

(2011) 03 AHC CK 0052

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1359 of 2011

Dr. Archana Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-03-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 4 ADJ 428

Hon'ble Judges : Dilip Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dilip Gupta, J.—The relief claimed in the petition is for quashing the order dated 11th /28th December, 2010 by which the Director of the Institute of Medical Sciences, Banaras Hindu University, Varanasi (hereinafter referred to as the "Institute") has rejected the representation filed by the Petitioner for granting admission to the "Ayurveda Vachaspati MD (AY)/Ayurveda Dhanwantari MS (AY) Course-2010" (hereinafter referred to as the "Course"). A further relief has been sought that the Petitioner should be granted admission in the said three years Course as a student belonging to the unreserved category.

2. An advertisement was issued by the Institute for granting admission to the 5 seats for Scheduled Castes/Scheduled Tribes, 5 seats for OBC and 9 seats for the General category candidates. The last date for filling the application forms was mentioned as 10th June, 2010 and the date of holding of the Entrance Test was mentioned as 20th June, 2010. The Petitioner submitted her application as a candidate belonging to the OBC category. The merit list of the general category candidates contained 9 names as also a waiting list of 9 candidates. The Petitioner was shown at serial No. 4 in the waiting list of general category candidates, while Respondent No. 6. -Dr. Devanand Upadhyay was shown at serial No. 5 in the waiting list of the general category candidates. A separate merit list of 5 OBC candidates was also published in which the Petitioner was

shown at serial No. 4. The Admissions Committee met on 30th July, 2010 and required the Petitioner to indicate whether she would like to be admitted as a candidate belonging to the general category or as a candidate belonging to the OBC category. The Petitioner did not opt for admission under the general category and opted for admission as a candidate belonging to the OBC category on the strength of the certificate dated 28th July, 2010 issued by the Tahsildar Chunar, Mirzapur that the Petitioner belongs to the OBC category and does not belong to the creamy layer. The Petitioner was, therefore, granted admission as a candidate belonging to the OBC category on the basis of the option exercised by the Petitioner since her name appeared at serial No. 4 in the main list.

3. Dr. Ghanshyam Verma-Respondent No. 5, however, filed a writ petition alleging that Dr. Archana Singh (present Petitioner) belongs to the creamy layer of OBC and was, therefore, wrongly admitted. The writ petition was disposed of with a direction to the Director of the Institute to examine the grievance of the Petitioner and take a decision. The Director of the Institute then constituted a Committee of teachers to examine the admission of the Petitioner. The Committee noticed that the Petitioner could not produce OBC non-creamy layer certificate till 12th November, 2010 and, accordingly, in its meeting held on 24th November, 2010 resolved to cancel the admission of the Petitioner which decision was approved by the Director of the Institute by the order dated 26th/27th November, 2010 and the Petitioner was informed that her admission had been cancelled. A letter dated 24th September, 2010 was also received from the Tahsildar Chunar, Mirzapur that the father of the Petitioner comes under the creamy layer OBC category and, therefore, the Petitioner should be treated as a candidate belonging to the creamy layer in the earlier certificate dated 28th July, 2010.

4. It needs to be noticed that the Petitioner was at serial No. 4 in the waiting list of general category candidates and at serial No. 4 in the main list of OBC category and as the Petitioner specifically opted not to be considered as a candidate belonging to the general category but as a candidate belonging to OBC category, admission was granted to Respondent No. 6-Dr. Devanand Upadhyay who was at serial No. 5 in the general category waiting list.

5. The decision of the Director of the Institute to cancel admission of the Petitioner was assailed by the Petitioner in Writ Petition No. 69909 of 2010 which was disposed of on 1st December, 2010 with the following observations:

...

