
(1991) 05 RAJ CK 0026
In the Rajasthan High Court
Case No : Civil Special Appeal No. 90/91

Miss Neeta Midha

APPELLANT

Vs

Gramotthan Teachers Training School, Sangaria and Another

RESPONDENT

Date of Decision : 23-05-1991

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1992 Raj 20 : (1991) 1 RLW 453 : (1991) 1 WLC 499

Hon'ble Judges : Y.R. Meena, J;J.R. Chopra, J

Bench : Division Bench

Advocate : Sangeet Lodha, for the Appellant; R.P. Dave,A.G.A. and H.S. Sindhu, for the Respondent

Final Decision : Dismissed

Judgement

1. This Special Appeal is directed against the order of the learned single Judge dated 7-2-1991 whereby the writ petition filed by the petitioner, has been dismissed and it has been held that she is not entitled to be admitted to the Basic Teachers" Training Course, hereinafter referred to as "the Course". It is alleged that the appellant after passing her Higher Secondary Examination applied for taking-up this course. She has studied in Sangeria District Sri Ganga Nagar as a first class student. She filled up her form in time and submitted it before 13-8-90 which was the last date for submission of the forms. However, she has submitted her bona fide resident Certificate on 17-9-90 but she was not called for interview although she is higher in rank. Simply because the bona fide resident Certificate was not filed by her with the application form, she could not have been denied admission and it has resulted in injustice to her. In this respect, Mr. Lodha has placed rdiance on a decision of their Lordships of the Supreme Court in Dr (Mrs) Kirti Deshmankar Vs. Union of India (UOI) and Others, The learned single Judge has held that it was a condition in the instructions that the application form should be accompanied by all necessary certificates including Mark Sheets, Bona fide Resident Certificates and if the

petitioner has a rural background then Rural Education Certificate and if it is not done then that form will not be considered and the same will be rejected and as the petitioner did not submit her Bona fide Resident Certificate even before finalisation of the admission, she is not entitled to any relief and hence this appeal.

2. The main contention of the petitioner in this appeal is that the admission is based on merits and once it is held that persons less meritorious than the petitioner have been admitted to the Teachers Training Course then the petitioner is entitled to be admitted because she has now submitted the Bona fide Resident Certificate on 17-9-1990. In this respect, it was submitted by Mr. Sangeet Lodha that the criteria for admission is merit and, therefore, merit has to be preferred as against the compliance of mere formality of Bona fide Resident Certificate and in this respect, he has again placed reliance on the aforesaid decision of Dr. (Mrs.) Kirti Deshmankar's case and has said that the learned single Judge has not properly appreciated the ratio of the decision of this case.

3. We have critically gone through the aforesaid authority. This was a case where the Rules provided that the admission in a Medical College to a foreign student will not be granted till he produces a Clearance Certificate from the Ministry of Health and Social Welfare. In this case, the Clearance Certificate was produced by Dr. (Mrs.) Kirti who is a foreign national and is married to an Indian student, from the Ministry of External Affairs but their Lordships felt that this is not a sufficient compliance of the Rules. Clause b of Instructions relates to the admission which reads as under: --

"(b) No foreign student, who is seeking admission directly for such course, shall be admitted unless Ministry of Health and Family Welfare gives its clearance."

4. Thus, whatever embargo has been put it is against actual admission and not against consideration of a form submitted by a foreign student. In this case, the form submitted by her was considered and she was assigned merit No. 5 but she was admitted on the basis of the No Objection Certificate issued by the External Affairs Ministry whereas such a Certificate should have been obtained from Ministry of Health and Social Welfare. Thus, this is a condition to refuse admission if Clearance Certificate is not produced. This authority has no application to the facts of the present case. Here, the last date for submission of the form was 13-8-90 and the last date for declaration of the result on the basis of merit was 31-8-90. The guidelines which have been issued by the department clearly show that the admission to the Course is dependent upon the district to which a particular person belongs. Rule 4 relates to the decision providing area to which -a particular person belongs and it has been provided that all persons who belong to different districts of the State, will have a right to apply and the admission will be given on the basis of the residence in a particular district. For decision of the home district, condition No. 5 provides that the petitioner will have to produce a certificate from Competent Authority as regards his bona fide residence of that particular district or rural area from First Class Magistrate and if

