

(8) In view of the principles of law laid down in these authorities and also clear provisions of the statute under which the election can be set aside, we hold that the Sub-Divisional Magistrate could hold inquiry into the matter regarding the age of Darshan Singh as entered in the electoral roll. The finding of the Sub-Divisional Magistrate is based on evidence. It is on the record that in the nomination papers Darshan Singh had given his age as 28 years but in the voters' list it was entered as 23 years. He produced his School Leaving Certificate, wherein his date of birth was shown as January 16, 1945. He also produced enrolment certificate from the Army Authorities and in this certificate his age was shown as 18 years on February 28, 1963, when he joined the Army. He had also produced the certificate before the Returning Officer and on this basis the Sub-Divisional Magistrate came to the conclusion that the rejection of the nomination papers of Darshan Singh was not proper. Since this is one of the grounds for setting aside the election, the election of the petitioner was set aside. Although the petitioner succeeds on the first point and the finding of the Sub-Divisional Magistrate is reversed so far as his disqualification for moral turpitude is concerned, but his election is to be set aside on the second ground for illegal rejection of nomination papers of Darshan Singh, respondent.

(9) No other point is urged.

(10) For the reasons recorded above, this petition must fail and the same is dismissed, but there will be no order as to costs.

K.T.S.

CIVIL MISCELLANEOUS

Before A. S. Bains, J.

RANBIR SINGH,—Petitioner.

versus

THE STATE OF PUNJAB and others,—Respondents.

Civil Writ Petition No. 4869 of 1976.

September 2, 1977.

Constitution of India 1950—Art. 226—Student obtaining admission on a false Scheduled Caste certificate—Such student successfully completing the course and post examination training—Principal of the college—Whether has the authority to take action after the student has left college.

Held, that if a candidate is admitted on the basis of a false certificate and at a subsequent time it is discovered that it was false, the student can be removed from the college and all the fees and

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other dues paid up to the date of such removal can be confiscated. If, however, a student has completed his course and has also successfully gone through his post examination training, he is no longer on the rolls of the Collège. He ceases to be a student for all intents and purposes after he joins the post examination training. He has not to pay any tuition fee or any other dues to the College since he is no longer a student. The principal has no authority in law to take action against him after he has successfully completed his course and also the post examination training.

(Paras 3 and 5)

Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of Certiorari, mandamus or any other appropriate writ order or direction be issued quashing the notice Annexure P/3 and directing the University, respondent No. 3 to declare the result of the petitioner, and directing the respondents not to interfere with the M.B.B.S. Degree of the petitioner and his further rights to practice or to seek any job on the basis of the said degree, and any other writ, order or direction as this Hon'ble Court may deem fit and proper, under the circumstances of the case and the record of the case be ordered to be sent for; and the cost of the petition be awarded to the petitioner.

Kuldip Singh, Advocate and Hardev Singh, Advocate, for the Petitioner.

D. V. Sehgal, Advocate for respondents Nos. 1 and 2, for the Respondents.

JUDGMENT

Ajit Singh Bains, J.—

(1) Ranbir Singh, petitioner, was admitted to the M.B.B.S. Course at the Medical College, Amritsar, in June/July, 1970, against one of the seats reserved for the Scheduled Caste candidates. He successfully completed the five years course of studies prescribed by the Guru Nanak Dev University, Amritsar (hereinafter called the 'University'). He appeared in the M.B.B.S. final examination in December, 1974 and was declared successful subject to the condition that he was to reappear in two subjects up to April, 1976, i.e., (i) Medicine etc. and (ii) ophthalmology and E.N.T. He had already appeared in the above-mentioned two subjects, but the University had not declared his result. The Medical Council of India has prescribed 12 months' period of internship for the purposes of registration with it. After the petitioner was declared successful in the M.B.B.S. Examination, he was allowed to join as an interneer.

