

(2013) 10 UK CK 0024

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 2444 of 2013

Dr. Himmani Gupta

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 21-10-2013

Acts Referred:

Citation : (2013) 3 UC 2265

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : Shailendra Nauriyal, for the Appellant; R.C. Arya for State of Uttarakhand, Mr. Rajendra Dobhal assisted by Mr. G.D. Joshi, Advocate for Respondent No. 2 and Mr. Paresh Tripathi, Advocate, for the Respondent

Judgement

Sudhanshu Dhulia, J.—The petitioners have done their Bachelor course of Ayurvedic Medicine and Surgery (hereinafter referred to as "B.A.M.S.") from an institute in Uttarakhand. However, when the petitioners sought admission in a Post-Graduate Ayurvedic Medical course, the candidatures of the petitioners was considered as an "outsider" candidate and not as a "insider" candidate as there is a condition mentioned in Clause (ii) of the information Brochure in which it is provided that only such those candidates will be given the admission under the quota of State of Uttarakhand (i.e. as an "insider"), who have their domicile in Uttarakhand!

2. Admittedly, Dr. Himani Gupta and Dharmendra Kumar (the two writ petitioners above), are permanent residents of Delhi and Uttar Pradesh respectively. However, once the petitioners have already done their graduation from an institute in Uttarakhand, they cannot be considered outsider for a Post-Graduation course, the petitioners contend.

3. According to the State counsel, the petitioners are not having a domicile of Uttarakhand. Mr. R.C. Arya, Standing Counsel for the State has argued that the petitioners are in fact estopped from seeking any remedy before this Court inasmuch as these are the candidates who had participated pursuant to the

advertisement and the brochure conditions given in the brochure, which had been issued as far back as in August, 2012 and they were fully aware of such conditions. Consequent to that they have proceeded in the selection process and having failed in the selection process they are estopped from challenging the selection process by means of the present writ petitions. In support of their contention, the State counsel has relied upon a judgment of Hon"ble Apex Court in Dhananjay Malik and Others Vs. State of Uttaranchal and Others, wherein while making selection of Physical Education Teachers, the Hon"ble Apex Court observed that no relief can be granted to the persons who have participated in the process and have failed to get an appointment or selection and they are estopped from complaining that the selection process was not in accordance with rules.

4. However, it is not a case where petitioners participated in a "selection process" in the manner in which it is contemplated. Here the very "exclusion" of the petitioners is on a complete misreading and misapplication of the principle of "domicile".

5. The stand of the State Government in considering the candidatures of the petitioners as an outsider is totally irrational, arbitrary and violative of Article 14 of the Constitution of India. The word "domicile" has not been defined by the Government in any of its order and nothing has been presented before this Court. Moreover, in two of the judgments of this Court in Neha Saini Vs. State of Uttarakhand and Another, and another in Smt. Dr. Madhu Arya Vs. State of Uttarakhand and Others, this Court has categorically held that in India there is only one domicile of a citizen of this Country which is "domicile of India" and there is nothing like a "provincial domicile". Therefore, the stand of the State counsel is totally misconceived. Moreover, this Court in a similar matter (in WPMS No. 2286 of 2012 Bhawana Sharma Vs State of Uttarakhand & others decided on 21.12.2012) relating to the Post-Graduate Ayurvedic Medical Course has already held that treating similarly placed petitioners as outsider is violative of Article 14 of the Constitution of India and had directed the respondents to consider them as internal students and their concept of "domicile" was bad.

6. This Court has been informed that special appeal has been filed against the said order, but presently it stands dismissed in default. Therefore, the present writ petition is also disposed of in the same terms and conditions as made in WPMS No. 2286 of 2012 (WPMS No. 2286 of 2012 Bhawana Sharma Vs State of Uttarakhand & others) decided on 21.12.2012. The respondents are further directed to treat the petitioners as internal candidates and consider their case for admission in Post-Graduate course in Ayurvedic Medical in the counseling, as internal candidates.

7. Let a copy of this order be supplied to learned counsel for the petitioners today itself.