
(2005) 04 J&K CK 0010

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 352 of 2005

Jahan Ara

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 27-04-2005

Acts Referred:

Jammu and Kashmir Reservation Rules, 1994 — Rule 22, 23, 24, 25, 25A

Citation : (2006) 1 JKJ 106

Hon'ble Judges : Y.P. Nargotra, J

Bench : Single Bench

Advocate : M.A. Goni and Piyush Gupta, for the Appellant; D.C. Raina and Farooq Ahmed Natnoo, for the Respondent

Final Decision : Allowed

Judgement

Y.P. Nargotra, J.—The Board of Professional Entrance Examination, Jammu (hereinafter referred to as 'the Board') by its Notification No.

2-BPEE of 2005 dated 25-1-2005, invited applications on the prescribed forms from the eligible candidates for appearing in the Entrance Test for

admission to M.D/M.S/P.G Diploma Courses in the Government Medical Colleges of the State, SKIMS Srinagar and Acharya Shri Chander

College of Medical Sciences and Hospital, Jammu, for 182 seats in MD/MS Courses and 63 seats in P.G. Diploma Courses. The petitioner,

applied under ALC Category for competing in the Entrance Examination. Like the petitioner, other eligible candidates also applied. The Board

conducted the written examination for making selection to the said courses on 17-03-2005. The total number of seats for which the selection was

to be made, were 245. The Board issued the Select List, selecting 132 candidates in the open merit category, 25 candidates in the open merit rural

category, 10 candidates in S.C. Category, 13 candidates in S.T. Category, 25 in RBA Category, 5 in ALC Category, 3 in OSC Category, 2 in

SP Category while 5 in CDP/JKPM Category.

2. The selected candidates were to be called for counseling for allotment of seats. Foot-Note-3, which is relevant to the dispute, reads as follows:

Twenty nine candidates in the Reserved Categories and one candidate under the 'Rural Service' have obtained marks which fall within the range of

marks obtained by the Open Merit Category candidates. These candidates are accordingly eligible to be considered under Open Merit Category.

They will be given option when the counseling is made for allotment of streams/ disciplines and depending upon their option whether they would like

to be placed in the Open Merit category or in their respective reserved categories, the residual berths in the Open Merit category or in the

appropriate reserved categories, as the case may be, will be allotted to the candidates on merit.

3. The name of the petitioner does not figure in the General List of selected candidates. Aggrieved by her non-inclusion in the list, the petitioner has

filed this writ petition.

4. The case of the petitioner is that she belongs to ALC Category. In the Open Merit category, the last candidate has obtained 169 points whereas

in the ALC category, under which the petitioner has applied, the last candidate has obtained 154 points in the examination. The other 4 candidates

in the ALC category have secured 191, 186, 170 and 169 points. The candidates figuring at S.Nos. 1 to 3 in the ALC category have thus

obtained more points than the last selected candidates in the Open Merit and, therefore, in terms of Rule 25-A of SRO 126 of 1994, these

candidates were required to be placed in the Open Merit category and consequently three vacancies were required to be filled up from the three

ALC category candidates, who may be figuring low in the merit than the last selected candidate in the category who has obtained 154 points. It is

the case of the petitioner that the petitioner has secured 149 points and, therefore, had the other three candidates from the ALC category, who

have more points than the candidates in the Open Merit category, been shifted to the Open Merit category, in consequent vacancies caused in the

ALC category, the petitioner can find berth. The petitioner, therefore, seeks re-

drawing of the select list in accordance with the rules and showing the place of the petitioner in the category of selected candidates in the ALC Category.

5. During the pendency of the writ petition, the Board proceeded ahead with the counseling of the selected candidates and has allotted disciplines

to 210 candidates out of the select list. The other seats available have not been allotted because of the pendency of this writ petition.

6. I have heard Mr. M.A. Goni Sr. Advocate, learned Counsel for the petitioner, Mr. D.C. Raina, Sr. Advocate learned Counsel for the respondent-Board and also perused record.

7. The rules for reservation of seats in Professional institutions for the reserved categories are contained in Chapter-4 of SRO 126 of 1994. Rule

22 provides for reservation of seats in appropriate institutions for S.C./S.T./ Socially and Educationally Backward Classes, in the following percentage:

(i) Scheduled Castes. 8%

(ii) Scheduled Tribes:

(a) Gujjars and Bakerwals. 6%

(b) Residents of District Leh. 2%

(c) Residents of District Kargil 2%.

(d) Other than (a), (b) and (c) 1%.

(iii) Socially and Educationally Backward

Classes (other than Scheduled Castes and

Scheduled Tribes):

(a) Weak and under privileged classes (Social 2%
Castes)

(b) Residents of Area adjoining Actual Line 3%.
of Control.

(c) Residents of Backward Areas 20%.

8. Rule 23 provides for reservation of seats for Children of Defence Personnel

1%, Children of Para-Military forces and State Police Personnel

1% and candidates possessing outstanding proficiency in sports to the extent of 2%.

