

*Held*, that present is a case where advertisement was in fact issued for allowing admission in the MDS Course on the basis of existing rules. Even if the Course was to be changed from 2 years to 3 years, by changing the eligibility clause arbitrarily the rights of the candidates could not be hampered and the case of petitioner No. 1 is such. The petitioner who had served the State Government for more than 5 years with having three years rural service to his credit and such like other persons should not be deprived of the chances of gaining excellence in the field of medicine in such speciality. Further-more, when selection committee had held interview, it was too late to change the criteria for admission.

(Para 5)

*Civil Writ Petition Under Article 226 and 227 of the Constitution of India praying that this Hon'ble Court may be pleased to pass the following orders :—*

- (a) complete records of the case may be summoned ;
- (b) condition of filing of certified copies of Annexures may be dispensed with ;
- (c) condition of service of advance notice to the respondents may be dispensed with ;
- (d) that notification Annexure P-7 may kindly be quashed by issuing a writ of certiorari ;
- (f) a writ mandamus may be issued directing the respondents to restore the select list prepared after interview was finalised on 8th August, 1991 in pursuance of advertisement Annexure P-1 and grant admission to the petitioners, on the basis thereof ;
- (g) that all the proceedings which the respondents have conducted in pursuance of notification Annexure P-7 may be ordered to be quashed ;
- (h) any other appropriate, writ order or direction as this Hon'ble Court may deem fit, just and proper be allowed ;
- (i) cost of the petition may be allowed.

J. C. Nagpal, Advocate, for the Petitioner.

H. S. Sidhu, Asstt. A.G. Punjab, for the State (Respondent).

## JUDGMENT

*A. L. Bahri, J.*

(1) The matter relates to admission to M.D.S. Course in the Medical College of the State of Punjab for the Sessions 1991. Initially advertisement was issued on March 8, 1991 (Copy Annexure P. 1) for admission to two years course in Masters of Dental Surgery MDS in two State Colleges at Amritsar and Patiala in respect of the following five Specialities :—

- (1) Pedodontics and Preventive Dentistry ;
- (2) Oral Surgery ;
- (3) Periodontia ;
- (4) Dental Prosthesis and Crown and Bridge Work; and
- (5) Operative Dentistry.

The eligibility clause contained in Annexure P. 1 reads as under :—

- (1) Candidate must have passed the final Prof. B.D.S. Examination of Guru Nanak Dev University and Punjabi University, Patiala and Dental Council of India.
- (2) Candidates must be registered under Dentist Act, 1948.
- (3) Candidates must be a teacher in a recognised Dental College and recruited on permanent basis and must have held such an appointment at least for a continuous period of one year after above recruitment.

OR

Candidates must have been recruited in the Punjab State Denal Services through Punjab Public Service Commission or holding permanent commission in the Armed Forces Dental Services and also must have continuously worked for a period of two years after above recruitment.

OR

Candidate must have completed one year house job in a Dental Institution/Medical Institution recognised by Dental Council of India.

The three petitioners; Dr. Mohamad Shabir, Dr. Vinay Garg, and Dr. Tejinder Kharbanda being eligible as per advertisement-Exhibit

P. 1 applied for admission, in the category of in-service candidates, 25 per cent posts were to be filled on all India basis. Out of the remaining 75 per cent, 60 per cent seats were to be filled by the Demonstrators-in-service and 40 per cent B.D.S. Graduates in-service. Interview was fixed for April 2, 1991. Subsequently the date of interview was changed twice,—*vide* orders Annexures P. 2 and P. 3 and ultimately postponed indefinitely,—*vide* order Annexure P. 4. Thereafter on July 10, 1991 fresh advertisement-Annexure P. 5 was issued for holding two courses; (1) 2-Years M.D.S. Course and (2) 3-Years M.D.S. Course. It provided that the candidates who had applied for admission in response to advertisement-Exhibit P. 1 were not to apply again. It further provided for introducing 6th Speciality in Ortho Dontia. The interview was fixed for August 8, 1991 to be held in Government College, Amritsar, for Session of 1991 commencing from May 1991. At this stage it may be mentioned that only one eligible candidate was selected through All India Entrance Test, namely, Dr. Shaily Chopra who started attending the Course with effect from May 1991. The Selection Committee held interview of the candidates on August 8, 1991. However, subsequently without finalising the selection the entire process was scrapped as per news-item published in the newspaper-Annexure P. 6. According to the present petitioner, this was done *mala fide* and arbitrarily in order to accommodate wards of certain VIPs. A fresh advertisement was issued on October 3, 1991-Annexure P. 7 for holding only one Course of 3 Years duration. It further provided that the State Government had decided that the period of housemanship should be treated equivalent to one year rotating internship as one time exception for admission during the current year. *Vide* advertisement-Annexure P. 8, dated October 3, 1991, it was decided to hold Post-graduate Entrance Test for admission to M.D.S. Course. Such an examination was to be held on November 3, 1991. The present writ petition was filed on November 8, 1991 apprehending that the petitioners would not be eligible as per latest advertisement for seeking admission.

