

period of limitation to May 17, 1941, on the ground that the money, the subject-matter of that deposit receipt, were payable to him on demand, that such demand was made by him on May 17, 1941, and that, therefore, that was the date for the commencement of the period of limitation. No express agreement in this behalf could be proved by him nor could an agreement be implied from the course of dealings between him and the company for the period of 25 years during which the dealings continued between the parties. As a matter of fact, such an agreement, either express or implied was negatived by the very terms of the deposit receipt which, apart from mentioning that the monies were received by the company as deposit for 12 months from August 1, 1939, to July 31, 1940, contained on the reverse a note that interest would cease on due date. This was sufficient to establish that the amount due at the foot of the deposit receipt became due and payable on the due date mentioned therein and that there was no question of the amount being payable at any time thereafter on demand being made in this behalf by the creditor."

(6) The ratio of the above authority is fully applicable to the facts of the instant case. The claim is *prima facie* barred by time. The respondent company has succeeded in proving that their defence is in good faith and likely to succeed in point of law.

(7) The petition is accordingly dismissed. The petitioners can enforce the remedy by way of a suit.

P.C.G.

Before J. V. Gupta, J.

DR. MANGAT RAI,—Petitioner.

versus

STATE OF PUNJAB THROUGH THE SECRETARY AND
OTHERS,—Respondents.

Civil Writ Petition No. 4176 of 1989.

June 2nd, 1989.

Admission to M.D./M.S. courses—Petitioner eligible for admission to such course—Admission refused as the Petitioner was working as Demonstrator—Validity of such refusal.

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Secretary and others (J. V. Gupta, J.)

Held, that admittedly, the petitioner was eligible for admission to the course. If he was eligible for the said course then he is entitled to the admission in a course in which he comes on merits. If the petitioner is entitled to admission in M. D. General Medicine or M.S. Medical Surgery on merits, then the same cannot be denied to him on the ground that since he was working as a Demonstrator, therefore, he was only entitled to be admitted in the Diploma Course. The criteria laid does not warrant such a conclusion. (Para 4)

Petition under Articles 226 and 227 of the Constitution of India praying that this Hon'ble Court may be pleased to summon the record of the case and after perusal of the same may be pleased:—

- (a) *to issue a writ of mandamus directing the respondents to consider the case of the petitioner against M.D. General Medicine and M.S. General Surgery in order of preference given by the petitioner against 60 per cent seats.*
- (b) *to issue a writ of Mandamus directing the respondents to place on record any order debarring the petitioner's right of consideration in order of preference and thereafter quash the same by issuing writ of Certiorari.*
- (c) *to issue any other writ, order or direction that this Hon'ble Court deems fit under the circumstances of the case.*
- (d) *issuance of advance notices of motion on the respondents be ordered to be dispensed with.*
- (e) *filing of certified copies of annexures be ordered to be dispensed with.*

It is further prayed that during the pendency of the writ petition, the petitioner be given provisional admission in M.D. General Medicine and M.S. General Surgery.

Vinod Sharma, Advocate, for the Petitioner.

H. S. Bedi, Addl. A.G. Punjab, for the Respondents.

J. V. Gupta, J.

JUDGMENT

(1) The petitioner obtained his M.B.B.S. degree in the year 1983. He did his one year house job in General Surgery and General

Medicine. He was then selected as PCMS Class II in the year 1985. After joining the PCMS Class II, the petitioner had done rural service for four years and applied for admission to M.D. General Medicine and M. S. General Surgery. According to the petitioner, he was selected in M.S. General Surgery but as a number of cases were filed in the Courts against the selection, he was not allowed to deposit the fees and the No Objection Certificate issued to him earlier was withdrawn.

(2) Later on, the petitioner was selected as a Demonstrator in Clinical Pathology as PCMS Class II officers could apply for being appointed as Demonstrators. At present he is working as Demonstrator in Government Medical College, Amritsar,—vide annexure P-3, a public notice for admission to Postgraduate Medical Degree/ Diploma courses in Punjab State Medical Colleges, Amritsar/ Patiala, was issued on 15th February, 1989. The petitioner applied for admission by giving order of preference, that is, General Medicine at Amritsar/Patiala, General Surgery at Amritsar/Patiala and D.C.P. & M. at Amritsar. For being eligible for admission to the Course against 60 per cent quota, a PCMS Class II doctor is required to do three years' rural service and as the petitioner had already done four years' rural service, he was fully eligible and as such his case was to be considered in order of preference given by him. According to the petitioner, the conditions for admission to the Courses are that the candidate has to be a M.B.B.S. Graduate of a recognised university and must have done house job in the subject for which he has applied for Postgraduate course and since he has already done house job in General Medicine and General Surgery, he was fully eligible for consideration for the said two courses. The petitioner appeared for interview before the Selection Committee on 21st March, 1989, when he was informed that his candidature could not be considered against M.D. General Medicine and M.S. General Surgery and would be considered only against D.C.P. & M. as he is working as Demonstrator in the said subject. At this stage, the petitioner offered to be reverted back to PCMS Class II general cadre and forego his right to be a Demonstrator as previously the Punjab Government had been accepting the offer of reversion from the candidates selected for M.D./M.S. courses. Thus, according to the petitioner, since he is fully eligible according to the notification and the rules, he is entitled to be admitted in M.D. General Medicine or in M.S. General Surgery.

(3) The stand taken by the Principal, Medical College—respondent No. 3 in his written statement is that the Demonstrators can

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do the Postgraduation in the speciality in which he/she is posted. Annexure R-1 has been filed along with the return which lays down the criteria for selection of candidates for admission to M.D./M.S. and various Diploma Courses. In the said criteria, rule 5 provides that all the courses are whole time and no candidate can hold any appointment during the course of his studies. If any candidate joins any service after taking admission to the course, his admission to the course will stand automatically cancelled and his fees forfeited. Then reliance was placed on rule 8 thereof which further provides that a full time Postgraduate student means a student who is not doing any job anywhere except in the department concerned as Demonstrator/Registrar/Lecturer or is a full time stipendary in the department concerned. According to the learned counsel for the respondents, reading the two rules 5 and 8 together, it is evident that since the petitioner was working as Demonstrator he could only be considered for the subject in which he was working as Demonstrator and not for any other subject.

(4) After hearing the learned counsel for the parties and going through annexure R-1 laying down the criteria for selection of candidates for admission to M.D./M.S. and various Diploma Courses, I do not find that rules 5 and 8 thereof, read together, lay down that the Demonstrators are only entitled to admission to a course in which they are working as Demonstrator. Admittedly, the petitioner was eligible for admission to the course as per notification annexure P-3. If he was eligible for the said course then he is entitled to the admission in a course in which he comes on merits. If the petitioner is entitled to admission in M.D. General Medicine or M.S. Medical Surgery on merits, then the same cannot be denied to him on the ground that since he was working as Demonstrator, therefore, he was only entitled to be admitted in the Diploma Course. The criteria laid down,—*vide* annexure R-1 does not warrant such a conclusion. Consequently, this petition succeeds and the respondents are directed to consider the case of the petitioner for admission against M.D. General Medicine/M.S. General Surgery in order of preference given by the petitioner against 60 per cent seats. No order as to costs.

S.C.K.