

(2011) 05 RAJ CK 0171

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3759 of 2009

Harsh Kiran Bubber (Surg Lt CDr.) (Retd.)

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 30-05-2011

Acts Referred:

Citation : (2012) 1 RLW 154

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Advocate : Sanjeev Prakash Sharma, with Tapesht Agarwal, for the Appellant; S.N. Kumawat, Additional Advocate General with Smt. Shruti Dixit, Deputy Government Counsel for State, R.S. Katta for Respondent No.2 and Prahlad Singh for Private Respondents, for the Respondent

Final Decision : Dismissed

Judgement

Mohammad Rafiq, J.—This writ petition has been filed by petitioner, inter-alia, with prayer that counselling conducted on 31.3.2009 by respondent PG Admission Board, Government Dental College and Hospital, Jaipur, for admission to Master of Dental Surgery Course (for short, "MDS Course"), be declared illegal and admission granted to respondents No. 4 and 5 on that basis against in-service quota seats be quashed and set-aside. Further prayer has been made that action of respondents in applying reservation policy for in-service quota be declared illegal and seats be directed to be filled in on merit basis alone. Alternatively, it is prayed that action of respondents in adopting 100 point roster and running account roster meant for direct recruitment on year to year basis to admission, be declared illegal and seats be directed to be filled in only on the basis of merit, and that petitioner be granted admission to MDS course against in-service quota seats on the basis of her second merit in pre-PG Dental Examination, 2009. Petitioner had served Armed Forces (Indian Navy) from 7.4.1997 to 6.4.2007 as Short Service Commissioned Officer. She appeared in pre-PG Dental Examination, 2009 for admission to MDS course against in-service

quota as per stipulation contained in clause 2(4) of the instructions booklet issued by respondent No. 2. She stood second in merit of in-service quota. In the year 2009 there were in all two seats for in-service quota and three seats for open category. Out of these three seats, admission on one seat was granted to general candidate against unreserved seat whereas a candidate belonging to Scheduled Tribe was given admission on second seat. Aggrieved thereby, petitioner has approached this court with aforesaid prayer.

2. Shri S.P. Sharma, learned Senior Advocate appearing on behalf of petitioner, has argued that since there were only five seats in the year 2009, 100 point roster and running account roster prescribed by the government in Annexure-II (Schedule-A annexed with writ petition), appended to the government circular dated 20.11.1997, could not be applied for the purpose of reservation and rather Appendix to Annexure-II, which contained model roster for direct recruitment for cadre strength upto 8 posts, should have been applied.

3. Learned counsel for petitioner argued that in the year 2006 there were four seats out of which two seats were given to open/non-service quota and two seats went to in-service candidates. Against both seats of in-service quota, one candidate of ST and another candidate of OBC were admitted. In the year 2007, there were five seats in State quota and this time only two seats were given to in-service quota and three seats were given to non-service/open category quota, so both the seats of in-service quota went to in-service general category candidates. In the year 2008, there were in all five seats of State quota, out of which three seats were given to in-service candidates and two were given to non-service/open category candidates. Out of these three seats, one seat each was given to OBC, SC and general candidate.

4. According to learned counsel for petitioner, cyclic order was not correctly applied because one Pramod Jain of general category was also admitted, although under interim order of this court, against in-service quota seat of the year 2006, therefore when one general seat was occupied by him, then one seat of ST candidate already given in 2006 to in-service was in excess of their quota. The quota of ST was thus already filled. Thus in the year 2009, again another seat could not be given to ST candidate. This is because upto the year 2008 total seven seats were filled, out of which one seat each went to candidates belonging to SC and ST and, two seats went to OBC, thus their slots were filled in completely.

5. Learned counsel argued that 100 point roster meant for appointment could not be applied to PG dental course as there does not exist any such instructions by the Government. Running account roster meant for direct recruitment also could not be applied for admission to PG dental course. Action of the respondents is in clear violation of law laid down by Supreme Court in R.K. Sabharwal and others Vs. State of Punjab and others, , and Ajit Singh and Others Vs. The State of Punjab and Others, .

6. It was argued that respondent No. 4 did not have requisite minimum three years service experience as per Clause 2(II) (3) of Instructions Booklet, which requires that a candidate should have completed at-least three years of service on 30.4.2009. Respondent No. 4 was appointed as Senior Demonstrator (Dental) by order dated 7.5.2007 at Government Dental College and Hospital, Jaipur, thus he completed three years of service only on 7.5.2010. Ad-hoc service rendered by him in Government Dental College as Demonstrator could not be counted for making up the deficiency of three years experience. His appointment was neither made through RPSC nor under the Rajasthan Collegiate Branch Rules, 1962, (for short, "the Rules of 1962"), therefore that term of that appointment could not be counted for the purpose of service. Judgments of this court in Mukesh Garg (Dr.) and Others Vs. State of Rajasthan and Others, , and in Deepak Goyal (Dr.) Vs. University of Rajasthan and Others, , can not be applied to present case because those were the cases where candidates having rendered three years services in rural areas, were to be treated as in-service candidates. Even otherwise, in view of Rule 2 of the Rules of 1962, respondent No. 4 was appointed on probation for a period of two years and, therefore, such period cannot be counted as service for the purpose treating him as in-service candidate.

