

(2008) 05 J&K CK 0005
In the Jammu And Kashmir High Court

Arti Sakral

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 28-05-2008

Acts Referred:

Citation : (2008) 2 JKJ 739

Hon'ble Judges : Y.P. Nargotra, J

Bench : Single Bench

Judgement

Y.P. Nargotra, J.—The J&K Board of Professional Entrance Examination vide its advertisement Notice No. 02-BPEE of 2008 dated 25-

1-2008 dated 25-1-2008 invited applications for admission to MD/MS/PG Diploma /Degree Courses. The petitioner was one of the candidates

who offered her candidature. In the Exam/Test conducted by the Board of Professional Entrance Examination (hereinafter to be referred as the

Board") the petitioner secured 236 marks out of 300 in Open Merit Category. The last selected candidate in the Open category had secured 213

marks. Respondent No. 7 Shaista Rashid who was a candidate under RBA category obtained 247 marks. The petitioner had offered the

preferences with regard to the discipline and the colleges in the following order:

- (i) Radio Diagnosis: - Govt Medical College, Jammu
- (ii) Dermatology: - Govt Medical College, Jammu
- (iii) Dermatology: - Govt Medical College, Srinagar
- (iv) Paediatrics: - Govt Medical College, Jammu
- (v) Obs & Gynae: - Govt Medical College, Jammu

2. The petitioner attended the Counselling and thereafter was allotted Obs. &

Gynae. in Govt Medical College, Jammu vide Notification No. 17-

BPEE of 2008 dated 8-5-2008. Respondent No. 7 RBA category candidate was allotted Radio-Diagnosis discipline in Government Medical

College, Jammu which was also the first preference of the petitioner. Respondent No. 6 was allotted the discipline of Dermatology in Govt

Medical College, Jammu.

The petitioner being aggrieved of denial of the allotment of Dermatology in Govt Medical College, Jammu as per her merit has filed the instant writ

petition.

3. The case of the petitioner is that respondent No. 7 who was the reserved category candidate and had obtained more marks than the last

selected candidate in the Open Merit Category was to be shifted in the Open Merit Category where she could make the choice of opting for the

discipline available in Open Merit Category as per her merit choice or to opt for the discipline as per her own merit in the reserved category in

terms of Rule 17 of the Jammu and Kashmir Reservation Rules.

4. It is not in dispute that respondent No. 7 exercised the option available to her in the Open Merit Category and therefore, the seat which she

could opt as a reserved category candidate had to go to the next candidate in the order of, merit who is respondent No. 10. The discipline

available to respondent No. 7 in the reserved category was Dermatology and on her not opting for the same, same was to be allotted and

accordingly was allotted to respondent No. 10. There being only one seat available for reserved category candidates on being allotted to

respondent No. 10, the quota reserved for reserved category i.e. 35% out of 4 seats got exhausted and as such, no seat remained available in

Dermatology discipline under reserved category for allotment yet the Board has allotted and allocated the seat in Dermatology in Govt Medical

College, Jammu to respondent No. 6.

5. Notices were issued to the respondents. None of the private respondents despite service through publication has opted to contest this petition.

They are as such set exparte. Objections on behalf of Board have been filed. The petition with the consent of learned Counsel for the parties is

taken up for final disposal.

6. The contention of Mr. Sharma, learned Counsel for the petitioner is that the seat of Dermatology which in fact was available in open merit

category could not be shifted to reserved category for being allotted to respondent No. 6 legally and had the same not been shifted and remained

in the open merit category, the petitioner as per her own merit and choice would have been entitled thereto. He submits that respondent No. 6

being a reserved category candidate was entitled only to the seat available in that category as per his own merit and choice.

7. A Further contention of Mr. Sharma, learned Counsel for the petitioner is that the case of the petitioner is fully covered from all fours by the

judgment rendered by a Division Bench of this Court in case titled Mir G.R. Wali Vs. State and Others, .

