NISHANT PURI

v.

STATE OF HIMACHAL PRADESH AND ORS.

DECEMBER 2, 1998

[K. VENKATASWAMI AND M. JAGANNADHA RAO, JJ.]

Medical admission—Himachal Pradesh University—prospectus—Clause III—Eligibility of admission—Bona fide residents of Himachal Pradesh—Requirement of passing two examinations from schools situated in Himachal Pradesh—Exemption to wards of serving Central Government Employees—Appellant's mother a Himachal Pardesh State Government employee—At her own request sent on deputation to work with Chandigarh Education Department—Appellant's application for combined entrance test for M.B.B.S. admission—Rejection of—Writ—High Court held exemption under clause III was not available to appellant because his mother was only a State Government employee working on deputation with the Central Government and she cannot be considered to be a Central Government employee—Appeal preferred before Supreme Court—Held, purpose behind clause (iii) is that **bona fide** *Himachali Students should be given preference over others—Object is to protect those students whose parents were obliged to move out of Himachal State on account of exigencies of service, by reason of which the children also moved out of State—Mother of the Appellant went on deputation of her own volition and not out of compulsion or exigencies of service—It cannot be said that she is a Central Government employee as contemplated in Clause (iii) of the eligibility clause—High Court was right in dismissing the writ petition of the appellant.*

Meenakshi Malik **v.** *University of Delhi and Ors.,* **[1989] 3 SCC 112, distinguished.**

Anand Madaan **v.** *State of Haryana and Ors.,* **[1995] 2 SCC 135, relied on.**

CIVIL APPELLATE JURISDICTION ; Civil Appeal No. 6037 of 1998.

From the Judgment and Order dated 4.9.97 of the Himachal Pradesh High Court in C.W.P.No. 305 of 1997.

A J.D. Jain, M.R. Vig and Balbir Singh Gupta for the Appellant.

A.V. Palli, Atul Sharma and Ms. Rekha Palli for the Respondent in No. 3.

Himinder Lal for the Respondent in No. 4.

B

Naresh K. Sharma for the Respondent No.1.

The following Order of the Court was delivered :

Special leave granted

C

Heard counsel for the parties.

The short question that arises for consideration in this appeal is whether a State Government employee lent on deputation (at the request of the State Government employee on health ground) to a department of the Central D Government can be considered as a 'serving Central Government employee" within the meaning of the eligibility clause as provided by Himachal Pradesh University in a combined prospectus for admission for M.B.B.S./B.D.S/B.A.M.S courses.

The relevant clauses in the Prospectus read as follows :-

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"Definition of bona fide residents of Himachal Pradesh"

A *bona fide* Himachali is a person who has permanent home in Himachal Pradesh and includes a person who has been residing in Himachal Pradesh for a period not less than 15 years or a person who F has permanent home in Himachal Pradesh but on account of his occupation he is living outside Himachal Pradesh."

Eligibility -"

(i) Candidates who have to compete for admission to Indira Gandhi Medical College. Shimla (M.B.B.S), Dr. Rajendra Prasad Govt. Medical G College Kangra, Himachal Pradesh Government Dental College and Hospital Shimla (B.D.S.). OR Free seats available in various Private Dental Colleges and Medical Colleges situated in Himachal Pradesh and Rajiv Gandhi Government Ayurvedic College, Paprola should have passed atleast two of the following examinations from the H recognised Schools or Colleges affiliated to ICSE/CBSE and HP Board

of School Education or equivalent Boards/University established by law in India.

(a) Middle or Equivalent.

(b) Matric or Equivalent.

(c) 10+2 or Equivalent.

(ii) The *bona fide* Himachali students who are admitted to Navodaya Schools situated in Himachal Pradesh and who pass Matric or +2 examination under the exchange programme from other Navodaya Schools in the Country shall also be eligible for admission to the above courses.

(iii) The Wards of Defence personnels/serving Central Government employees who are bona fide Himachalis are also exempted from the condition of passing two classes from the State of Himachal Pradesh."

Stated briefly, the relevant facts of the case are as under.

The appellant herein submitted his application for combined entrance test for admission to the first year M.B.B.S. course for the year 1997-98. The third respondent herein, after a perusal of the appellant's application informed him that he was not eligible for submitting the application inasmuch as he had not passed two out of three examination mentioned in the eligibility clause from the school situated in Himachal Pradesh. In fact, the appellants mother, a Himachal Pradesh State Government employee requested for sending her on deputation to Chandigarh Union Territory on health ground. Accordingly, she was sent on deputation to Chandigarh Education Department since 21.12.1988. Alongwith his mother, the appellant also moved to Chandigarh and pursued his studies there since 1988. Therefore, he could not satisfy the eligibility requirement as mentioned above. Though the appellant initially claimed exception under the category that he is the son of a defence personnel, that was not pursued in view of the fact that his father was not a *bona fide* Himachali. The alternative claim of the appellant was that his mother is a Himachal Pradesh State Government employee and she having been sent on deputation to work at Chandigarh Education Department, must be treated as a "serving Central Government employee". In that case exemption contemplated under Clause (iii) of the eligibility clause would come to his rescue. This was not accepted by the respondents. Though, on merits he was entitled to get admission, he was denied admission for lack of eligibility for admission.

