

Court No. - 7

Case :- WRIT - C No. - 1000082 of 2015

Petitioner :- Madhulika Tiwari And Ors.

Respondent :- State Of U.P.Throu.Prin.Secy.Deptt.Of Medical Edu.Lko.And Ors.

Counsel for Petitioner :- Vidhu Bhushan Kalia

Counsel for Respondent :- C.S.C.,A.S.G.,Arpit

Kumar,G.K.Srivastava,Gyanendra Kumar Srivastav,Hemant Kr. Pandey,Tanveer Ahmad Siddiqui

Hon'ble Neeraj Tiwari,J.

Heard Sri S.K. Kalia, learned senior counsel assisted by Sri Rajat Rajan Singh as well as Sri Vidhu Bhushan Kalia, learned counsel for the petitioners, learned standing counsel for respondent nos. 1, 4, Sri Gyanendra Kumar Srivastava, learned counsel for the respondent nos. 3 & 8 and Sri J.N. Mathur, learned senior counsel assisted by Tanveer Ahmad Siddiqui, learned counsel for respondent nos. 6 and 7.

By means of present petition, petitioners have challenged the impugned order dated 28.11.2014 by which they have been discharged from M.B.B.S. Course in academic session 2013-14.

Learned senior counsel for the petitioners submitted that earlier 72 students including petitioners were given admission to M.B.B.S Course for academic session 2013-14 based upon entrance test conducted by respondent no. 7. They have also started pursuing studies but later on, they have been discharged vide impugned order dated 28.11.2014 from M.B.B.S. Course on the ground that they have obtained less than 50% marks in entrance examination, which is minimum requirement for admission as provided in "Regulation on Graduate Medical Education, 1997" (in short "Regulations 1997"). He next submitted that petitioners have challenged the discharge order and this Court after hearing the counsel for the parties has passed detail interim order dated 26.02.2015. While evaluating answer books, negative marks were also awarded to all the petitioners, which was contrary to the Rules. Therefore, this Court vide interim order dated 26.02.2015 has also directed the respondent no. 7 to reevaluate the answer books of all 72 students including petitioners and further observed that after revaluation any or some of the students secure requisite minimum 50% marks, such students should be allowed to pursue their course and appear in the examination subject to final order of this Court.

In compliance of interim order dated 26.02.2015, University

has evaluated the answer books of 72 students including the petitioners without negative marking and all students including petitioners have obtained more than 50% marks. University has also filed short counter affidavit and counter affidavit on 23.03.2015 & 06.05.2016 mentioning these facts. He next submitted that against the said counter affidavits, no rejoinder affidavit has been filed rebutting the facts so mentioned in the affidavit. He next submitted that under such facts of the case, once petitioners have obtained more than 50% marks, they have been became eligible to pursue their M.B.B.S. Course in accordance with "Regulations, 1997" and permitted to continue the same.

Learned senior counsel on the basis of affidavits dated 09.03.2021 & 09.07.2022 submitted that all petitioners have competed M.B.B.S Course in 2019. They have also been registered in U.P. Medical Council at Lucknow and allotted registration number. He next submitted that some of them have also completed Post Graduate Course and now indulge in medical practice. He lastly submitted that petitioners have been discharged only on the ground that they have obtained less than 50% marks in entrance test, which has now been cured after revaluation in compliance of interim order dated 26.02.2015 passed by this Court, therefore, impugned order may be quashed and petition may be allowed. In support of his contention, he has placed reliance upon the judgment of Division Bench of this Court in the matter of **Dr. Sandeep Gautam Vs. State of U.P. Thru. The Secy., Medical Education & others (Special Appeal No. 197 of 2019)** decided on 23.05.2019 wherein this Court after relying upon the judgments of Apex Court in the matters of **Smita Johnbhai Master and others Vs. State of Gujrat and others; AIR 1981 SC 1633 & State of Maharashtra Vs. Milind and others, AIR 2001 SC 393** is of the view that once appellant- petitioner has acquired the entire qualification and it would not be in any bodies interest to cancel the degree, therefore, such degree deserves to be made absolute.

Sri Gyanendra Kumar Srivastava, learned counsel for the respondent nos. 3 & 8 could not dispute the aforesaid facts so argued by learned senior counsel for the petitioners about revaluation of answer books in compliance of interim order of this Court dated 26.02.2015 and further enhancement of marks to all petitioners more than 50% making the deficiency good, which is minimum requirement as per "Regulations, 1997".

I have considered the submissions made by learned counsel for the parties. There is no dispute on the point that in compliance of interim order dated 26.02.2015, answer books of all 72

students including petitioners have been evaluated and they have fulfilled the minimum criteria of 50% marks in entrance examination as required under the provisions of "Regulations, 1997" coupled with the fact that they have completed their degree of M.B.B.S. Course and also registered in U.P. Medical Council at Lucknow. I have also considered the judgment of Division Bench of this Court in the matter of **Dr. Sandeep Gautam (supra)** in which petitioner has obtained less than 50% marks and after relying upon the judgements of Apex Court in the matters of **Smita Johnbhai Master and others (supra)** & **State of Maharashtra (supra)**, Court is of the view that degree cannot be taken back and should be made absolute. Relevant paragraph of the said judgement is quoted below;

"In the instant matter too the appellant-petitioner has acquired the entire qualification and it would not be in any bodies interest to cancel the degree, which is given as a consequence to acquisition of knowledge. The degree obtained by the appellant-petitioner in view of the factual background mentioned above deserves to be made absolute."

Under such facts of the case as well as law laid down by this Court, petition deserves to be allowed.

Accordingly, impugned order dated 28.11.2014 is hereby quashed and writ petition is **allowed**.

No order as to costs.

Order Date :- 17.11.2022

Arvind