In Dr. Mir G.R. Wali v. State and Ors. the Hon'ble Division Bench of this Court while dealing with Rule 17 of the Jammu and Kashmir

Reservation Rules held as follows:

Rule 17 deals with the allotment of discipline. It reads:

17. Allotment of discipline etc.:

A reserved category candidate, if selected against the Open Merit seat, may be considered for allotment of discipline/stream/college allocable to

him in his respective category on the basis of his merit and preference. The resultant discipline/stream/college in the Open Merit category shall be

allotted to the reserved category candidate who gets selected consequent upon the reserved category candidate getting selected in the Open Merit

Category.

From the rule it is significant to note that it does not speak of allocation of seats in open category or reserved category, but refers only to shifting of

discipline/stream/college. Thus, in the event of a reserved category candidate who has moved to open category and opted for a

stream/discipline/college available in reserved category, what is shifted to reserved category is not the seat but the stream/discipline/college which

he would have got in the open category. The number of seats available in the open category and reserved category remaining the same fixed as per

the ratio of 65% : 35%.

8. Therefore, for a candidate in reserved category the choice of discipline/stream/college would be reduced by one stream for having been

consumed by the candidate shifted to open merit from reserved category. One stream which such candidate would have got in open category

would get added up to the streams available and thereby total number of streams/discipline available in the categories remains the same. Therefore,

the candidate who comes next in merit to such candidate would have respective availability of choice substituted. It would therefore be incorrect to

assume that there would be an additional seat in reserved category in the stream added up.

9. On the moving of Vikrant Gupta from the reserved category to open merit category and on his choosing Radio diagnosis available as a choice

stream in reserved category for the candidates in reserved category who comes to be selected in his place on merit, a substituted left over choice

made available by Vikram Gupta would also become available to him. This in our view cannot be an addition to the seats available for reserved

category.

The above observations fully apply to the case in hand.

10. In the present case respondent No. 7 Shaista Rashid a candidate under RBA category in view of her merit moved over to open merit category

and validly opted for Radio Diagnosis discipline, available in the reserved category. There was only one seat available in reserved category in the

discipline of Dermatology. Same having been allotted to respondent No. 10 another reserved category candidate, there was no further seat

available in the discipline of Dermatology for being allotted to a reserved category candidate respondent No. 6. Respondent No. 6 could have

been allotted only one of those streams/disciplines and colleges which were available in the reserved category as per his merit and choice. The seat

in the discipline of Dermatology in Govt Medical College, Jammu which has been allotted to respondent No. 6 would have remained available to

the candidate of open merit category, next in the order of merit and could not be available for allotment in favour of respondent No. 6, a reserved

category candidate. The Board, therefore, could not have validly and legally allotted the discipline of Dermatology to respondent No. 6.

11. However, the contention of Mr. Raina, learned Senior Counsel for the Board is that all those candidates who had made their grade in the open

merit category though belonging to reserved category were entitled to the

benefit of Rule 17 and in terms of Rule 17 according to Mr. Raina, the seats available to them in Open Merit Category on their opting for the seats available in reserved category, would get shifted from open category to reserved category.

I am not in agreement with Mr. Raina. The argument advanced by Mr. Raina runs counter to the interpretation placed by this Court on Rule 17 of the Reservation Rules in Dr. Mir G.R. Wali's case (Supra).

12. In this view of the matter this writ petition deserves to be allowed. Accordingly same is allowed. The allotment of discipline of Dermatology in

Govt Medical College Jammu to respondent No. 6 (reserved category) by the Board in terms of Notification No. 17-BPEE of 2008 dated 8-5-

2008 is hereby quashed with a direction to the respondents No. 1. to 4 to allot the discipline of Dermatology in Govt Medical College, Jammu to

the petitioner, if she is next in merit in open category and allot another seat in the discipline available as per his merit and choice to respondent No.

6 in reserved category in which he has applied and selected. Needful shall be done forthwith, in any case, before 31st of May, 2008, the cut of

date fixed by the Hon'ble Apex Court in terms of judgment in Mridul Dhar (Minor) and Another Vs. Union of India (UOI) and Others, ,

Connected CMPs shall also stand disposed of.