
(1983) 11 AHC CK 0011
In the Allahabad High Court
Case No : Writ Petition No. 2130 of 1982

Dr. Raj Kamal

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 09-11-1983

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1984 All 226

Hon'ble Judges : R.C. Deo Sharma, J;D.N. Jha, J

Bench : Division Bench

Advocate : K.S. Bajpai, for the Appellant; B.M.H. Kacher, for the Respondent

Final Decision : Allowed

Judgement

D.N. Jha, J.—Petitioner Dr. Raj Kamal has directed this petition under Article 226 of the Constitution praying for issue of a writ in the nature of mandamus directing the opposite parties viz., the State of Uttar Pradesh through the Secretary Medical and Health Department, U. P. Lucknow, the Principal, King George's Medical College, Lucknow and Lucknow University, Lucknow to admit the petitioner in M. S. (Orthopaedic) Course for the session 1982-83.

2. It may be mentioned that petitioner by order dated 25th May, 1982, passed by this Court after hearing the parties and perusing the averments made in the respective affidavits, was ordered to be admitted provisionally to M. S. (Orthopaedic) course until further orders, The petition on that very date was listed for final hearing but the Standing Counsel Sri. B. M. H. Kacher for the University had sought time to file a supplementary counter-affidavit in order to bring certain facts on record for purposes of laying foundation for his argument in support of the interpretation of relevant notification. In spite of lapse of time no supplementary counter-affidavit has been filed.

3. We have heard the learned counsel for the parties and have gone through the averments and cross-averments made by the respective parties in their

affidavits. We have also perused the record produced by the counsel for the respondents.

4. The petitioner, admittedly, had secured 63.35% of marks in his M.B.B.S. examination from Jamshedpur Medical College in the State of Bihar. He applied for being admitted to the post-graduate course of M. S, (Orthopaedic) in King George's Medical College, Lucknow for the session 1982-83 but, unfortunately was unsuccessful in getting admission and that is why he preferred this petition.

5. It is not disputed that there were seven seats in M. S. (Orthopaedic), out of which five seats were kept for internal candidates while two seats were to be filled from amongst the external candidates provided they were superior in merits to the internal candidates. The procedure to be adopted for admission is provided in G. O. dated 3rd December, 1980 attached as Annexure-2 to this petition. The relevant sub-clause (4) reads as under:--

"In every specialty, seventy-five percent seats in a particular Medical College shall be reserved for the candidates who have passed the M. B, B. S. Examination from the college and against the remaining twenty-five per cent candidates who have passed M. B. B. S. examination from other Medical Colleges and are bona fide residents of Uttar Pradesh, shall be eligible for admission on the basis of merit along with the candidates who have passed the M. B. B. S. examination from that very College."

On the five seats reserved for internal candidates the respondents admitted following candidates:--

1.

Dr. S. P. S. Sidhu

63.40%

2.

Dr. A. K. Mehrotra

62.40%

3.

Dr. C. N. Tewari

58.80%

4.

Dr. Vinay Kumar

58.80%

5.

Dr. H. K. Srivastava

58.33%

With respect to the two seats meant for open field of eligibility two internal candidates Sri Vineet Sharma and Sri Ashok Kumar Srivastava having 66.63 and 64.57 per cent of marks respectively were admitted. The external candidates with their percentages of marks who had applied for admission are as under:--

1.

Dr. Raj Kamal

63.35%

2.

Dr. M. J. Naidu

61.98%

3.

Dr. B. K. Pandey

61.26%

4.

Dr. A. K. Sipani

60.58%

6. It would appear from amongst the list of external candidates that they had the higher percentage of marks but a unique device was adopted by the respondents to eliminate them from being admitted to M. S. (Orthopaedic) course. Learned counsel for the petitioner vehemently argued that in fact the respondents ought to have first selected 75% of candidates from amongst the internal candidates who had secured highest percentage of marks and thereafter should have selected 25% from the remaining, internal candidates and external candidates after due comparison of marks and since this yardstick has not been adopted the refusal of admission to the petitioner has resulted in outrageous miscarriage of justice. Learned counsel for the respondents tried to justify this method adopted by the respondents with respect to the admission to the postgraduate course by asserting that preference was given to the local candidates and after they had already made selection for the 25% quota fixed for outsiders by assessing the merits of external candidates with the internal candidates. Such a method of selection, in our opinion, was contrary to the procedure prescribed in Sub-clause (4) of the Government Order. What the respondents in fact did was that by putting their best internal candidates in the 25% of quota managed to oust the outside candidates from the field and thereafter proceeded to fill up the internal quota of 75% from internal candidates there by providing an avenue to the less

meritorious internal candidates who in fact had secured lesser percentage of marks as compared to outside candidates and could have no chance for getting admission. It has, however, been duly conceded by the learned counsel for the respondents that they have from this session reversed the procedure and adopted the procedure which has been canvassed before us by the learned counsel for the petitioner.

7. In view of aforesaid discussion we have no hesitation in observing that the respondents have perpetrated gross injustice in not admitting the petitioner to the post-graduate course of M. S. (Orthopaedic). In the specialised branches it is expected that the authorities would give preference strictly on the basis of merit rather than admitting students on extraneous considerations.

8. Learned counsel for the respondents, however, argued that if admission is allowed to the petitioner the result would be that last candidates with the lowest percentage of marks would have to be ousted. It is not for this Court to cancel the admission already made by the authorities but where the decision of the authorities is not in keeping with the prescribed procedure or where they have overstepped their jurisdiction it is the duty of the Court to correct the error. The admission was granted and more than an year has elapsed, therefore, we do not deem it just and proper to quash any admission made by the authorities on their own, but, however, it is open to them that if they want to keep the ratio of teachers and students they may, on their own, take such action as they deem necessary or they may with the permission of the medical council increase the seats to accommodate the persons having lower percentage of marks and who had erroneously been admitted. It was cast-iron case for the petitioner's success and the provisional order of admission deserves to be confirmed.

9. In view, of observations made above the petition succeeds and is allowed. The interim mandamus granted by this Court provisionally admitting the petitioner to M. S. (Orthopaedic) course for the session 1982-83 is confirmed. Let mandamus issue accordingly. In the circumstances of the case no order is made as to costs.