
(1999) 12 AHC CK 0098

In the Allahabad High Court

Case No : C.M.W.P. No. 40897, 39488, 39742 and 40713 of 1999

Kumari Priyanka Agrawal

APPELLANT

Vs

Director General, Medical Education and Training, Lucknow
and others

RESPONDENT

Date of Decision : 02-12-1999

Acts Referred:

Constitution of India, 1950 — Article 15(4), 16(4), 29, 340

Citation : (2000) 1 AWC 473 : (2000) 1 UPLBEC 503

Hon'ble Judges : Yatindra Singh, J

Bench : Single Bench

Advocate : R.B. Singhal, Navian Sinha and Ashok Khare, for the Appellant;
Hanuman Upadhyay, Addl. Chief S.C. and Ashutosh Srivastava, for the
Respondent

Final Decision : Allowed

Judgement

Yatindra Singh, J.—Does a candidate in order to qualify as a dependent of a freedom fighter, should be financially dependent upon him? What is the interpretation of the word "dependent" In the Uttar Pradesh Public Services (Reservation for Physically Handicapped, Dependents of Freedom Fighters and Ex-Servicemen) Act, 1993 (the "reservation Act). This is the main question in these four writ petitions. This is how it arises.

FACTS

2. Admissions to Medical Colleges in the State are made on the basis of a competitive examination known as Combined Pre-Medical Test (CPMT). The CPMT is conducted every year and was held this year in July, 1999 (CPMT-99). There is reservation in admissions in the medical colleges. The brochure issued by the respondents states that all rules relating to reservation in the State will apply. It further provides 5% of horizontal reservation for actual dependents of freedom fighters. The brochure also includes format of the certificates to be submitted by a candidate, while claiming reservation. The certificate No. 6 of clause 5 of the

brochure deals with a dependent of a freedom fighter. The format indicates that an officer of the State has to certify that :

- * There is a person, who is a freedom fighter within the meaning of the Reservation Act ;
- * The candidate is a son or a daughter (unmarried or married), or son of a son or unmarried daughter of a son, of that person (freedom fighter) ; and
- * He (the candidate) is his dependent under the Reservation Act.

3. Petitioners appeared in the CPMT-99 in the reserved category of "dependents of a freedom fighters". The results of the CPMT-99 were declared in August, 1999 and the successful candidates were called for counselling. The petitioners were also called for counselling in this category. They produced certificates from the designated officers. All certificates indicated that their grandfather was a freedom fighter within the meaning of the Reservation Act and they are son's son or unmarried daughter of a son of such freedom fighter. This was sufficient for claiming benefits under the Reservation Act. The certificates substantially certified the information required, but were not the exact replica of the format mentioned in the brochure. The certificate in the first writ petition also indicated that the petitioner is also dependent of the freedom fighter within the meaning of the Reservation Act. But the certificates in the remaining three writ petitions did not so indicate.

4. The petitioners filed the writ petitions challenging the rejection of their candidature in the reserved category. The Court by different interim orders directed the respondents to conduct fresh counselling and re-admit the petitioners according to their merit in the reserved category. The recounselling took place on 9.10.1999, and by that date all petitioners produced the certificates in the exact format but they were not given admission according to their merit as presumably all seats were filled up. The Director General, Medical Education and Training, U.P. Jawahar Bhawan, Lucknow (the contesting respondent) has filed application for vacating the interim orders. The counter and rejoinder-affidavits have been exchanged. With the consent of the counsel for the parties, these four writ petitions are being decided on merits.

POINTS FOR DETERMINATION

5. I have heard Sri Navin Sinha, Sri R. B. Singhal, Sri Ashok Khare counsel for the petitioners : Sri Ashutosh Srivastava counsel for the contesting respondent ; and Sri Hanuman Upadhyay. Additional Chief Standing Counsel as a friend of the Court. Following points arise for determination in these cases.

(i) What is the law relating to reservation for dependent of a freedom fighter in admission to the medical colleges? Is the Reservation Act applicable?

(ii) What is the meaning of word "dependent" in the Reservation Act? Should a candidate be financially dependent on the freedom fighter in order to qualify as a

"dependent"?

(iii) Was the format provided in the brochure mandatory? Did the certificates comply with it?

(iv) The petitioners certificates were rejected ; thereafter they appeared again for counselling in pursuance of the interim orders passed by this Court. They could not be given admission in accordance with their merit, as the seats had been filled up. In these circumstances, what relief can be granted to the petitioners?

