

(1984) 09 RAJ CK 0008

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2304 of 1984

Kumari Shikha Choudhary

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 13-09-1984

Acts Referred:

Citation : (1984) WLN 394

Hon'ble Judges : Milap Chand Jain, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.C. Jain, J.—Heard learned Counsel for the parties.

2. By this writ petition the petitions seeks a direction from this Court to non-petitioner No. 2 to admit her in the Engineering Course in general category.

3. The petitioner undertook the pre Engineering Test 1984 (here in after referred to as "the PET") and thereafter she was called for interview and she was offered admission in B Sc. Ag Engineering at Udaipur. According to the petitioner her father represented to the Centralised Admission Committee that the petitioner is entitled to be considered for admission in general category according to her merit. This request, made on behalf of the petitioner, was not acceded to. The petitioner's case is that she was eligible under Clause 2 (b)(1)(vi) of the Instructions for Admission to First B.E Degree Course for the Session 1984-85. According to the petitioner even less meritorious candidates have been given admission in Mechanical. Electrical and Civil Engineering and the number of such candidates may be 53 or more. The petitioner was given admission in Agricultural Engineering, which was not as per her preference. Her preferences were for Electrical Engineering, Mechanic Engineering and Civil Engineering respectively in that order. As the petitioner's request for change of branch of study on the basis of merit was not acceded to, the petitioner has approached this Court for issuance of necessary directions in this regard.

4. The respondents' case is that the petitioners case was considered in the reserved category of defence personnel and her case was considered in order of merit.

5. On consideration of the petitioner's case, she could be given admission only in the branch of study of Agricultural Engineering in the reserved category and under the instructions for Admission her application could not have been considered in the general category. According to the respondents admissions are given to eligible candidates in order of merit in the different categories and the case of any eligible candidate cannot be considered simultaneously in more than one category. The respondent's case is that the scheme of the Instructions for Admission would reveal that admissions are given in order of merit category wise and the candidates of reserved category are not open for consideration in general category and so the petitioner was rightly refused admission in any branch of study in the general category.

6. The main question that arises for consideration in the present writ petition is as to whether an eligible candidate falling in reserved category can be considered, if meritorious, in general category? Clause 2 of Instructions for Admissions provides for eligibility conditions. It is not in dispute that the petitioner was an eligible candidate, as her case is covered under Item (vi) of Sub-clause (b)(1) of Clause 2. In the Table Appendix-11, the category is of defence personnel. I am not concerned with other special categories other than general category or unreserved category. Sub-Clause (g) of Clause 3 of the Instructions for Admissions provides that the eligible candidates will be admitted in order of merit for the general as well as reserved seats judged on the basis of the aggregate of marks secured in Physics, Chemistry and Mathematics at the Pre Engineering Test subject to availability of seats and Clause 6 provides that the Centralized Admission Committee will make the allotment of the college and the branch of study as per availability at the time of interview strictly according to merit. The choice of an institution once made cannot be changed subsequently.

7. The contention advanced on behalf of the respondents is that the consideration of eligible candidates would be made in order of merit category-wise and the candidates of reserved category cannot be considered in the merit in the unreserved category. According to Mr. Parekh, learned Counsel for the respondents, the above submission is apparently borne out from Sub-clause (g) of Clause 3 and Clause 6.

8. If we examine the scheme of the Instructions for Admissions it would appear that candidates of reserved category undoubtedly first be considered in order of merit in their respective category, but it does not appear from the scheme that if the candidates of reserved category after the reserved seats are being filled are found meritorious to the candidates filling under the unreserved category, then their merit can be ignored and the less meritorious candidates falling in unreserved category can be given admissions. If Sub-clause (g) of clause 3 and clause 6 are read together, it would be clear and obvious that merit of reserved

