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(1999) 05 P&H CK 0125

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 13498 of 1996

Miss Bindiya Mukhija — APPELLANT

Vs

State of Punjab and Others — RESPONDENT

Date of Decision : 27-05-1999

Acts Referred:

Citation : (1999) 123 PLR 307

Hon'ble Judges : Harjit Singh Bedi, J

Bench : Single Bench

Advocate : Kapil Kakkar, for the Appellant; Anil Sharma, D.A.G., for the Respondent

Judgement

Harjit Singh Bedi, J.—The petitioner took and qualified the Entrance Test to'' admission to the MBBS Course for the year 1996 securing 542 marks (which put her at merit position 238), and sought admission as a candidate belonging to the General as also the Border Area Category for which 2% seats had been reserved. As per the prospectus, she gave her option (preference wise) for the Medical Colleges at Ludhiana, Patiala, Amritsar and Faridkot. She also appeared before the Admission Committee headed by the Principal, Government Medical College, Amritsar-respondent No.2 on 14th August, 1996 and was granted admission to the Government Medical College, Patiala on the basis of her merit in the reserved category. The Principal of the College, thereafter, issued a notice Annexure P-1 dated 27th August, 1996 that as per the orders of the Principal, Government Medical College, Amritsar the petitioner was to be shifted to the Guru Gobind Singh Medical College, Faridkot. This information was also conveyed to the petitioner by a telegram Annexure P-2 of even date. It is the petitioner''s case that this action had been taken so as to accommodate respondent No. 5 who was also a candidate belonging to the reserved category of Border Area though he was lower in merit to her having obtained 52% marks in the Entrance Test. The petitioner has, accordingly, filed the present writ petition impugning the orders Annexure P-1 and P-2.

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2. Notice of motion was issued in this case on 3rd September, 1996 and the petition was eventually admitted to a final hearing on 8th October, 1996 in view of the judgment cited at the bar i.e. Ritesh R. Sah Vs. Dr. Y.L. Yamul and others, .

3. On notice of motion, a reply has been filed by Dr. Sudesh Khanna, Principal of the Government Medical College, Amritsar-respondent No.2 and it has been pointed out that the petitioner had been shifted from the Government Medical College, Patiala to the Govt. Medical College, Faridkot in the light of the judgment of this Court in C.W.P. No, 10053 of 1994 Jaskaran Singh v. State of Punjab etc 1995(1) S.L.P 641. It has been highlighted that the procedure for admission visualised under this judgment had been specifically accepted and had found mention in the prospectus as well. It has been explained that this judgment postulated inter-alia that candidates belonging to the reserved category who were meritorious enough to be admitted under the General Category were to be treated as General Category candidates, and as the petitioner had the requisite merit she had now been adjusted against a General Category Seat as per her merit in the Medical College, Faridkot whereas respondent No.5 Navin Sethi, who had thereby gained admission against one of the seats reserved for Border Area Candidates had been adjusted against that category in the College at Patiala. It has, nevertheless, been admitted that Navin, respondent No. 5 was lower to the petitioner in merit.

4. Mr. Kapil Kakkar. the learned counsel for the petitioner has placed reliance on the Ritesh Shah''s case and has pointed out that the basic question raised was as to whether a student who belonged to a reserved category but had the requisite merit to come into the General Category, could be considered as a General Category candidate. The Court held that this procedure was in order but observed as under:-

"In view of the legal position enunciated by this Court in the aforesaid case, the conclusion isirresistible 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 seats reserved for reserved category. But at the same time, the provisions should be so made that it will not work out to the dis-advantage of such candidate 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 who 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 case of less meritorious reserved category candidates should be considered and they will be allotted seats in which 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 beer kept reserved for reserved category but while computing the percentage of reservation, he will be need to have been admitted as a open

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category candidate and not a reserved candidate."

5. The issue was also specifically raised in this Court in Navreet Kaur Sandhu v. Punjabi University, Patiala and Ors., C.W.P. No.211 of 1998, decided on 19th March, 1998.

6. In this case, Navreet Kaur Sandhu, sought admission to the M.B.B.S. course as a general category candidate as also a candidate belonging to the reserved Border Area category. She was first considered for admission in the general category but was not selected as she was low down in merit. She was, however, admitted to the Course as a candidate belonging to the reserved category and was given admission in the Government Medical College, Patiala. After she had been attending the classes for some time, she received a notice from the Principal of the College that she was to be shifted to the Guru Gobind Singh Medical College, Faridkot as she had, in the meanwhile, been transposed to the general category as some seats had become available therein. This action was challenged in this Court. This Court concluded that once a reserved category candidate was considered for the open category in the first counselling of that category but could not be admitted due to his lower merit vis-a-vis the other candidates in that category but was admitted in the reserved category in the same counselling, there would be no occasion for taking such a candidate into the general category seat which became vacant later on.

7. The facts of the present case are pari-materia with Navreet Kaur Sandhu''s case. The order Annexure P-1 dated 27th August, 199C shifting the petitioner from ''Patiala to Faridkot cannot, therefore, be sustained. It is, accordingly, quashed with no order as to costs. Dasti order.

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