1ST POINT : RESERVATION LAW

Scope of Article 16(4) is wider than Article 15(4)

6. The preamble of the Reservation Act states that it was enacted to provide for the reservation of posts in favour of physically handicapped, dependents of freedom fighters and ex-servicemen. Section 3 of the Reservation Act clarifies that it provides reservation in public services and posts in connection with the affairs of the State. The Reservation Act by itself does not provide for any reservation in admission in an educational institution. It is an Act for reservation in service, within the meaning of Article 16(4) of the Constitution. The Reservation Act was not enacted under Article 15(4) of the Constitution under which reservation in educational institution can be provided. Let's consider if Article 15(4) of the Constitution and Article 16(4) relate to the same class.

7. The reservation under Article 16(4) can be made in favour of "backward class of citizens which are not adequately represented in the services under the State" but the reservation under Article 15(4) can be made for "socially and educationally backward class of citizens or for Scheduled Castes and Scheduled Tribes". Scheduled Castes and Scheduled Tribes are backward class of citizens and reservation for them can be made under both the articles but this is not true for every other class. The State may make reservation for backward class of citizens not adequately represented in services under Article 16(4) of the Constitution, but this backward class (not adequately represented in the services) may not be both, socially and educationally backward and no reservation under Article 15(4) can be made. A class for whom a reservation may be made under Article 16(4) of the Constitution does not necessarily fall within the sphere of Article 15(4) of the Constitution. Article 16(4) caters to a wider class than Article 15(4) of the Constitution.

Does The Reservation Act Apply?

8. The Reservation Act by its own force does not apply for admission in educational institutions. The Government has to apply its mind independently for providing reservation under Article 15(4) of the Constitution. It cannot, without application of mind, apply the reservation under Article 16(4) of the Constitution to the reservation meant for Article 15(4) of the Constitution. But perhaps in the circumstances of the case, it is not necessary to consider this question in these

writ petitions. Both sides agree that the reservation for dependents of freedom fighter has to be provided on the interpretation of the words "dependent" and "freedom fighter under the Reservation Act. Perhaps the State Government has applied its mind for reservation in the admission to the medical colleges under Article 15(4) of the Constitution. In case the Government has not applied its mind under Article 15(4), it may do so, lest in an appropriate case it may cause havoc in admissions in the reserved categories and turn the entire selection topsy-turvy. At present, these writ petitions may be decided on the basis of the answer to the question, "whether the petitioners are dependents of the freedom fighters under the Reservation Act or not." If they are so, then they would be entitled to horizontal reservation of 5% In admission in the medical colleges.

2ND POINT : FINANCIAL DEPENDENCE NOT REQUIRED

9. Section 2 (d) of the Reservation Act defines the word "freedom fighter". This, amongst the others, includes one who has already laid down his life, i.e., a freedom fighter need not be alive on the date when the Reservation Act came into force or reservation is to be provided. The word "dependent" is defined u/s 2 (b) of the Act. According to it, a son or a daughter (married or unmarried), or a son of son or an unmarried daughter of a son, of a freedom fighter is a dependent. The Reservation Act does not envisage that a candidate should be financially dependent upon such freedom fighter.

THE HARINDER SINGH CASE

10. The counsel for the contesting respondent cited a decision reported in Haryana Public Service Commission v. Harinder Singh and another (the Harinder Singh case) for proposition that financial dependence is necessary. The Supreme Court while interpreting reservation for dependents of ex-servicemen had observed that the meaning of reservation of dependent of ex-servicemen would be lost if it could be made available to those who are gainfully employed. The Supreme Court in this case was interpreting different provisions for giving reservation in public employment. The paragraph 4 of the judgment shows that people already employed were to be excluded from reservation. It was in this light that aforesaid observations were made.

11. The Harinder Singh case dealt with the situation when employment was claimed by the dependents of ex-servicemen when they were already employed. The present, case is not for employment ; it is for admission in the medical colleges. Neither the petitioners are gainfully employed nor are they studying in any other medical college. The respondents have also granted admission to everyone who was dependent of a freedom fighter within the meaning of the Reservation Act without insisting on the additional condition that he should be financially dependent on the freedom fighter. It is strange that they should do so for the petitioners. There is no reason for this discrimination except that the respondents rejected the certificates of the petitioner in the first place. This Harinder Singh case is not applicable to the facts of this case.