7. It was argued that merely because this petition has remained pending for last two years, cannot be a reason not to grant admission to petitioner even at belated stage. Reliance in this connection has been placed on judgment of Supreme Court in Mrs Sheela Ashok Patwardhan Vs. Dean, Dr. V.M. Medical College and others, , wherein Supreme Court held that petitioner cannot be made to suffer for no fault of his, if two years had elapsed in deciding the petition. Learned counsel also relied on judgment of Supreme Court in Ritesh R. Sah Vs. Dr. Y.L. Yamul and others, , to argue that in that case Supreme Court granted relief to petitioner even after admissions were over and more than one year had gone by. Reliance was placed on judgments of Supreme Court in Harshendra Choubisa and Others Vs. State of Rajasthan and Others, , and Harshali vs. State of Maharashtra and Others - (2005) 13 SCC 464, wherein relief to same effect was granted and it was argued that in those cases Supreme Court directed admission of concerned petitioners in subsequent academic years. It is therefore prayed that writ petition be allowed in the terms as prayed for.

8. Per contra, Shri S.N. Kumawat, learned Additional Advocate General appearing on behalf of respondent State and Shri R.A. Katta, learned counsel appearing on behalf of respondent No. 2 University opposed writ petition and they argued that admission was granted to Pramod Jain initially under interim order of this court. Although according to Ordinance 278 E of the University Ordinances, 50% marks for general and 40% for reserved candidates were fixed as minimum qualifying marks. Pramod Jain did not secure 50% marks and therefore he was not granted admission, whereas two seats of in-service quota of the year 2006 were meant for general category/unreserved category. However, as per ratio of Supreme Court judgment in Ritesh R. Sah case, supra, and as per law laid down by Supreme Court in Indra Sawhney Vs. Union of India (UOI) and Others, , which

has been followed in Ritesh R. Sah case, *supra*, a reserved category candidate who secured more marks than the marks obtained by a candidate of general category, shall have to be treated as general candidate, notwithstanding the fact that he may belong to any of reserved categories. Since no general category candidate in the year 2006 secured minimum 50% marks, one candidate of ST and another candidate of OBC, who could secure minimum marks prescribed for them i.e. 45%, were admitted. Shri Pramod Jain, who was admitted initially under interim order of the court, considering the fact that he had completed substantial study course, the court allowed him to continue with the course and subsequently despite contest, a Division Bench of this Court confirmed that interim order allowing him to continue. That however cannot be a reason to say that he should be treated to have been admitted against general category seat and therefore the admission of ST candidate in that year should be treated to have been made at the roster point No. 9, though it would actually become ripen at a much later stage. It was argued that 8 point model roster included in Appendix to Annexure-II of Schedule-A to the government circular dated 20.11.1997 is meant for promotion, which has not been applied to admissions in PG Medical course or to any other course. The government, based on 100 point roster contained in Annexure II appended to said government circular, has adopted 200 point roster for admission to PG medical course, which is maintained as running account roster.

9. If contention of learned counsel for petitioner is accepted and 8 point roster is applied, a candidate of SC, ST and OBC would not be able to get admission for number of years. The decision of respondents to apply 100 point roster/200 point roster for admissions, was just and most equitable method of applying reservation.

10. It was argued that candidate belonging to ST category admitted in the year 2009 has been admitted at 9th point, which is the slot reserved for ST candidate in 100 point roster corresponding to 200 point roster adopted for the purpose of admission to PG medical courses by the State Government. This has been consistently applied on year to year basis and carried further for admission to next academic year and thereafter in subsequent academic years as well. It is therefore prayed that writ petition be dismissed.

11. It was argued that while in the year 2004 there were four seats, in the year 2005 five seats became available to State quota, thus when two seats were given to in-service quota in the year 2007, in the next year i.e. 2008 three seats were given to in-service quota and it is on that analogy that in the year 2009 two seats were given to in-service quota and if admission of Pramod Jain is counted, three admissions have already been made in the year 2006, and two admissions in the year 2007.

