

(1990) 06 SHI CK 0002
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 467 of 1989

Harinder Batra

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 15-06-1990

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1990) 1 ILR HP 87

Hon'ble Judges : P.C.B. Menon, C.J.; Bhawani Singh, J

Bench : Division Bench

Advocate : Rajeev Sharma, for the Appellant; M.C. Mandhotra, for Respondent Nos. 1 and 2, D.C. Jishtu and Devinder Gupta, for Responent Nos. 4 and 5, for the Respondent

Final Decision : Dismissed

Judgement

Bhawani Singh, J.—Indira Gandhi Medical College, Shimla, is owned and financed by the State Government. Besides the M.B.B.S. Course, the College has started the Post Graduate Degree and Diploma Courses in various Specialties, including Radiology. Selection of candidates to the Courses is made on the basis of a test conducted by the Himachal Pradesh University. The duration of the Degree Courses is 24 months from the date of admission whereas it is one year for the Diploma Courses.

2. The third Respondent issued examination notice on July 15, 1989 for the Session 1989-90/91 to be held on August 31, 1989. According to this Notification, two seats in the Degree Courses have been indicated for candidates belonging to services (GDO-I and GDOII) and two seats for Diploma Courses for open candidates. Reference to the Prospectus, issued by the second Respondent, will show that under "Reservations and Restrictions", there are Group-A and Group-B to the following effect:

RESERVATIONS AND RESTRICTIONS:

GROUP-A

3.1 25% seats of Degree and Diploma course shall be filled through All India Entrance Examination conducted by All India Institution of Medical Sciences or any other body nominated by the Government of India from time to time. The seats will go in alphabetical rotation and at the rate of maximum one seat from each subject.

GROUP-B

3.2 66.6% seats will be reserved for in-service regularly appointed G. D. O. I and G. D. O. II in Himachal Pradesh Health Services Cadre and 33.3% seats will be available by open competition from amongst the graduates of Indira Gandhi Medical College. If sufficient number of candidates in one category is not available, the seats reserved for them will be allotted to the candidates of other category".

3. Under Clause 3.3, to qualify for Degree or Diploma Course, only such G.D. Os. (HPHS) will be eligible who have at least five years regular service, including ad-hoc service, to their credit and out of this, at least three years service has to be in a rural area. Clause 3.5 deals with the distribution of seats in each specialty to G.D. Os. (HPHS) and direct candidates according to the following roster:

3.5. Distribution of seats in each speciality to G.D. Os. (HPHS) and direct candidates will be according to the following roster:

3.3.1 First seat to G.D.O. (HPHS).

3.3.2 Second seat to direct candidate.

3.3.3 Third seat to G.D.O. (HPHS).

3.3.4 Fourth seat G.D.O. (HPHS).

3.3.5 Fifth seat to direct candidate.

3.3.6 Sixth seat to G.D.O. (HPHS).

This roster will be repeated after every six seats.

4. Under Sub-clause 3.6, 15 per cent of the seats are reserved for Scheduled Castes and 7.5 per cent for Scheduled Tribes. The allotments of seats are to be determined in consonance with the 40 point roster being maintained for the purpose. It is provided under Sub-clause 3.7 that if sufficient number of candidate (s) in each group of reserved seats (S. C. & S. T.) is not available, the seat (s) reserved for them will be treated open and allotted to the candidate (s) on merit of same category in the same specialty. However, under Sub-clause 3.8, no in-service candidate (s) is eligible to appear in the competitive examination if his/her application has not been routed through the administrative department.

5. Clause 5 deals with criteria and method of selection into Post Graduate

Courses. Under Sub-clause 5.2, the admission is by an open competitive examination conducted by the Himachal Pradesh University for different subject. Sub-clause 5.3 prescribes as under:

5.3.G.D. Os. (HPHS) will compete amongst themselves and open candidates will compete in their own group in the competitive examination conducted by the H.P. University.

Written test M.C.O. type in the concerned speciality to be conducted by Himachal Pradesh University.

Note: The candidate who obtains less than the following percentage of marks will not be admitted in the Post-Graduate Courses in Indira Gandhi Medical College:

General category 50 % Scheduled Caste Scheduled Tribe 45 %

6. During this session, both the seats in the Degree Course in the Post Graduate Degree in Radiology have gone in favour of G.D.O. (HPHS) by operation of roster. The Petitioner has assailed the reservations in favour of in-service regularly appointed G.D.O.-I and G.D.O.-II in the Himachal Pradesh Health Services Cadre on the ground that this reservation to the extent of 66.6 per cent, as compared to 33.3 per cent in favour of open category, is highly excessive. There is no nexus between this reservation and the object sought to be achieved thereby and giving of this percentage to this category means leaving apart only a small percentage of seats in favour of the category of candidates to which the Petitioner belongs.

7. The Respondents have categorically denied all these averments and have justified the provisions in the Prospectus touching these percentages of these categories. We do not consider it necessary to go into the details of the respective averments of the parties since we do not feel inclined to interfere in this matter for reasons being given hereinafter. So, examination of this contention of the Petitioner is left undecided.