Sri R.N. Singh, Senior Advocate assisted by Sri V.K. Singh, Advocate fairly conceded that it will be difficult to dislodge the finding recorded qua Petitioner being a member of creamy layer. However, it is contended that no fraud was played by the Petitioner. She had claimed the benefit of OBC category on the strength of the certificate issued by the Tehsildar. In the subsequent certificate issued by the Tehsildar although it has been held that the Petitioner belongs to

creamy layer but there are no allegation that the Petitioner had ever misled him in the matter or she had disclosed wrong information. He further submitted that even if the Petitioner is liable to be excluded from the category of OBC and her admission to the M. S. Course in the subject concerned has to be cancelled on that ground, yet University authorities are under legal obligation to treat the Petitioner as a member of general category and in case she falls within the cut of marks provided for admission to M. S. Course in any subject, such claim cannot be refused.

Counsel for the University submits that if the Petitioner has any such grievance/claim, she may represent her grievance before the Director, who shall call for the records and shall take appropriate decision in the matter without any unnecessary delay.

In view of the aforesaid, the present writ petition is disposed of by providing as follows:

(a) The order of the Director, canceling admission of the Petitioner to Ayurveda Vachaspati MD (AY) Ayurveda Dhanwantari MS(AY) Course-2010 is hereby affirmed.

(b) Petitioner be treated as member of general category and if she claims admission in any other course having regard to the over all merit secured by her within the general category, she may represent before the Director within two weeks from today alongwith certified copy of this order.

(c) The Director shall take appropriate decision thereon strictly in accordance with law within four weeks thereafter.

(emphasis supplied)

6. The representation filed by the Petitioner pursuant to the direction issued by the Court has been rejected by the Director of the Institute by the order dated 11th/28th December, 2010. It is this order dated 11th/28th December, 2010 that has been assailed in this petition.

7. Sri R.N. Singh, learned Senior Counsel appearing for the Petitioner has submitted that since the Petitioner was at serial No. 4 in the general category waiting list and Respondent No. 6-Dr. Devanand Upadhyay, who has been granted admission, was at serial No. 5 in the said waiting list, the University should have cancelled the admission of Dr. Devanand Upadhyay and should have granted admission to the Petitioner as a candidate belonging to the general category, when admission of the Petitioner as a candidate belonging to the OBC category was cancelled as no fraud had been played by the Petitioner in seeking admission under the OBC category. In this connection, he has pointed out that it was for this purpose that the High Court had directed the Petitioner to file a representation but the Director of the Institute rejected the representation in an arbitrary manner. It is also his submission that in any case one seat could have been increased by the Institute to save admission of the Petitioner.

8. Sri K.S. Chauhan, learned Counsel appearing for the Respondent-Institute has submitted that the order passed by the Director of the Institute does not call for any interference under Article 226 of the Constitution. It is his submission that when the Petitioner specifically opted before the Admissions Committee on 30th July, 2010 not to be treated as a candidate belonging to the general category but as a candidate belonging to the OBC category and she was granted admission as a candidate belonging to the OBC category, she cannot now turn around and claim admission as a candidate belonging to the general category when her admission under the OBC category has been cancelled for the reason that the certificate produced by her at the time of admission that she did not belong the creamy layer was found to be wrong and she actually belonged to the creamy layer which fact was also not disputed by learned Counsel for the Petitioner in the earlier Writ Petition No. 69909 of 2010 which was decided on 1st December, 2010.

9. Sri A.K. Tripathi, learned Counsel appearing for Respondent No. 6. Dr. Devanand Upadhyay has submitted that the said Respondent is not at fault in any manner as he was granted admission in the general category by the Admissions Committee by the order dated 30th July, 2010 only when the Petitioner opted not to be considered in the general category.

10. I have considered the submissions advanced by the learned Counsel for the parties.

11. It is not in dispute that in the result declared for general category candidates for which there were 9 seats, the Petitioner was at serial No. 4 in the waiting list, while Respondent No. 6-Dr. Devanand Upadhyay was at serial No. 5. The Petitioner claimed that she belonged to the OBC category and for this purpose, she had also filed the certificate dated 28th July, 2010 issued by the Tahsildar that she belongs to the OBC category and does not fall within the creamy layer. The Admissions Committee called the Petitioner on 30th July, 2010 for counseling to find out whether she wanted admission as a candidate belonging to the general category or as a candidate belonging to OBC category. The Petitioner opted to be considered as a candidate belonging to the OBC category and was granted admission since her name was shown at serial No. 4 in the main list. As a result of this option exercised by the Petitioner, the candidate next in the waiting list of general category candidates namely, Respondent No. 6-Dr. Devanand Upadhyay, was offered admission and he accepted it and was granted admission.