12. Shri Prahlad Singh, learned counsel appearing on behalf of private respondents submitted that even ad-hoc service has been held countable to period of three years for the purpose of eligibility of in-service candidates by

judgment of this Court in the cases of Dr. Mukesh Garg and Dr. Deepak Goyal, supra. Those judgments were delivered in the context of admission to PG medical course under Ordinance 278 E, which Ordinance is also applicable for admission to PG dental course. He also argued that even though appointment of respondent No. 4 on the post of Senior Demonstrator was made on ad-hoc basis vide order dated 7.5.2007 but it was after inviting applications from all eligible candidates, and that selection of petitioner and several other candidates was made and their appointments were made on recommendation of Central Selection Committee. Reference was made to additional affidavit of respondent No. 4, filed on 12.8.2009, and appointment order dated 25.2.2005. The appointment thus for all practical purposes has been treated as regular appointment.

13. I have given my thoughtful and anxious consideration to rival submissions and perused the material on record.

14. Contention that 100 point model roster or 200 point model roster subsequently prepared by the State Government for the purpose of admission to PG medical study courses, ought not to be applied to admission to PG dental course because in every academic year there are lesser number of seats than 8 seats and therefore 8 point model roster given in Appendix to Annexure II of Schedule A annexed to government circular dated 20.11.1997, should be applied, has to be rejected for the simple reason that as to what should be the method and manner of providing reservation, is discretion of the State Government. When the State Government and for that matter the respondent authorities, have adopted 100 point model roster, which has been advanced further upto by 200 point model roster for the purpose of admission to PG medical courses, unless it is shown that method of giving reservation is so arbitrary and obnoxious that it creates discrimination and that it is eminently unjust and contrary to well accepted norms of implementing reservation, this court cannot interfere with the action of the respondent just because according to perception of the petitioner, 8 point model roster meant for direct recruitment given in Appendix to Annexure-II would have been more just and reasonable. The 8 point model roster in the first place, which is meant for direct recruitment, presupposes the total cadre strength being only 8 or less and within that, the slots are given for reservation to various categories like general, SC, ST and OBC. That analogy perhaps may not be applicable to the matter for admission where the 100 point model roster which has been further improved by the government preparing 200 point model roster system as running account roster, would be a more reasonable method of providing reservation. This is because admissions are to be made in every academic session and reservation has to be therefore given in every successive academic year. While in this method, the reservation to SC, ST and OBC candidates would be available fairly regularly as compared to 8 point roster meant for direct recruitment, if we compare the two. For example, upto 8th point in both the model rosters, slots of reservation do tally but if it is compared beyond 8th point, it would be evident that reservation given to ST at 9th point in 100 point roster would be available to ST candidate at

16th point in the 8 point model roster. Similarly, second slot of reservation given to OBC at 10th point in 100 point model roster would become available at 12th point in 8 point model roster. In similar manner, 13th point given as the second slot of reservation to SC candidate in 100 point model roster would become available at 14th point in 8 point model roster and in this manner, the chances of getting reservation for reserved category candidates in 8 point model roster would be getting delayed with every passing year, if not denied. If that roster is to be applied for admission, it would have been rather too harsh on the reserved category candidates. Even otherwise, there is no illegality, in the action of the respondents because they are consistently applying 100/200 point model roster system on year to year basis as a running account and admissions on that basis are made from the point next to the point upto which admissions have been made in the previous year. I therefore do not find any merit in this argument of the petitioner either.

15. Contention that respondent No. 4 did not complete three years in regular service as on 7.5.2010, therefore, he could not be considered eligible for admission against in-service category, cannot be accepted because appointment of respondent No. 4 was made by adopting the mechanism that is provided for direct recruitment i.e. by inviting applications from all eligible candidates, subjecting them to interview, preparing a select list, on the basis of recommendations of the Central Selection Committee, and then issuing appointment orders. Respondent No. 4 was thus duly selected and thereafter, on being selected by RPSC vide order dated 23.4.2007 on substantive basis, he had completed more than three years of service. On this aspect, a division bench of this court in Dr. Deepak Goyal's case, *supra*, had rejected similar argument raised in the context of admission to PG medical courses where ad-hoc/temporary rural service was held countable towards requisite experience of three years of eligibility for admission against in-service quota.

16. Contention that since Shri Pramod Jain was admitted in the year 2006, and since both the seats of in-service quota in that year were meant for unreserved category i.e. general seats and he, being a candidate of general category, should be counted against general quota and on that logic, the seat given to ST candidate should be adjusted against 9th slot which became ripen in the year 2009, is too far-fetched to be accepted. Pramod Jain admittedly did not secure minimum qualifying marks of 50%. He was admitted under interim order of this court and eventually he completed the study course and in those facts in the SLP so filed, the Supreme Court did not interfere but that did not amount to approval of the judgment/order by which he was granted admission to PG medical course. That admission was obviously made due to intervention by the court but that did not and should not disturb application of 100 point roster and cyclic order in which admissions are to be granted to in-service and non-service candidates. I therefore, do not find any merit in this writ petition and same is accordingly dismissed.