candidates that way cannot be ignored. The candidates have to be considered in order of merit. The allotment of College and branch of study have to be made according to merit by the Centralised Admission Committee. If all reserved seats are filled up and candidates of reserved category are available, who are meritorious compared to the candidates, who are considered in the general category then they can be given admission. The Instructions for Admissions do not contemplate any restriction or prohibition for not taking into consideration the meritorious candidates belonging to the reserved category vis-a-vis the candidates of general category. Much emphasis has been placed on Sub-clause (g) of Clause 3 and it has been strenuously urged on the basis of that provision that eligible candidates have to be considered only category-wise in order of merit and not that the candidates falling under the reserved category, can be considered in general category. In my opinion, admission has to be given on the basis of the merit in general as well as in reserved seats. Sub-clause (g) of Clause 3 does not in any way lay down any such restriction that the meritorious candidate of the reserved category has to be overlooked and he should not be considered for the purpose of admission in general category. The emphasis, which has been placed, is OQ merit in the respective category, meaning thereby, while considering the applications falling in the reserved category, admission will be given in order of merit. Similarly, for filling the vacancy in general category, admission will be given in order of merit and as much as would be given not only to those candidates, who are filling in general category but also the candidates belonging to the reserved Category. In the absence of any specific restriction, such an interpretation of the existing instructions cannot be taken, whereby the merit is combined. Reservation of seats to a particular category of candidates, means a restriction of access to the seats is that those, who are not in a position to obtain seats in a category of general category, still on account of their reservation may not be given admission. But the object of reservation does not appear to be that even when the candidates of the reserved category are meritorious, over the candidates of general category, they can be refused admission quite to the disadvantage of the general category. The reasonability or the rationality of the contention advanced by the Shri Parekh in my opinion, is open to serious doubt. If such a contention is accepted it would mean that the scheme of admissions is that the merit would have no place in general category and would have only place in the respective category. Such cannot be the intention of the framers of the scheme for admission. To my mind, the intention of the framers of the scheme for admission appears to be to create reservation in favour of some weaker section of the community or certain specified section of the community, who are the candidates belonging to Scheduled Caste, Scheduled Tribes/Defence personnel meaning Ex-servicemen, then another Defence personnel Paramilitary Force-killed/permanently disabled in China-Pak Wars and Physically Handicapped. The second note to Appendix-II provides that in case adequate number of eligible candidates under reserved categories of DP & DK are not available, the vacant seats shall be transferred to unreserved General Category. So there can be transfer of category in this particular situation.

Similarly, if meritorious candidates of certain reserved category are available over the candidates of general category, then, in my opinion that can be equally be considered for admissions in general category.

9. Mr. Parekh, learned Counsel for the respondents, then submitted that ,the seats are fully filled up by the Centralized Admission Committee in the manner what they thought to be the rules & in the manner that the candidates have to be considered only in their respective categories and the choice of Institution allotment of branch of study have already been made & completed and no seats are available and if the interpretation, which the Centralised Admission Committee has put on the Rules is possible, then this Court should accept that interpretation and refrain from giving any direction, as the same would result it upsetting the structure, which has become final and besides that like the present one, as stated above, it would not be proper for this Court to issue Mandamus directing the respondent No. 2 to consider the petitioner's application for giving admission in other branches of study judging her case on the basis of merit vis-a-vis the candidates of general category.

10. In this connection suffice it to say that when the petitioner has given preferences for various branches of study and when admittedly the petitioner is meritorious over the candidates of general category, then the petitioner can not be denied her right to seek instructions and education in the branch of study of her own choice, if she is entitled to admission to that particular branch of study. The interpretation, which appears to have been placed by the Centralised Admission Committee would affect adversely the merit for all times to come, then, in my opinion, it becomes the duty of this Court to give necessary directions to respondents No. 2 to proceed to scrutinize the application in the manner in which the rules contemplate the scrutiny of applications. The meritorious candidates of reserved category should be considered along with the candidates of general category, if the reserved seats are not available as having been filled up, by such candidates of reserved category.

11. Some case law has been referred on behalf of both the parties, but it is not necessary to deal with the case law in view of the fact that the Instructions for Admission have to be followed and non-observance of the Instructions for Admission would call for, in my opinion, interference. Had there been specific restriction, on consideration of applications of the candidates of reserved category in the manner, as stated above, perhaps the rule could have been struck down on the ground of being highly unreasonable. But such a question does not rise in the present case, as there is no such specific rule. On the contrary emphasis has been placed in the rules on merit and negative rule has not been provided-

12. In the light of above discussion, in my opinion, this writ petition deserves to be allowed.

13. Accordingly, the writ petition is allowed and the respondent No. 2 is directed

to consider the petitioner's candidature for admission to other branches of study applied for in order to merit vis-a-vis the candidates of general category.