it is not done then his form will be rejected. Thus, this was a condition laid down for the very consideration of the form. If the form is not accompanied by that Certificate then the form itself will not be considered. This is not a condition for admission but a condition for consideration of the form because the merit-list has to be prepared district wise and unless the bona fide Certificate of that particular district is not furnished, the petitioner's seniority as regards that district cannot be determined and, therefore, it was a condition precedent that such a Certificate should be filed with the form and it has been clearly mentioned in the notification that if it is not accompanied by that form, the form will be rejected. Instruction 10 relates to filling-up of the form and sub-condition 4 of it provides as under;--

4- ^ ^;ksX;rk] x`g ftyk vkfn dh lwpukvksa ds izek.khdj.k gsrq izek.k&i= rFkk vadrkfydkvksa dh IR;kfir izfrfyfi;ka vo"; layXu dh tk,a d;ksafd muds fcuk vkosnu&i= ij fopkj ugha gksxk A**

5. Now as regards the preparation of the merit-list, certain instructions have been issued and sub-clauses 1 and 2 of Instruction 5 under head "Niyamanushar Yogyata Tatha Ankan" reads as under:--

5- ^ ^fu/kkZfjr frfFk rd izkIr vkSj iafr vosnu&i=ksa dh tkap bl izdkj ls dh tk, %&
 1? lcls igys x`g ftys ds vk/kkj ij mudh tkap dh tk, A mlesa tks v/kqjs gksa] mUgsa vLohdkj djds ;Fkk laHko izkFkhZ dks yksVk nsuk pkfg, A
 2? bls ckn x`g ftys dh dlkSVh ij [kjs mrjus okys vkosnu i=ksadks fuEefyf[kr oxksZ esa NkaVdj vyx&vyx dj ysuk pkfg, %&
 d? vuqlwfr tkfr ds izos"kkFkhZ ?efgyk lfgr?
 jo? vuqlwfr tutkfr ds izos"kkFkhZ ?efgyk lfgr?
 x&1? jktfufrd ihfM+r dh ifRu@iq=@vfookfgr iq=h
 2? HkqriwoZ@orZEkku lSfud dh ifRu iq=@vfookfgr iq=h
 3? Isokjr e`r jkT; deZpkfj;ksa dh ifRu@iq=@vfookfgr iq=h
 4? fo/kok rFkk ifjR;drk lfgr
 ?k? efgyk izos"kkFkhZ tks mijksDr ?d??jo? ls vU; gks A
 M+? vU; lkekU; izos"kkFkhZ A

6. This clearly shows that first thing that has to be done is that the forms should be examined on the basis of home district and once that is determined then alone their comparative merit has to be examined and, therefore, filing of this Certificate was a very essential condition. The seats should be filled-up on the basis of district wise allocation and it is contained in sub-condition 2 of Condition 12 which pertains to the things that have to be taken care of in selection. Sub-condition 2 of Condition 12 reads as under:--

^ ^2 fo|kky; laLFkku ds fy;s fu/kkZfjr ftys vkSj oxZokj lhVksa ds fy;s o ifjf'k"V&3

