

(2017) 03 MP CK 0011
In the Madhya Pradesh High Court
Case No : Writ Petition No.18162 of 2016

Dr. Madhuri Tripathi

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 21-03-2017

Acts Referred:

Madhya Pradesh Ayurved Chikitisa Snatakottar Pathyakram Pravesh Pariksha Niyam,
2016 — Rule 8

Citation : (2017) CJ 1034 (MP) : (2017) 3 MPLJ 77 : (2017) 2 JabLJ 24

Hon'ble Judges : Shri R.S. Jha and Shri A. K. Joshi, JJ.

Bench : Division Bench

Advocate : Shri S. P. Mishra, Advocate, for the Petitioner; Shri Deepak Awasthi,
Govt. Advocate, for the State

Final Decision : Dismissed

Judgement

R.S. Jha, J.—The petitioner has filed this petition praying for a direction to the respondent authorities to allot the Post Graduate seat in the subject of Panchkarma to the petitioner by cancelling the allotment made in that regard in favour of respondent no.5 Dr. Darshana Tiwari.

2. The petitioner alleges that after having completed her Graduation Course in Ayurveda she appeared in the entrance test conducted by the respondent authorities seeking admission in the P.G Ayurveda Course. It is submitted that the petitioner stood second in the merit list having scored 85 marks whereas respondent no.5 stood 12th in the merit list having scored 83 marks. It is submitted that the petitioner, being more meritorious, was entitled to the P.G seat in the subject of Panchkarma but the authorities have allotted the said seat to respondent no.5 who is less meritorious and has thereby committed gross illegality. On the basis of the aforesaid assertion and on the ground that the petitioner is more meritorious, she has prayed for the relief as stated above.

3. The respondents have filed a return and have stated that the merit position of the petitioner as stated by her in the petition is undisputed. It is, however,

submitted that the petitioner applied as an in-service candidate and, therefore, in the first round of counselling, as per her own choice, she was treated as an in-service candidate and as no seat in the subject of Panchkarma for in-service candidate was reserved or available, therefore, the petitioner was allotted a seat of the second option mentioned by her, that is the subject of Rog Nidan Avum Vikriti Vigyan at Government Ayurved College, Bhopal.

4. It is submitted that the petitioner, instead of joining the aforesaid course, opted for up gradation, whereupon the authorities found that the petitioner in fact did not fall within the category of in-service candidate as she has not completed three years of Government service and, therefore, in view of her application for up gradation, she was asked to obtain fresh registration. It is submitted that the petitioner thereafter obtained fresh registration as an unreserved candidate and gave new preferences. It is submitted that pursuant to the fresh registration, the petitioner was called in the second round of counselling wherein she has been allotted Swasthya Virta which was her second choice, as a seat of her first choice Panchkarma, was not available at the time of second counselling having already been filled up in the first round. It is submitted that in such circumstances the claim of the petitioner is meritless.

5. We have heard the learned counsel for the parties at length and perused the record. From the record it is evident that the petitioner stood second in the merit-list of selected candidates pursuant to the P.G entrance examination in Ayurveda Course conducted by the respondent authorities in accordance with the provisions of the Madhya Pradesh Ayurved Chikitsa Snatakottar Pathyakram Pravesh Pariksha Niyam, 2016 (hereinafter referred to as the Ayurved Chikitsa Niyam, 2016"). From the documents filed by the petitioner herself, which is an online counselling registration receipt for Ayush Pre-PG Counselling 2016, Annexure P-3, and the information submitted by the petitioner in the form submitted by her before the authorities for participating in the examination, Annexure P-6, it is apparent that the petitioner while declaring herself to be an Unreserved Category candidate stated that she was an in-service candidate as prescribed under Rule 8 of the Ayurved Chikitsa Niyam, 2016.

6. From a perusal of the allotment list published by the respondent authorities after the first round of counselling, it is also apparent that the petitioner's name appears at Serial No.3 of the said list in which it is stated that she has been allotted category of INUR i.e. in-service unreserved candidate. In the said document that have been brought on record by the petitioner as well as the respondent along with the rejoinder and additional return, etc. it is also clear that the petitioner, after the first round of counselling that was held between 22.10.2016 and 24.10.2016, filed an online application before the authorities seeking seat up gradation and also filed a representation before the college concerned on 24.10.2016 stating that she had wrongly been allotted the seat in the subject of Rog Nidan whereas she was entitled to a seat in the subject of Panchkarma as she stood second in the merit list. It is also undisputed that

respondent no.5, who had applied as an unreserved category candidate, was allotted Panchkarma seat in the first round of counselling itself on 23.10.2016 and her name is also shown in the list of allotted candidates that has been filed by the petitioner on page 23 of the petition.

7. It is also apparent from the documents that on the petitioner filing representations before the authorities it was discovered that the petitioner has not completed three years of service and was, therefore, not an in service candidate as claimed by her before the authorities while filing the form and, therefore, by way of a second opportunity the authorities, vide communication dated 7.11.2016, asked the petitioner to obtain fresh registration as an unreserved category candidate so that she may be given a chance to appear in the second round of counselling and obtain a seat of her choice.

8. Pursuant to this letter dated 7.11.2016, Annexure R/1, filed along with the first return filed by the respondents, the petitioner obtained fresh registration. Documents in respect of which have been filed by the respondents as Annexures R/8 and R/9 along with the additional return filed by them in which the petitioner has clearly stated that she is not an in-service candidate and has also given her subject preferences.