He successfully completed the period of internship in June, 1976. He left the hostel premises from June 30, 1976 and ceased to be a student of the said college. He has already been granted a provisional Medical Registration Certificate by the Punjab Medical Council on July 4, 1975. It is alleged in para 9 of the petition that the Principal, Medical College, Amritsar, issued a notice dated June 24, 1976 to the petitioner, in which it was stated that the Scheduled Caste Certificate, on the strength of which the petitioner was admitted to the M.B.B.S. Course, had been reported to be false, and, consequently, the petitioner was called upon to show cause why his name be not removed from the College Rolls as per provision contained in the college prospectus. A copy of the said notice is Annexure 'P-3' to the writ petition which is in the following terms :—

“You were admitted to the 1st Year M.B.B.S. Course of this College against one of the seats reserved for the candidates belonging to Scheduled Castes. Your Scheduled Caste Certificate on the strength of which you were admitted to the course has been reported to be false subsequent of your taking admission to this course. You are, therefore, called upon to show cause as to why your name be not removed from the college rolls as per provision contained in the college prospectus.

This show cause notice is being served upon you in accordance with the instructions of the Punjab Government/Director, Research and Medical Education, Punjab, Chandigarh, received with his endstt. No. 2055-2NE(4)-pb-76/12028, dated 31st May, 1976.

In case you have to say anything against the above, you are directed to produce irrefutable evidence of your being a Scheduled Caste by the 30th June, 1976, positively in duplicate otherwise the undersigned will be constrained to remove your name from the college rolls.”

It is against this notice that the present petition has been filed. The return to the writ petition has only been filed by the Principal, Medical College, Amritsar (respondent No. 2).

(2) Mr. Kuldip Singh, learned counsel for the petitioner, has contended that the Principal, Medical College, Amritsar, had no

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authority in law to issue such a notice as the petitioner was no longer a student of the Medical College having already qualified for M.B.B.S. Degree by completing his post-examination training, which is called internship. I find merit in the contention raised by the learned counsel for the petitioner. The petitioner was admitted to the Medical College, Amritsar, in the year 1970. He has completed the M.B.B.S. Course as also the internship training successfully. It is not now open to the Principal or any other authority to say that the petitioner had obtained admission by fraud on the basis of a false certificate. It was incumbent on the authorities to verify the correctness or falsity of the certificate at the time of admission or within a reasonable period of 3/4 months. Now after six years, when the petitioner has completed the M.B.B.S. Course and the internship training, it is not desirable that the action be taken against him on the basis of an event which took place in the year 1970. Medical education is very expensive; thousands of rupees are spent on the training of a medical student. It is a matter of common knowledge that there is an acute shortage of doctors in our country. Moreover, even if action is taken against the petitioner at this stage, it would not benefit any Scheduled Caste student. No doubt the petitioner has indulged in a practice which is highly undesirable but, as observed earlier, this fact could be verified by the Principal at the time of admission or within a period of 3/4 months thereafter. Had it been done at the time of admission, a Scheduled Caste candidate would have been benefited, because at the initial stage action could be taken against the petitioner and in his place, a Scheduled Caste candidate could get admission. The Principal and the other authorities are themselves to be blamed for this state of affairs. Petitioner on producing a false Scheduled Caste Certificate got admission in the M.B.B.S. Course, and completed successfully and also underwent the internship training. If the verification had been done at the time of admission or soon thereafter, such consequences would not follow. The fact of getting admission in the Medical College on the basis of a false certificate was discovered by the authorities only in the year 1976. If the action is taken now against the petitioner, the society would be deprived of one qualified doctor when there is dearth of doctors in India. No doubt the petitioner has committed a serious mistake, but as he had already completed the M.B.B.S. Course and internship training, it would be harsh to condemn him for ever — who knows if he is denied the chance of becoming a doctor, he may turn into a desperate character. The view which I am taking also finds

support from a decision of the Supreme Court in *Shri Krishan v. The Kurukshetra University* (1), in which it was observed by their Lordships as under :—

“The University Ordinance empowers the authorities to withdraw the certificate regarding attendance before the examination if the candidate fails to reach the prescribed minimum. But this could be done only before the examination. Once the appellant was allowed to take the examination, rightly or wrongly, then the statute which empowers the university to withdraw the candidature of the applicant has worked itself out and the applicant cannot be refused admission subsequently for any infirmity which should have been looked into before giving the applicant permission to appear.