LANGUAGE IS PLAIN

12. The Reservation Act was enacted in 1993. It was 46 years after our independence. It must be in the knowledge of the Legislature that the freedom fighter may not be alive or even if alive would be old and generally retired. Even then they chose to enact the Act and defined the word "dependent" without putting any condition of financial dependence upon the freedom fighter. The counsel for the contesting respondents, submitted that even if language of a statute is clear, the condition of financial dependence may be read while interpreting the provisions. The respondents themselves have not insisted on this condition in any other case. They are insisting in these cases as they rejected petitioners' candidature, still, should we read the condition of financial dependence in it?

13. The Courts should not play with the words, if the language of a statute is plain. And if Legislature has spoken-within constitutional limits-we cannot be wiser. I don't think we should read the Reservation Act as suggested by the counsel for the contesting respondent. There is no justification for reading a condition of financial dependence on a freedom fighter before giving benefit to a dependent under the Reservation Act. If the candidate is, a son or a daughter (married or unmarried), a son of a son or an unmarried daughter of a son, of a freedom fighter, then that candidate is a "dependent" under the Reservation Act. He is entitled to its benefit. He cannot be denied benefit merely on the ground that the candidate is not financially dependent on the freedom fighter.

3RD POINT : MANDATORY

PROVISIONS OF BROCHURE ARE BINDING

14. The brochure issued by the respondents has mandatory as well as directory provisions. Mandatory provisions of a brochure are undoubtedly binding. In case mandatory provisions are not followed, then certificate as well as candidature can be rejected. The petitioners do not dispute this proposition. But the question relates to what was not followed in the present case. "Was it mandatory or a directory provision?" "Was it the content or the form?"

15. The counsel for the contesting respondent has cited a division bench of Kerala High Court : A. Sainulabadin v. State of Kerala 1996 (3) ESC 296, to show that a candidate is required to produce a certificate according to the prospectus. In this case, candidates were required to produce income certificates, which were not produced. The production of income certificate was a mandatory condition and failure to produce was violation of the mandatory provisions. The candidature in that case was rightly rejected. In the present case, the condition that a candidate should be financially dependent is not even a condition. The respondents cannot reject the candidature on its non-production.

16. The certificates undoubtedly are not verbatim same as the language prescribed under the brochure. The counsel for the contesting respondent

submitted that the law supposes that the certificate ought to have been in the same language, same format as that in the brochure and if it was different then the candidate and candidature had to be rejected. Is this supposition (proposition) of law correct?

17. One would not like to be in the company of Mr. Bumble (Oliver Twist by Charles Dickens) or even to refer him, much less in a Judgment of a Court of law, but even he had insights to some of the suppositions of law. One would do well to be aware of his criticism :

"If the law supposes that." said Mr. Bumble, squeezing his hat emphatically in his hands, "the law is a ass-a idiot. If that's the eyes of the law, the law's a bachelor : and the worst I wish the law is, that his eye may be opened by, experience--by experience".

The law does not suppose rejection of the form but only for the content, which is missing in these cases.

18. A "dependent" of a "freedom fighter" under the Reservation Act is entitled to reservation. The mandatory condition is that certificate should state that a person is a "freedom fighter" within the meaning of the Reservation Act and the candidate should be his son or daughter, or son's daughter or unmarried daughter of a son. A candidate is dependent of a freedom fighter is merely a conclusion from the aforesaid facts.

19. It is not disputed that the petitioners' grandfathers were freedom fighters within the meaning of the Reservation Act and they are sons of a son or unmarried daughter of a son of the freedom fighters. The certificate produced by the petitioners stated these facts when they appeared for the first time for counselling on 9.9.1999. This is sufficient for claiming benefit of a "dependent" under the Reservation Act. Nothing else is required. The certificate in the first writ petition even stated that he was dependent within the meaning of the Reservation Act. These certificates had the content of the certificate prescribed in the brochure but not the form ; the language was different. Their certificates could not be rejected on the ground that their certificates were not proper.

4TH POINTS : RELIEF TO THE PETITIONERS

THE RESPONDENTS ARE NOT BLAMELESS

20. This question in the present writ petition did not arise for the first time. It arose in the Combined Pre-medical Test held last year (CPMT-1998). The candidature of one of the candidate, namely, Sri Neeraj Sharma was cancelled on the similar ground. He filed a writ petition (the Neeraj Sharma case), which was allowed on 20.8.1998 and the Special Appeal was dismissed on 29.10.1998. This problem was already there last year and was corrected by this Court once. There was no justification for the respondents committing the same mistake again. The respondents ought to have instructed their officers to issue certificates in the correct format and not to reject the certificate on the same ground.