(2) Entrance Examination was held and subsequently admission was finalised. Petitioner No. 2 Dr. Vinay Garg (Jain) was allowed admission. Thus in the present writ petition the cases of other two petitioners would be considered.

(3) The facts in the written statement have been broadly admitted by the respondents. However, it is asserted that ultimately advertisement-Annexure P. 7 was issued which was in accordance with the directions issued by the Supreme Court in Writ Petition

No. 348—352 of 1985 (*Dr. Dinesh Kumar and others v. Moti Lal Nehru Medical College, Allahabad and others*), decided on September 25, 1987, copy of the judgment being Annexure R-III. It was denied that the interview held by the Selection Committee in response to earlier advertisement was scrapped *mala fide* in order to help wards of the VIPs. On behalf of the petitioners an additional affidavit was filed by Dr. Vinay Garg (Jain), *inter alia*, alleging that scrapping of Two-Years Course in M.D.S. for the Session 1991 was *null and void*. It was an act of arbitrariness and discriminatory, violating provisions of Articles 14 and 16 of the Constitution. Some seats were stated to be vacant, as only two persons on All India Basis were selected for admission. Petitioner No. 1, Dr. Mohamad Shabir, was not allowed to take Entrance Examination. He was asked by letter Annexure P. 9 to produce a certificate of having performed house-job for one year. According to the petitioner such a condition was not applicable to him as per eligibility clause in Annexure P. 1. He had completed 5 years of Punjab Government service and his case fell in 60 per cent quota. He was wrongly excluded from consideration for admission. There were 3 persons whose names were given who did not fulfil eligibility condition *qua* 60 per cent quota but were allowed admission. Their period of service on *ad hoc* basis was taken into consideration wrongly. In fact those persons should have been considered under 40 per cent quota. In this manner a seat for petitioner No. 1 could be made available in 60 per cent quota. A reply to this rejoinder was filed by the Principal, Punjab Government Dental College & Hospital, Amritsar, *inter alia*, asserting that now admission was held for 3-Years Course only as per direction of the Supreme Court. The candidate selected on All India Basis had voluntarily joined classes and was not forced to do so as was alleged by the petitioner. Admission could not be granted to the two petitioners as on merit they were much lower than other candidates who were selected for admission. Some seats were stated to be lying vacant under orders of the High Court in C.W.P. No. 12245 of 1991 filed by Dr. Lalit Kapoor. All the in-service candidates were to be considered in 60 per cent quota. The names of Dr. Rajesh Khanna and two others could not be considered for 40 per cent quota. They were rightly considered and allowed admission in 60 per cent quota.

(4) We have heard learned counsel for the parties. As far as the case of Dr. Tejinder Kharbanda, petitioner No. 3, is concerned, there is no merit. On the basis of merit list prepared, he could not be allowed admission.

(5) Dr. Mohamad Shabir, who is petitioner No. 1, was denied an opportunity for being considered for admission to M.D.S. Course.