8. We are told that the Prospectus for the impugned Courses was issued prior to the issuance of examination notice of July) 15, 1989. The Petitioner had come to know about the Course, the manner of admission, reservations and the percentages of seats to the two categories-in-service and direct-but he did not challenge the same and preferred to keep quiet. Similar conduct he displayed even after the issuance of examination notice issued by the Himachal Pradesh University which clearly indicated that two seats in the Degree Course in Radiology were to be filled from the category of in-service candidates and only the seats in Diploma, in this Course, were to be filled from amongst the candidates from open category. Petitioner's application for admission shows that he wanted to compete and seek admission in Diploma in Radiology. His mention of M. D. (Radiology) in the second place is only for the reason that if sufficient number of candidates in one category is not available, the seats reserved for them are to be allotted to the candidates of other categories. The examination

took; place on 31-8-1989 and the Petitioner appeared in the same without any protest. The result was declared on 19-9-1989 and the Petitioner was declared successful for admission in the Post Graduate Diploma Course in the subject of Radiology according; to the merit list. Subsequently, the Petitioner actually not only joined the Course but also pursued the same regularly till date. Similarly, Respondents Nos. 4 and 5, who were admitted in the Degree Course, are also pursuing the same.

Further, Sub-clause 3.9 envisages as under:

Once a candidate has been admitted in a particular course he/she will not be allowed to change the course until completion

This provision is also a bar against the Petitioner. When once he has sought admission in the Diploma Course, he cannot be permitted to change the same midstream and join the Degree Course. Moreover, in view of this prohibition, the second Respondent cannot be directed to do something which it cannot otherwise do. This will also render the seat in the Diploma Course vacant against which no other candidate, more particularly, out of the fourth and fifth Respondents, can be directed to join at this late stage.

9. The Petitioner sought to challenge the provisions of Sub-Clause 3.2 of the Prospectus on the basis of excessive reservation only after he found that his admission in the Diploma Course was a certainty. Looking to this nature of conduct on the part of the Petitioner, we refrain to exercise our discretionary jurisdiction Under Article 226 of the Constitution of India and grant any of the reliefs to the Petitioner.

10. At this stage, it is important to quote paras 3,4 and 5 of Durga Prashad Vs. Chief Controller of Imports and Exports,

3. It is well settled that the relief Under Article 226 is discretionary, and one ground for refusing relief Under Article 226 is that the Petitioner has filed the petition, after delay for which there is no satisfactory explanation.

4. Gajendragadkar, C.J., speaking for the Constitution Bench, in Smt. Narayani Devi Khaitan v. State of Bihar, Civil Appeal No. 140 of 1964, Dt/22-9-1964 (SC), observed:

It is well settled that under Article 226, the power of the High Court to issue an appropriate writ is discretionary. There can be no doubt that if a citizen moves the High Court under Article 226 and contends that his fundamental rights have been contravened by any executive action, the High Court would naturally like to give relief to him, but even in such a case, if the Petitioner has been guilty of laches, and there are other relevant circumstances which indicate that, it would be inappropriate for the High Court to exercise its high prerogative jurisdiction in favour of the Petitioner, ends of justice may require that the High Court should refuse to issue a writ. There can be little doubt that if it is shown that a party moving the High Court Under Article 226 for a writ is, in substance, claiming a

relief which under the law of limitation was barred at the time when the writ petition was filed, the High Court, would refuse to grant any relief in its writ jurisdiction. No hard and fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. That is a matter which must be left to the discretion of the High Court, and like all matters left to the discretion of the Court, in this matter too discretion must be exercised judiciously and reasonably.

5. Relying on the judgment of this Court in *Maharashtra State Road Transport Corporation Vs. Balwant Regular Motor Service, Amravati and Others*, the learned Counsel for the Appellant contends that the delay should not debar him from seeking relief because the Respondents have not suffered in any manner because of the delay. In this case Ramaswami, J., speaking for the Court, referred to an earlier decision in *Moon Mills v. Industrial Court Bombay*. AIR 1967 SC 1450. In that case Ramaswami, J., speaking for the Court, observed:

It is true that the issue of a writ of certiorari is largely p. matter of sound discretion. It is also true that the writ will not be granted if there is such negligence or omission on the part of the applicant to assert his right as, taken in conjunction with the lapse of time and other circumstances, causes prejudice to the adverse party. The principle is to a great extent, though not identical with, similar to the exercise of discretion in the Court of Chancery".

It would be noticed that Ramaswami, J., had first examined the question of delay and came to a finding that in fact there was no delay. Ramaswami, J., observed:

On behalf of the Respondent Mr. B. Sen, however, pointed out that the conduct of the Appellant does not entitle it to the grant of a writ, because it has been guilty of acquiescence or delay. It was pointed out that the award of Mr. Bhat was given on April 25, 1958, but an application to the High Court for grant of a writ was made long after on November 16, 1959. We do not think there is any substance in this argument, because the second Respondent had made an application, dated August 19, 1958 to the Labour Court for enforcement of the award and the Appellant had contested that application by a written statement, dated September 15, 1958. The Labour Court allowed the application on August 4, 1959 and the Appellant had preferred an appeal to the Industrial Court on August 31, 1959. The decision of the Industrial Court was given on October 24, 1959 and after the appeal was dismissed the Appellant moved the High Court for grant of a writ on November 16, 1963

(See also: AIR 1971 SC 898, *Tilok Chandel Moti Chand and Ors. v. H.B. Munshi, Commissioner of Sales Tax-Bombay and Anr.*).

11. In view of the aforesaid discussion and examination of the matter, the writ petition is dismissed. However, the parties are left to bear their own costs.