Here though notice regarding shortage of attendance was twice put up on the notice board and the appellant was aware of it, it cannot be said that he committed a fraud by not drawing the attention of the university authorities to this fact. If neither the Head of the Department nor the university authorities took care to scrutinize the admission form, then the question of the appellant committing a fraud did not arise. Where a person on whom fraud is committed is in a position to discover the truth by due diligence, fraud is not proved.

Hence if the university authorities acquiesced in the infirmities which the admission form contained and allowed the appellant to appear in the examination, then by force of the university statute the university had no power to withdraw the candidature of the appellant.”

(3) In the college prospectus there is a provision on the basis of which the Principal can take action, which is in the following terms :—

“If a candidate is admitted on the basis of statements made in the form of descriptive roll, but at a subsequent time it is discovered that any of the statement was false, the

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student shall be removed from the College and all the fees and all other dues paid up to the date of such removal shall be confiscated. The Principal may take any further action against the candidate and his/her guardian that he may consider suitable."

The plain reading of this provision shows that if a candidate is admitted on the basis of a statement made in the form of descriptive roll, but at a subsequent time, it is discovered that any of the statement was false, the student shall be removed from the College and all the fees and other dues paid up to the date of such removal shall be confiscated. Now as the petitioner has completed his M.B.B.S. Course and has also successfully completed his internship, he is no longer on the rolls of the College. He has ceased to be a student for all intents and purposes after he joined the internship training. He has not to pay any tuition fee or any other dues to the College; rather he is paid stipend by the State as an internee. The word 'intern' is not defined anywhere, but according to Webster's New World Dictionary, Second Concise Edition 1975, it means "a doctor serving as an assistant resident in a hospital, generally just after graduation from medical school." This shows that the petitioner is no longer a student. He is a full-fledged doctor after his graduation from the Medical College. The petitioner as an internee also gets stipend from the State. According to the dictionary meaning, the word 'stipend' means "a regular or fixed payment for services, as a salary; any periodic payment as an allowance." In the same dictionary, the word 'student' means "(1) a person who studies something, (2) a person who is enrolled for study in a school, college, etc.". From the combined meanings of the words "Intern", "student" and "stipend", it is quite clear that the petitioner is no longer a student now and for all practical purposes he is a doctor. As noticed earlier, the petitioner had also been granted a provisional Medical Registration Certificate by the Punjab Medical Council on July 4, 1975, and he completed the period of internship in June, 1976. These facts are not denied by the Principal. Moreover, the present show-cause notice was issued at the direction of the Government, which is illegal. Government cannot issue any such direction to the Principal. In this situation, the Principal has no authority in law to issue the impugned show-cause notice to the petitioner.

(4) The Punjab Government has recently issued a 'Brochure on Admission to First Year M.B.B.S. Class, 1977, for Government

Medical Colleges, Amritsar and Patiala'. Clause 14 of the Brochure is in the following terms :—

“The Punjab Government may also direct the Principal to remove such a student from the college rolls, if on verification received by it before a candidate has passed his first Professional Examination, it is satisfied that he/she has obtained admission to the college on the basis of a statement or certificate, which is false.”

The plain reading of this clause shows that the Punjab Government can now direct the Principal of the Medical College to remove any student from the college rolls, if on verification received by it before a candidate has passed his first Professional Examination, it is satisfied that he/she has obtained admission to the College on the basis of a statement or certificate, which is false. This provision in the brochure was made only to avoid hardship and from this it is also clear that a student can be removed from the college rolls if the falsity of the certificate is discovered before the completion of the First Professional Examination. This also implies that no action can be taken after a student has passed his First Professional Examination even if he got admission on the strength of a false certificate.

(5) For the reasons recorded above I hold that the Principal has no authority in law to take action against the petitioner now after the petitioner has passed his final M.B.B.S. Examination and has completed the internship training.

(6) No other point is urged.

(7) For the reasons recorded above, this petition is allowed and the impugned notice (Annexure p/3) is quashed, but with no order as to costs.

K.T.S.