9. Under Rule 24 half of the available posts from each of the above categories are to be filled up from the female candidates in M.B.B.S and

B.D.S Courses.

10. Rule 25 reads as followed:

Noting in the Rule 22 shall bar admission of members of the Scheduled Castes or Scheduled Tribes or Backward Classes against seats other than

or in addition to those reserved for them under the said rule, if such members are found to be qualified for admission on merit as compared with the

persons not belonging to Scheduled Castes, Scheduled Tribes and Backward Classes.

11. From a bare perusal of Rule 25, it is manifest that if a candidate who has applied under any of the reserved categories, is found to be

possessing merit better than the last selected candidates in the category other than the reserved category, there is no bar for including his name in

the category other than the reserved category. As per the merit position, under ALC category, three candidates were to be considered in the open

merit category irrespective of the fact that they had applied in the ALC Category. Similar would be the position with regard to other candidates

selected in other reserved categories, who have obtained better points than the last selected candidate in the Open Merit category. In the general

merit list number of such candidates is 29. The question arises if the candidates of reserved categories find berth in the Open Merit, a situation may

arise that in view of the comparative merit in the Open Merit category, they may be put to a dis-advantageous position and may not be able to get

the stream/discipline of their choice, which they would have got by remaining in their respective reserved categories. Can it be allowed to happen?

In Ritesh R. Sah Vs. Dr. Y.L. Yamul and others, , it was observed that:

A student who is entitled to be admitted on the basis of merit though belonging to a reserved category cannot be considered to be admitted against

seat reserved for reserved category. But at the same time the provisions should be so made that it will not work out to the disadvantage of such

candidates and he may not be placed at a more disadvantageous position than

the other less meritorious reserved category candidates. The aforesaid objective can be achieved if after finding out the candidates from amongst the reserved category would otherwise come in the open merit list and then asking their option for admission into the different colleges which have been kept reserved for reserved category and thereafter the cases of less meritorious reserved category candidates should be considered and they will be allotted seats in whichever colleges the seats should be available. In other words, while a reserved category candidate entitled to admission on the basis of his merit will have the option of taking admission to the colleges where a specified number of seats have been kept reserved for reserved category but while computing the percentage of reservation he will be deemed to have been admitted as a open merit category candidate and not as a reserved category candidate.

12. In Dr. Javed Iqbal Vs. State and Others, , a coordinate Bench, on the point in issue, has also held:

It is settled proposition of law that a candidate belonging to any reserved category is entitled to be selected in the Open Category if he comes within the merit and reserved vacancy is to be allotted to the candidate of reserved category, next in merit in the said category. However, the same principle cannot be applied as far as the allocation of the discipline is concerned for the simple reason that the meritorious candidates who have been selected in the Open Merit Category securing higher percentage may be unable to find a discipline of his choice as there may be more meritorious candidates in the open merit category. His merit cannot become demerit and used to his disadvantage if he can secure a better discipline on the basis of his merit in the category to which he actually belongs.

13. In view of the aforesaid position of law, it clearly emerges out that if a candidate who has applied under reserved category on the basis of his merit comes in the open merit category, he is to be admitted in the open merit category and not in a reserved category but such candidate will be given the choice of selecting the college, on the basis of his merit, in the reserved category from the seats reserved for reserved category candidates. 29 candidates of the selected candidates under reserved category which include 3 ALC candidates, under which category the petitioner has also applied, thus in view of their better merit than the other

selected candidates in the open merit category, ought to have been selected in open merit category and not in the reserved category.

14. The respondent-Board while drawing the select list has shown their names in the reserved categories and as per note, has allowed them option to opt whether they would like to be placed in the open merit category or their respective reserved categories. Such a course, could not be adopted in view of the law laid down by the Supreme Court in Ritesh R. Shah's case (supra)

15. Admittedly, until recently upto 10-02-2005, the General Select List was being prepared by the Board by keeping the reserved category candidates securing higher merit than the last selected candidate in the open merit category in the list of the open merit candidates. The Board has made a departure this time. The departure has been made in view of the SRO 31/2005 dated 10-02-2005 issued by the order of the Governor, whereby Rule 25-A has been added into the J&K Reservation Rules, 1994. Rule 25-A reads as follows:

The reserved category candidate if selected against the Open Merit seat may be considered for allotment of discipline/stream/college allocable to him in his respective category on the basis of his merit and preference. The resultant discipline/stream/college candidate who gets selected consequent upon the reserved category candidate getting selected in the Open Merit Category.

