
(2009) 02 J&K CK 0002

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 207 Of 2008, CMP No. 483 Of 2008

Iqra Hassan Khan

APPELLANT

Vs

State of J&K & Ors.

RESPONDENT

Date of Decision : 05-02-2009

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2009) JKJ 31 Supp : (2009) 1 SriLJ 309

Hon'ble Judges : Muzaffar Hussain Attar, J

Bench : Single Bench

Advocate : J.A.Kawoosa, S.F.Qadiri, Advocates appearing for the Parties

Judgement

1. The petitioner has filed this writ petition seeking following reliefs:

Writ of Mandamus or any other appropriate writ, order of direction thereby directing the respondents to consider and treat the petitioner to be

selected in the free seat category of a five year LLB integrated course in the respondent department of Law of the respondent University.

Writ of Mandamus or any other appropriate, order of direction thereby directing the respondents to make refund of the capitation amount

alongwith interest, deposited by the petitioner to the tune of Rs.1 Lakh to secure a payment seat in the respondent University.

2. The case of the petitioner is that process of admission for five year Law Course was started by University of Kashmir in the year 2007. The

petitioner alongwith other eligible candidates sought selection for being admitted to the five year Law Course and the petitioner came to be

selected against the payment seat. Admittedly, the process of selection got completed in the month of July, 2007 and the classes also started in the

month of July, 2007. Thereafter, somewhere in September, 2007 three candidates who were selected in open merit category to undergo five year

Law Course opted out of the course as they did not report to the University from that month onwards. The petitioner filed application to the Vice

Chancellor, University of Kashmir in which she prayed for her adjustment against the open merit category seat and for refund of the payment of

Rs. 1.00 lac which she had paid as she had been admitted against the payment seat. The official note recorded on the petitioner's application

reveals that the admissions were closed and course started from the month of July, 2007. Perusal of the note further reveals that it was provided

that refund of payment against payment seats claimed would be given only if vacant seats are filled up on payment seat basis. The note was,

however, not approved and it was observed that the request is not maintainable. The petitioner has referred to another notification of University of

Kashmir which pertains to the year 2007 in which the candidates whose roll nos. were given in the notification were earlier admitted against

payment seats category and later shifted to open merit category because of availability of seats in the open merit category. The petitioner states that

she is entitled to reimbursement of Rs. 1.00 lac which she has paid for having been admitted against the payment seat and by not doing so she has

been subjected to violation of her rights guaranteed under Article 14 of the Constitution.

3. The respondents have filed their reply and in their reply they have submitted that as the admission for five year Law Course had closed in the

month of July, 2007 and classes had started in the same month, there was no occasion of any seat becoming available for being filled up from

amongst the candidates who were appearing in the merit list. The respondents have further clarified the position in respect of B. Pharma course by

stating that the admission process was still open when the seats in open merit category in B. Pharma course, 2007 had become available and

accordingly, candidates next in merit were shifted from payment seats to open merit category seats. The respondents have submitted that the writ

petition is not maintainable and as such merits dismissal.

4. Heard learned counsel for the parties. Considered the matter. It is now practice with the educational institutions to reserve seats in open merit

category as also against payment which are called as payment seats. Such a decision to fill up seats in open merit and against the payment is a policy decision and has not been challenged. The petitioner is beneficiary of said policy decision of the University of Kashmir. The petitioner having been admitted on the basis of her merit against the payment seat and she having voluntarily deposited the fee, is undergoing five year Law Course, does not in law have any right to seek refund of Rs. 1.00 lac solely on the ground that after the process of admission has been closed and course commenced, some students opted out of the course. The admissions having been closed, selection process automatically got closed. Directing the respondents to adjust the petitioner against open merit category seat would run contrary to the settled norms of conducting educational courses in Universities. If such a situation is permitted, then it would be an unending process which would be embarrassing for institutions and would adversely affect the career of the students who are undergoing different courses. The petitioner is also estopped by conduct to seek any relief as she has consciously and voluntarily accepted the payment seat. The writ petition in essence is filed to seek refund of Rs. 1.00 lac. which is not countenanced by law.

5. The plea of having been subjected to invidious discrimination is also not available to petitioner, as because in the discipline of BPharmacy the selection process was still underway, when candidates were shifted from payment seats to open category. It was right of the candidates to seek and get admission against open merit category seats on the basis of their merit. In the case of petitioner the selection process was over and course had commenced when the seats in open category became available. The petitioner thus cannot draw any parallel with candidates in BPharmacy. The petitioner has not suffered infraction of any of her legal or constitutional rights.

6. The petition is, accordingly, dismissed.