12. One Dr. Ghanshyam Verma-Respondent No. 5 in this writ petition challenged the certificate issued by the Tahsildar on 28th July, 2010 in favour of the Petitioner contending that the Petitioner belonged to the creamy layer. The petition was disposed of with a direction to the Director of the Institute to take a decision and the Director constituted a Committee to examine this aspect. The Committee submitted a report that the Petitioner belonged to the creamy layer which report was accepted by the Director of the Institute. The Tahsildar also

submitted a letter dated 24th September, 2010 that the Petitioner comes under the creamy layer category. The admission of the Petitioner was cancelled which decision was assailed by the Petitioner in Writ Petition No. 69909 of 2010 and in this petition a statement was made by learned Senior Counsel for the Petitioner that it would be very difficult for the Petitioner to dislodge the finding recorded against the Petitioner that she belonged to the creamy layer and the only relief pressed for was that the case of the Petitioner may now be examined as a candidate belonging to the general category. The petition was, accordingly, disposed of with a direction to the Director of the Institute to take a decision and by the order dated 11th /28th December, 2010, the Director has rejected the representation filed by the Petitioner for granting her admission as a candidate belonging to the general category for the following reasons:

...

WHEREAS Dr. Archana Singh appeared before the Admission Committee on 30.7.2010 and did not opt for her consideration under general category and gave her remark "Not opted". Since Dr. Archana Singh did not opt her admission under General Category, the P.G. seat was offered to the next waitlisted candidate under General Category Dr. Devanand Upadhyay. Accordingly all the seats under General Category were filled up on the same day i.e. 30.7.2010 (First Counseling). No P.G. seat in Faculty of Ayurveda is lying vacant.

WHEREAS Dr. Archana Singh missed her opportunity to get admission under General Category as she gave her remark "Not opted" and preferred the seat from the OBC category. Under the circumstances Dr. Archana Singh cannot be permitted to exercise her option under General Category at this stage as no seat is vacant at this moment.

....

13. The order passed by the Director of the Institute does not suffer from any infirmity. The Petitioner, as noticed hereinabove, was granted an opportunity by the Admissions Committee to seek admission either as a candidate belonging to the general category in which the name of the Petitioner appeared at serial No. 4 in the waiting list or as a candidate belonging to the OBC category in which her name appeared at serial No. 4 in the main list. The Petitioner opted for taking admission as a candidate belonging to the OBC category and she was granted admission on the basis of certificate dated 28th July, 2010 issued by the Tahsildar that she does not belong to the creamy layer. Having done so, the Petitioner cannot now be permitted to contend that she should be treated as a candidate belonging to the general category when it has been found as a fact that she cannot be given the benefit of OBC category candidates as she belongs to the creamy layer. The person next in order of merit in the list was granted admission and there is no seat vacant against which admission can now be granted to the Petitioner.

14. In the end, Sri R.N. Singh, learned Senior Counsel for the Petitioner

contended that a sympathetic view should be taken and a seat may be increased so that the Petitioner may not suffer.

15. It is also not possible to accept this contention of learned Senior Counsel for the Petitioner as the Courts do not normally issue directions for increase of seats. This is not a case where opportunity was not given to the Petitioner to exercise option of seeking admission as a candidate belonging to the general category or a candidate belonging to the OBC category. The Petitioner exercised her option as a candidate belonging to the OBC category and, therefore, the Institute was justified in giving admission to Dr. Devanand Upadhyay who was next in the waiting list of general category students. Such a situation has been brought about by the Petitioner herself as she herself gave option to be admitted under the OBC category but such admission was cancelled as it was found as a fact that the Petitioner belongs to the creamy layer and could not, therefore, have claimed admission as a candidate belonging to the OBC category.

16. There is, therefore, no infirmity in the order passed by the Director of the Institute which may call for any interference under Article 226 of the Constitution.

17. The writ petition is, accordingly, dismissed.