A Aggrieved by the denial of admission to the first year M.B.B.S course, 1997, the appellant moved the High Court for appropriate writ to enable him to pursue the first year M.B.B.S. course.

A Division Bench of the High Court rejected the contention put forward on behalf of the appellant that the mother of the appellant comes under the B category of serving Central Government employee as contemplated in Clause (iii) of eligibility clause. The High Court observed that 'she is only a State Government employee working on deputation with the Central Government and she cannot be considered to be a Central Government employee.' Accordingly, the High Court dismissed the writ petition.

C Aggrieved by the order of the High Court, the present appeal by special leave has been filed.

The learned Senior Counsel appearing for the appellant placing strong reliance on a judgment of this Court in *Meenakshi Malik* v. *University of* D *Delhi & Ors.*, [1989] 3 SCC 112 submitted that in the light of the ratio laid down by this Court in the said judgment, the mother of the appellant must be deemed to be a serving Central Government employee satisfying the requirement of Clause (iii) of eligibility clause.

On the other hand, learned counsel appearing for the State of Himachal E Pradesh, the Himachal Pradesh University and the private 4th respondent argued that having regard to the scheme of the Prospectus and the intention of the eligibility clause, the claim of the appellant that he is the son of a serving Central Government employee who is a *bona fide* Himachali cannot be accepted. The learned counsel also submitted that the judgment in *Meenakshi Malik* case (supra) must be confined to the facts of that case and F the principle laid down therein cannot be pressed into service in all cases irrespective of the facts of the case.

We have considered the rival submissions. At the outset we have set out the relevant clauses in the Prospectus. The purpose behind the clause G relating to eligibility appears to be that *bona fide* Himachali students should be given preference over others. In achieving the above object care has been taken to protect those students whose parents were obliged to move out of Himachal State on account of exigencies of service, by reason of which the children also moved out of State. In the case on hand, it is an admitted fact that the mother of the appellant though a State Government employee went H on deputation on her own request on health ground to work as an employee

of the Central government. In view of the fact that she has been allowed to continue on deputation for nearly 10 years and is still maintaining her lien with the State government can it be said that she is a Central Government employee as contemplated in Clause (iii) of the eligibility clause. We are of the view that such an interpretation would go against the spirit of the eligibility clause provided in the Prospectus.

The reliance placed on *Meenakshi Malik* case (supra) will not help the appellant, as this Court, in *Anant Madaan* v. *State of Haryana & Ors.*, [1995] 2 SCC 135 while distinguishing the *Meenakshi Malik* case observed as follows :-

> "11. The appellants drew our attention to a decision of this Court in *Meenakshi Malik* v. *University of Delhi* where the father of the candidate was in government service. He was posted by the Government outside India. As the parents were compelled to go outside India, the children were also required to go with their parents. This Court considered this as a hard case. It held that the qualifying condition that the candidate should have received the last two years of education in a school in Delhi, should be relaxed in that case as the candidate was compelled to leave India for a foreign country by reason of the posting of her parents by the Government to such foreign country. The Court observed that there was no real choice in the matter for such a student and hence the rigour of the condition prescribing that the last two years of education should be received in Delhi should be relaxed in that case.
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> 12. None of the appellants who are before us are in a position similar to that of the appellant in the above case. In fact, the parents of Anant Madaan, Bharat B. Dua and Shalini Jain are in Haryana. In the case of Nandita Kalra the parents have voluntarily taken employment outside the State of Haryana. They are not in the same situation as the parents of Meenakshi Malik. Therefore, the relaxation which was given by this Court in the case of Meenakshi Malik cannot be given to any of the appellants before us."
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> (Emphasis supplied)

We have already noticed that the mother of the appellant went on deputation of her own volition and not out of compulsion or exigencies of service.

Therefore, the reliance placed by the learned Senior Counsel for the

A appellant on Meenakshi Malik case (supra) is of no avail. The High Court also took the same view in rejecting the contention put forward on behalf of the appellant.

In the circumstances, we do not find any merit in this appeal and the High Court was right in dismissing the writ petition of the appellants The B appeal fails and is dismissed. No costs.

T.N.A. Appeal dismissed.