16. From bare reading of the Rule 25-A, it is clear that in the event a reserved category candidate obtains merit for being included in the open merit category that is to say, if reserved category candidate gets more marks than the marks obtained by the last selected candidate in the open merit category, and as a consequence gets selected in the open merit category, he may be considered for allotment of discipline/stream/college allocable to him in his respective category i.e. reserved category on the basis of his merit in that category. In the event of his consideration in the reserved category for the purpose of allotment of discipline, the resultant vacancy in the discipline/stream/college, in the open merit category has to be allotted to any reserved category candidate who gets selected consequent upon the reserved category candidate getting selected in the open merit category. Rule 25-A thus envisages as to how the question of allotment of

discipline to a reserved category candidate who has found berth in the open merit category as per his merit, is to be made. The rule does not create any prohibition for treating the reserved category candidate in the open merit category, depending upon the merit in comparison to the merit of the last selected candidate in the open merit category. The Board, therefore, was not justified in keeping the selected candidates under the reserved category in their respective reserved categories irrespective of their merit and leaving the matter of their inclusion in the open merit category, to the exercise of their option.

17. The effect of allowing these 29 candidates, which include 3 candidates of ALC category in their reserved categories, would be to keep 29 candidates of reserved categories who have obtained less marks than the last selected candidates in each of the reserved categories, out of the select list and in their place 29 open merit candidates, who have obtained, less marks than the last selected candidates of the open merit category, shall get selected in the open merit category. This course would be to the detriment of the reserved category candidates, and, would defeat the purpose of reservation and shall be in breach of the Reservation Rules of 1994.

18. Mr. Raina, learned Counsel for the Board argues that in case reserved category candidates are kept in the open merit category, and given the choice of selecting the discipline/stream/college, as per their merit in the reserved category, their status will not be changed and they will continue to be the reserved category candidates and thereby the percentage of reservation for making reservation in different reserved categories shall be disturbed. I am not in agreement with Mr. Raina. In Ritesh R. Shah's case (supra) their Lordships have clearly held that while a reserved category candidate is entitled to admission on the basis of his merit, will have an option of taking admission to the college where seats have been kept reserved for reserved category but while computing the percentage of reservation, he will be deemed to have been admitted in the Open Merit category and not in the reserved category. Thus for the purpose of working out percentage, such selected candidate, who finds berth in the open merit category, on the basis of his merit in the examination, has to be deemed as open merit candidate and not as a reserved category candidate.

Such candidate, for avoiding dis-advantageous position, by being included in the

open merit category is only required to be given option for selecting discipline/stream/college allocable to him on the basis of his merit in his respective category. In 'Manu Hansa v. State and Ors.' 2001 KLJ 90, the Division Bench of this Court after referring to the observations, of the Supreme Court made in Ritesh R. Shah's case (supra) observed as follows:

We are of the opinion that whatever was observed by the Supreme Court in the aforementioned case is clear, it is that while fitting a candidate of the reserved category in the open merit category, his option for admission has also to be taken note of. In the present case, the appellant had given his option for the Course of Bachelor of Computer Engineering. If his merit was to be determined in the open merit then not only his position in the merit list but also as to whether he was entitled to a particular discipline as per his choice was also required to be gone into. It is the combination of these two factors, which would determine the merit of the appellant. What has happened in this case is that only one side of the picture has been kept in view and the otherside which deals with the option regarding the discipline has been totally ignored. It is here where injustice has been caused to the appellant. This conclusion of our would find support from the view expressed by the Supreme Court in the aforementioned case. The interpretation which is sought to be placed would work out and as a matter of fact, has worked out to the disadvantage of the appellant and this precisely what is not supposed to happen.

19. For the reasons stated above, I am of the considered view that 3 candidates from ALC category and other candidates of other reserved categories, who according to the respondents are 29 in all, who have obtained more points than the points obtained by the last selected candidate in the open merit category, are required to be fitted in the open merit category and for the purposes of allocation of seats, they are required to be given option in terms of Rule 25-A of the Reservation Rules. Mr. Raina, learned Counsel for the respondent-Board submits that these 29 candidates can be adjusted in the open merit category and given option for allocation of discipline/stream/college in terms of Rule 25-A of the Reservation Rules without disturbing the select list, under which 210 candidates, have been allotted disciplines. According to Mr. Raina, 29 seats

in the reserved category are still available. Be it so, as it may, the fact remains that the reserved category candidates who have obtained better

merit than the last selected candidate in the open merit category, have to be in the open merit category and accordingly they have to be provided

with option in terms of Rule 25-A of the Reservation Rules for selecting discipline/stream/college.

20. The writ petition of the petitioner is, therefore, allowed and the respondent Board is directed to treat the reserved category candidates, who

have obtained merit to be included in the open merit category, to be candidates selected in that category and give them option of selecting the

discipline/stream/college from the seats reserved for the category in which they have applied as per the choice given by them in the order of their

respective merit in that category. Resultant vacancies in the reserved categories shall be filled up strictly as per merit from the candidates next in the

que after the last selected candidate in each of the concerned category in which the vacancy has occurred. If need be, the respondent-Board shall

re-draw the select list. The case of the petitioner for selection in the ALC category on the resultant vacancies shall also be considered in the light of

her merit obtained in the Entrance Examination.