21. The responsibility of the admission in the medical college is of the State Government. The certificates have been issued by the Executive Officers of the State Government. These certificate contain necessary information and if the officers have chosen not to issue certificate in the same language as prescribed under the brochure (but have issued with the necessary ingredients), then the petitioners cannot be faulted. Looking into certificates in the second writ petition, it appears that it was issued on the basis of some old instructions. This ought to have been clarified and emphasised by the State Government (respondents).

ADMISSION IN THE COURSE ACCORDING TO THEIR MERIT

22. The petitioners' candidature was rejected on 8.9.1999. They filed their writ petitions immediately in September, 1999. They also obtained interim orders directing the respondents to admit the petitioners in accordance with their merit. There was no delay on the part of the petitioners. They appeared for general re-counselling on 9.10.1999. The counsel for the contesting respondent has made a statement that petitioners were called for individual counselling again on 27 to 30.10.1999. They were offered seats for the course of B.A.M.S., B.H.M.S. and B.U.M.S. where the seats were available but the petitioners refused the same. This was on the ground that the petitioners were entitled to admission in other courses according to their merit. At this stage, should they be given admission to a course according their merit?

23. The counsel for the contesting respondent submitted that in the Niraj Sharma's case, this Court had granted relief for admission in the left over vacancies and at the most similar relief may be granted. Considering the circumstances mentioned below, the petitioners may be granted admission in the course according to their merit in their category in the CPMT-99 :

- * Petitioners are dependents of freedom fighters and entitled to the benefits of the Reservation Act.
- * The respondents are not blameless.
- * There was no delay on the part of the petitioners.
- * Similar problem arose in the last year entrance examination and was corrected by this Court (the Neeraj Sharma case) on 20.8.1998 much before the advertisement published for CPMT-99.
- * Normally one spends his life in the course that he gets.

FEW SUGGESTION

24. Here are few suggestions that the State Government and the Director General. Medical Education and Training, U.P., Jawahar Bhawan, Lucknow may consider so that the problems may not arise in future :

(a) The State Government may apply its mind (if not done so) under Article 15(4) of the Constitution of India and provide reservation for those who are

socially and educationally backward. Mere reference to the provisions for reservation in public employment under Article 16(4) is not sufficient. (1st point : paragraphs 6 to 8 and footnote 3 of this Judgment).

(b) The State Government should clarify that in order to claim benefit as a "dependent" under the Reservation Act, a person need not be financially dependent on the "freedom fighter."

(c) The pro-forma of certificate to be issued be circulated to the officers of the State Government overriding the pro-forma previously issued--In these cases the problem arose as the officers issued the certificates in the old pro-forma or on the pro-forma using their own words).

(d) The Staff at the counselling may be properly instructed.

(e) In case a candidate provides a certificate which complies with mandatory provisions (content) of law (or brochure) but not the directory provisions (form), then grant of short time (one or two days) be considered for producing the certificate or provisional admission may granted.

CONCLUSION

25. A "dependent" of a "freedom fighter" under the Uttar Pradesh Public Services (Reservation for Physically Handicapped, Dependents of Freedom Fighters and Ex-Servicemen) Act, 1993 does not have to be financially dependent on the freedom fighter to claim its benefits. The writ petitions are allowed. The order cancelling the petitioners' candidature in the reserved category of dependents of freedom fighter is set aside. The respondents are directed to give admission to the petitioners. This may be in the course according to their merit in their category in the combined pre-medical test-1999. The admission may be in any medical college. This may be done, if possible, within a period of three weeks from the date certified copy is served on them. The petitioners are claiming admission in reservation quota. It will be open to the respondents to adjust their additional seats in the next year reservation quota.

Let a copy of this judgment be sent to the following authorities for considering the suggestions made in paragraph 24 of the Judgment.

1. The Chief Secretary, Government of Uttar Pradesh, Lucknow.
2. The Secretary. Department of Medical Education and Training, Government of Uttar Pradesh, Lucknow.
3. The Director General, Medical Education and Training, U. P., Jawahar Bhawan, Lucknow.
4. The Legal Remembrancer, Government of U. P. Lucknow.