When initially advertisement was issued, copy of which is Annexure P. 1, he was eligible for admission. He passed BDS Examination in the year 1978 of Panjab University from Government Dental Wing, Patiala (Medical College, Patiala). He was subsequently registered under the Dentists Act, 1948. He was recruited in the Punjab State Dental Services through Punjab Public Service Commission and thereafter he continuously worked for more than 3 years in rural service. He had not availed more than two chances in BDS Professional Course. He had 5 year's Government service to his credit. He applied for the admission within the prescribed time. Even when second advertisement was issued on July 10, 1991,—vide Annexure P. 5, he could compete with the persons like him for seeking admission as the persons who had already applied in response to advertisement-Annexure P. 1 were not required to apply again. Further-more,—vide this advertisement two Courses were to be started (a) Two Years M.D.S. Course and (b) Three-Years M.D.S. Course. He had also participated in the interview which was held on August 8, 1991. It was subsequently when fresh advertisement-Annexure P.7 was introduced that he was debarred from taking the Entrance Test for seeking admission to the only 3-Years Course in M.D.S. to be started. The question for consideration is that the respondents having once issued the advertisement prescribing the eligibility clause as aforesaid could debar, by issuing fresh advertisement, from consideration such candidates who were earlier eligible. The reliance of the respondents is on the judgment of the Supreme Court (Annexure R-III) in *Dr. Dinesh Kumar & Others v. Moti Lal Nehru Medical College, Alahabad & others*, (supra). If the judgment of the Supreme Court is read in extenso, no manner of doubt is left that the directions were issued for having uniform Course in Medical Faculties on All India Basis. All the states were to make arrangements so as to introduce uniform pattern for admissions beginning from 1993 i.e. 3-Years Course without any housemanship. A further direction was given that the present arrangement was to continue for a period of 5 years i.e. upto 1992 (inclusive). May be some of the States could amend respective rules in their respective states to be inconformity with the direction of the Supreme Court prior to 1993 session. However, it was never intended that by doing so the interests of the existing candidates was to be in any manner jeopardised. At least upto 1993 such persons were to be considered for admission who were eligible under the existing rules. Present is a case where advertisement was in fact issued for allowing admission in the MDS Course on the basis of existing rules. Even if the Course was to be changed from 2 Years to 3 Years, by changing the eligibility

clause arbitrarily the rights of the candidates could not be hampered and the case of petitioner No. 1 is such. Under the eligibility clause in Annexure P. 1, as reproduced above, he was eligible for seeking admission in the MDS Course. Further finally when Annexure P. 7 advertisement was issued, he was debarred from taking the Entrance Test as criteria of eligibility was changed. The petitioner who had served the State Government for more than 5 years with having three years rural service to his credit and such like other persons should not be deprived of the chances of gaining excellence in the field of medicine in such speciality. Further-more, when selection committee had held interview, it was too late to change the criteria for admission. Since the case of only one person is for consideration in this writ petition, it is not considered appropriate to make any further comment on the advertisement-Annexure P. 7 or to quash the admission of other candidates held under the Entrance Test. The ends of justice would be met if direction is given to the respondents to allow admission to Dr. Mohamad Shabir in the Speciality of his choice in the existing vacant seat, if any, or by creating an additional seat. Such a matter was under consideration of this Court in C.W.P. No. 17000 of 1991 (*Dr. Rajesh Khanna and another v. The State of Punjab and others*), which was decided on December 17, 1991. In that case no clear stand was taken as to from which session the changed eligibility clause would be applicable either from 1993 Session or for the earlier session also. A direction was given to finalise the admission to 1991-92 Course on the basis of result of examination already conducted for 3 Years Course.

(6) For the reasons recorded, this writ petition is allowed with the direction to the respondents to allow admission to Dr. Mohamad Shabir, petitioner No. 1. against any of the existing vacant seats or against the additional seat to be created, in necessary in 3-Years MDS Course. No order as to costs.

J.S.T.

Before A. L. Bahri, V. K. Bali, JJ.

AMARJIT SINGH.—Petitioner.

versus

THE STATE OF PUNJAB ETC.,—Respondents.

C.W.P. 58 of 1992.

23rd April, 1992.

*Constitution of India, 1950—Art. 226—Joining Duty—Petitioner selected as Lecturer Physics to join duty before 7th September, 1991 alongwith certified copies of educational certificates—7th September a Saturday reported for duty on 9th September, 1991—Not allowed to*