9. At this stage, it is pertinent to note that as per the appendix to the Rules relating to the distribution of seats notified along with the rules which is available on page 35 of the petition, no seat of Panchkarma has been reserved for in-service unreserved category candidates and, therefore, it is for this reason that the petitioner, who had claimed preference as an in-service unreserved category candidate, was not allotted the Panchkarma seat in the first round of counselling. In the second round of counselling, as the Panchkarma seat available for unreserved category candidates had already been allotted in the first round of counselling and no seat remained vacant, the petitioner was offered the seat of Swastha Virta which is her second choice in accordance with the subject preference given by her vide Annexure R/9 which she has accepted and is at present prosecuting.

10. From a perusal of the aforesaid chronology of events and documents, it is apparent that the petitioner at the first instance applied as an in-service unreserved category candidate but was allotted a seat in the subject of Rog Nidan Avum Vikriti Vigyan which was the second choice given by her in the first round of counselling as a seat of Panchkarma for in-service unreserved category candidate was not available as per the rules. It is also apparent that the petitioner did not choose to join the said course and opted for up gradation and on examining the said claim of the petitioner, it was discovered that the petitioner had wrongly claimed herself to be an in-service candidate as she did not fulfil the necessary qualification as prescribed in Rule-8 of the Ayurved Chikitsa Niyam, 2016 and, therefore, by way of indulgence she was given a second chance to get herself registered afresh and appear in the second round of counselling vide communication dated 7.11.2016, Annexure R/1 filed by the

respondents along with the return. On receiving the said communication, the petitioner obtained a fresh registration and while doing so changed the entries in the necessary column and clearly stated that she was not claiming admission as an in-service candidate and also gave different subject preferences, pursuant to which she was permitted to appear in the second round of counselling in which she has been allotted the second preference subject given by her of Swasthya Virta as the seat of Panchakarma was not available for allotment in the second round of counselling, in view of the fact that it had already been taken by other students in the first round of counselling.

11. From the aforesaid facts and circumstances it is apparent that though the petitioner stood second in the merit list, she could not obtain admission in the subject of her choice on account of the fact that she had wrongly filled the form as an in-service category candidate in spite of being fully aware of the fact that the seat of Panchkarma was not available for in-service category candidate in view of the seat distribution chart duly notified by the authorities along with the rules. It is also clear that in the first round of counselling the seat of Panchkarma that was available for unreserved category candidate was allotted to respondent No.5 in accordance with merits as she had opted for the same and, therefore, no fault can be found with the allotment of seat to the respondent No.5. It is also apparent that in the second round of counselling the petitioner, in accordance with her merit and choice, has been allotted a seat in the subject of Swasthya Virta which is also in accordance with law and does not call for any interference.

12. The petitioner, at this stage, has relied upon the decision of the Supreme Court rendered in the case of State of Uttar Pradesh and others v. Dinesh Singh Chauhan, 2016 (9) SCC 749, to contend that the petitioner being more meritorious was entitled to admission in the seat of Panchkarma by treating her as an unreserved category candidate and that she could not have been denied allotment of the subject of Panchkarma only on account of the fact that she had applied as an inservice candidate as reservation for in-service candidate is not permissible in law in view of the aforesaid judgment of the Supreme Court.

13. We are of the considered opinion that the contention of the petitioner in this regard is totally misconceived as the decision of the Supreme Court rendered in the case of Dinesh Singh Chauhan (supra) has no applicability to the facts and circumstances of the present case. In the aforesaid decision the Supreme Court has held that no preference for reservation can be given to in-service candidates in view of the fact that there was no provision in the rules and regulations governing admission providing for reservation for in-service candidates.

14. The facts of the present case are totally different. In the present case, Rule 8 of the Ayurved Chikitisa Niyam, 2016, specifically Rule 8.6, provides that 25% of the seats shall be reserved for in-service candidates and, therefore, the decision of Supreme Court relied upon by the petitioner does not render any assistance to the petitioner. Quite apart from the above, the aforesaid decision of the Supreme Court relates to the interpretation of MCI Regulations governing admission to

M.D/M.S courses whereas the present case relates to admission in P.G courses of Ayurveda which is not governed by the MCI Regulations. Therefore, the reliance placed by the petitioner on the aforesaid decision is totally misconceived.

15. It is pertinent to note that the petitioner, in the present petition, has not challenged the constitutional validity of the provisions of the Ayurved Chikitsa Niyam, 2016, providing for reservation for in-service candidates and, therefore, she cannot be permitted to say that they should not be applied to her moreso when the petitioner taking benefit of the same had herself applied as an inservice unreserved candidate.

16. Other decisions cited by the petitioner for canvassing the contention that even if a candidate belongs to the reserved category, he/she is entitled to admission in the unreserved category in case he/she is entitled for the same in accordance with merits also have no applicability to the facts and circumstances of the present case as all those decisions relate to SC, ST and OBC candidates which are vertical reservations provided in the rules and none of the decision relates to horizontal reservations or preferences that are granted under the rules to in-service candidates.

17. As the petitioner, with open eyes, had applied for admission as an in-service candidate knowing fully well that the seat of Panchkarma had not been reserved for an in-service candidate, she has only herself to blame and she cannot fault the action of the respondents on that count.

18. In view of the aforesaid analysis and in view of the facts and circumstances of the case, the petition, filed by the petitioner, being meritless is accordingly dismissed.