

W.P. No. 1510 of 2015

Jabalpur, Dt. 05.12.2017

Shri Tabrez Khan, learned counsel for the petitioner.

Shri S.M. Lal, learned Government Advocate for the respondent Nos. 1 & 2/State.

Shri Deepak Kumar Raghuvanshi, learned counsel for the respondent No.3.

With the consent of the learned counsel for the parties, the matter is heard finally.

This petition has been filed by the petitioner, who is studying in a Private Dental College and is pursuing B.D.S. Course therein, claiming benefit of the circular dated 03.07.2009 for exemption from payment of tuition fee on account of the fact that the petitioner's father had undergone a sterilization operation on 10.11.2005 and had been issued a Green Card pursuant thereto. It is submitted that as the petitioner's father is a Green Card Holder, as per circular of the State Government dated 03.07.2009, the petitioner is entitled to exemption from payment of tuition fee.

Learned counsel for the petitioner submits that a Single Bench of this Court in the case of **Dr. Leena Bhama vs. State of M.P. and others**, (W.P.No.8217/2014) decided on 14.05.2015 has allowed a similar petition filed by the petitioner therein and in such circumstances, the petitioner is entitled to similar relief as granted by this Court in W.P.No.8217/2014 decided on 14.05.2015.

The prayer is opposed by the learned Government Advocate appearing for the State on the ground that a bare perusal of Clause 4 of the circular dated 03.07.2009 makes it abundantly clear that the benefit to wards of Green Card Holders in respect of exemption from payment of tuition fee is available only in case where the ward is studying in a Government Autonomous Medical Institution and is not available to the students who are pursuing their studies in a Private Medical Institution.

We have heard the learned counsel for the parties at length and have also perused the decision of the learned Single Bench of this Court passed in W.P.No.8217/2014. From a perusal thereof, it is apparent that the learned Single Judge

in W.P.No.8217/2014 has dealt with and has considered the circular dated 28.10.2005 issued by the State Government granting benefit to ward of the Green Card Holders and while doing so, has taken into consideration similar orders passed by the co-ordinate Benches in the cases of **Anand Shrivastava and others vs. State of M.P. and another (W.P.No.243/2007)**, **Deepak Kalote vs. State of M.P. and others (W.P.No.9637/2012)**, **Ku. Ashta Jadon and others vs. State of M.P. and others (W.P.No.5563/2006)** and **Vivek Singh vs. State of M.P. and others (W.P.No.2810/2008)**. From a perusal of the order passed in W.P.No.8217/2014, it is further clear that though the State Government had pointed out the restrictions imposed and included in the circular dated 03.07.2009 before the Court, the said subsequent circular was not been considered on account of the fact that the learned Single Judge was of the view that similar petitions had been allowed and, therefore, the benefit should be granted.

From a perusal of the order passed by the learned Single Judge in W.P.No.8217/2014, it is

apparent that while deciding the said writ petition, the learned Single Judge was not apprised with the Division Bench order passed in **Gaurav Jaiswal vs. State of M.P. & others (W.P.No.12402/2008)** decided on 04.02.2009 whereunder the Division Bench taking into consideration the stipulations contained in the circulars dated 20.08.2005, 22.11.2005 and 17.10.2007 had already considered and decided the issue in respect of grant of benefit to ward of Green Card Holders studying in Private Medical Institutions and had categorically held that such a benefit of exemption from payment of tuition fee to the wards of Green Card Holders is not available to those students who are studying in Private Medical Colleges.

The law laid down by the Division Bench in **W.P.No.12402/2008 Gaurav Jaiswal** (supra) has been reiterated by several subsequent Division Benches namely; **Suresh Kumar Aarsay and another vs. State of M.P. and others (W.P.No.10720/2012)** decided on 27.10.2014, **Nikhil Kalraiya and others vs. State of M.P. & others (W.P.No.10972/2015)** decided on 11.12.2015, **Ashutosh Panwar vs. Technical**

Education Department and other (W.P.No.5132/2015) decided on 30.04.2016, **Hariom Rathi vs. Department of Technical Education & others (W.P.No.3905/2016)** decided on 15.06.2016 and **Jitendra Gahlot vs. Public Health and Family Welfare Department and others (W.P.No.1304/2016)** decided on 21.03.2017.

In view of the aforesaid facts and circumstances, it is apparent that the law in respect of grant of benefit to ward of Green Card Holder studying in Private Medical Institutions stands settled against the petitioner by a series of judgments by the Division Bench, which apparently were not placed before the learned Single Bench, which allowed W.P.No.8217/2014 relying upon several other Single Benches orders. Apparently as the order passed in W.P.No.8217/2014 was passed in ignorance of and is contrary to several Division Bench judgments of this Court, it does not lay down the correct law and, therefore, does not in any manner assist the submissions of the learned counsel for the petitioner.

As a consequence of the aforesaid discussion and taking into consideration the fact that the petitioner is seeking benefit on the basis of the circular dated 03.07.2009 which itself contains a clause regarding exclusion of grant of benefit of exemption from payment of tuition fee to wards of Green Card Holders studying in Private Medical Colleges and in view of the law laid down by the previous Division Benches as enumerated above, with which we are in respectful agreement, we are of the considered opinion that no relief can be granted to the petitioner.

In view of the aforesaid, the petition filed by the petitioner being merit-less is accordingly dismissed. No order as to cost.

(R.S. Jha)
Judge

(Nandita Dubey)
Judge

SJ