
(2011) 06 SHI CK 0046
In the High Court Of Himachal Pradesh
Case No : CWP No. 4958 of 2011

Manoj Sharma

APPELLANT

Vs

State of H.P. and Another

RESPONDENT

Date of Decision : 29-06-2011

Acts Referred:

Citation : (2011) 06 SHI CK 0046

Hon'ble Judges : Kurian Joseph, C.J;V.K. Ahuja, J

Bench : Division Bench

Judgement

Kurian Joseph, C.J.—Even at the last moment of admission to PG Courses, there are still confusions to be clarified. Apparently, these confusions have arisen because there are many vacant seats available in the State of Himachal Pradesh. We are informed that 15 degree seats and 7 diploma seats still remain to be filled up in two medical colleges in Himachal Pradesh. There will also be a situation on account of the corrective steps to be taken in the matter of ST candidates. There were four seats available to ST category, three degree and one diploma. Degree seats are (1) Obstetrics and Gynecology (OBG), (2) Surgery and (3) Pharmacology and diploma in Anesthesiology. It is seen that two doctors who had already secured admission in Government Medical College at Chandigarh have been admitted yesterday on obtaining their undertakings that they had already surrendered their seats in the Government College. That appears to be factually not correct. Those doctors are Dr. Anupama Dhiman and Dr. Pawan Kumar. Learned Counsel appearing for those doctors submits that they have taken steps to surrender. But the fact remains that the surrender has not taken effect so far. Even otherwise, they may not get those seats meant for ST-GDO since Dr. Anupama Dhiman belongs to SC direct and Dr. Pawan Kumar belongs to open direct. In order to avoid any confusion for the next round of the counselling, it is made clear that only those candidates who produce the surrender certificate from the Principal concerned of the Institution before 11 a.m. on 30.6.2011 shall be permitted to exercise their option in respect of the remaining seats. The seats already allotted yesterday in respect of the Dr.

Anupama Dhiman and Dr. Pawan Kumar shall be taken up afresh since the allocation of seats to them is not valid, as the claim of other and more eligible candidates have not been considered. The amounts already deposited by them shall be refunded. There also appears to be some confusion as to whether OBC-GDO candidates, who had secured less than 50% marks are entitled to participate in the counselling. Though, the learned Additional Advocate General and also some of the learned Counsel contended that the reservation policy of the State did not contemplate for relaxation in respect of the OBC candidates, the fact remains that the admissions now given are pursuant to the orders passed by this Court on 18.5.2011 and subsequent orders, wherein it has been clarified that the admissions in the second and subsequent rounds of counselling are based only on the basis of the entitlement as per the MCI regulations. As per the MCI regulations, it can not be disputed that OBC candidates who secured 40 or above marks are also eligible. That is precisely the grievance of the two doctors who belong to OBC, who though could not secure 50% but have qualified as per MCI guidelines by securing above 40%.

2. Dr. Praveen Singh, Petitioner in CWP No. 4977 of 2011 submits that he is interested in the seat of OBG and he is entitled to the same, being a ST-GDO candidate. The said seat shall be allotted to Dr. Praveen Singh. One seat in M.D. Anesthesia consequently falls vacant and that seat of M.D. Anesthesia shall be allotted to Dr. Manoj Kumar, who is GDO belonging to OBC category and who is otherwise qualified. One another seat available is in General Surgery. That seat shall be allotted to Dr. Rajesh Chaudhary (OBC), who has become qualified for admission under the GDO General category. Needless to say that the allotment as above is subject to their eligibility otherwise. It is made clear that the counselling shall be limited only to the remaining 22 seats and it shall be done in accordance with the preferences indicated above.

3. Even thereafter we are informed that few seats are likely to fall vacant. It is brought to the notice of this Court that there are certain GD Os available in the State who have successfully done their diploma courses in their respective faculties. It is further submitted that for those candidates, they can do their PG course while undergoing course in two years instead of three years. We find that this Court had the occasion to consider a similar question when vacant seats were available and it has been held in CWP No. 563 of 1989 and other connected matters in judgment dated 23.5.1990 that those candidates who have already done diploma in the respective faculties, could be considered to be eligible for admission in case, the vacancy is available in the respective faculties. Therefore, it is clarified that in case there are still vacant seats available after admitting all those candidates who were otherwise qualified as per the MCI regulations, the next preference should be given to those GD Os in the State who have obtained diploma in their respective faculties.

4. There is a third group of candidates before this Court. They are the candidates who have participated in the Centralized Competitive Examination at the National

Level. Some of the candidates are those who have participated for admission to DNB course conducted by the National Board of Examination, New Delhi. One candidate is from Banaras Hindu University and one candidate is from Christian Medical College, Ludhiana. It is made clear that in the case of those candidates, in case still vacancies are available, they shall also be admitted as per their inter se merit of percentage of marks in the examination.

5. Still there is fourth group of candidates. In case still seats are available either for diploma or degree, it is submitted that in such situation, the admission can also be permitted in terms of the marks they have secured on the basis of individual, cumulative performance at the first, second and third MBBS examination. We make it clear that the fourth preference shall be given to those candidates subject to availability of vacancy on the basis of individual, cumulative performance at the first, second and third MBBS examination recognized by MCI and conducted anywhere in the country. It is made clear that this concession is only to the GD Os available in the State of Himachal Pradesh. It is also made clear that the admissions already made shall not be disturbed except in the cases of ST & OBC- GDO, so as to give effect to the directions already issued by us. It is further clarified that the benefit of this order to participate in the counselling in respect of OBC-GDO will be available only to the two candidates before us namely (1) Dr. Rajesh Chaudhary and (2) Dr. Manoj Kumar, who have otherwise become qualified as per MCI regulations.

6. Since tomorrow is the last date of admissions, in order to avoid any further confusion, it is made clear that except to the above extent, the candidates already admitted shall not be permitted for the re-option. It is also made clear that these orders are not to be treated as a precedent since they are issued in the peculiar factual background of this year.

7. With the above directions, all the writ petitions and CMP No. 5086 of 2011 in CWP No. 3105 of 2011 and CMP No. 6078 of 2011 in CWP No. 2467 of 2011 stand disposed of, so also the other pending miscellaneous application(s), if any.

8. A duly authenticated copy of this judgment be supplied to the parties.