ds vuqlkj la[;k /;ku esa j[kuh pkfg;s A**

7. It is, therefore, clear from these instructions that bona fide Residence Certificate was a condition precedent and it has to be complied with. However, this Court while deciding certain cases have taken into consideration the fact that if the petitioner had applied for obtaining the Bona fide Residence Certificate prior to the filing of the application and has not been issued such a certificate by the Competent Authority then it was felt that he cannot compel the authority concerned to issue such a certificate before a particular date and hence in such a case, a compassionate view has been taken that if that certificate is filed by the candidate prior to the finalisation of the merit-list then too, the petitioner's case should be considered. This particular date mentioned in these executive instructions cannot be considered as magna carta. It is not in the power of the petitioner to obtain the certificate from the Competent Authority. He can at best apply for it and request the Authority to issue it but if the certificate is not issued in time then the factual foundation for that condition should be laid in the application and it should be mentioned in the application that he has already applied for the Certificate in time but the same has not been issued in time by the Competent Authority and, therefore, he will submit it before the finalisation of the merit-list. In this case, no such factual foundation has been laid down either in the form or in the writ petition. In the writ petition, it has not been mentioned that this application has been filed by her prior to the filing of the application and it will be submitted before the finalisation of the merit-list. Simply because this Certificate has been produced after the finalisation of the merit-list, it does not confer any right on her and, therefore, this Authority of Dr. (Mrs.) Kirti Deshmankar (supra) which has been cited by Mr. Lodha, has no application to the facts of the present case. It was claimed that in refusing admission to the petitioner who has already deposited the tuition fee as also the examination fee, it is the petitioner who alone will suffer. It will not spil the case of other students who have not filed any writ petition.

8. This argument has been controverted by Mr. R.P. Dave appearing for the State who while relying on the decision of their Lordships of the Supreme Court in Punjab Engineering College Chandigarh through its Principal Vs. Sanjay Gulati and Others, , he has stated that the submission of those who had filed the writ petitions in the High Court against the refusal of authorities to grant them admissions can be given any preference. All similarly situated persons irrespective of merits (sic) is also not should be dealt with on the basis of their respective merit. The circumstance that they filed writ petitions in the High Court but others similarly aggrieved did not, will not justify the granting of admission to them by ignoring those others who were higher up in the merit list. There may be cases whose forms have been rejected because they had not submitted the bona fide Residence Certificate and they may have rank higher than the petitioner and, therefore, on this score, she is entitled to no relief.

9. Mr. Lodha next contended that now the petitioner has been admitted under

the orders of this Court. She should not be denied admission because that will put her career in jeopardy. In this respect, he has placed reliance on a decision of their Lordships of the Supreme Court in *State of Madhya Pradesh and Another Vs. Kumari Nivedita Jain and Others*, In this respect, he specially drew our attention to para 29 wherein it has been observed that the petitioner who has been admitted is studying under the orders of this Court and prosecuting her studies and she is otherwise a qualified candidate and eligible for admission into the medical course to which she is now undergoing and the cause of justice does not require that her studies should be interrupted and her career should not be put in jeopardy. That was a case where the petitioner was otherwise eligible for admission and qualified to be retained. Here as stated above, the comparative merit of the candidates who have been left out cannot be judged and, therefore, it cannot be said that she was otherwise eligible for consideration as regards a particular district till the admissions were finalised and therefore, she cannot be granted any relief on that score. Our attention was next drawn to a D. B. decision of this Court in *Miss Niharika Tak v. The University of Jodhpur*, 1983 WLN (UC) 32, where the petitioner has already studied for about three years and, therefore, it was held that she should be allowed to study. This is not the case here. In two decisions of this Court, one S.B. decision rendered in *Kanhaiya Lal Vs. The State and Another*, and another D.B. decision rendered in *Smt. Manju Lata v. Hitkari Co-operative Shiksha Mahila Mahavtdyalaya, Kota* (1987) 2 RLR 84 it has been held that admission under the orders of the Court cannot confer any right on the parties. If the petitioner has deposited any examination fee, it should be refunded to her because she has not undergone any examination. She has no right to be admitted in the course because she has failed to comply with the requisite condition for consideration of her case. It was lastly submitted by Mr. Lodha that petitioner's case may be considered for admission against next year's vacancy. In this respect, he drew my attention to a single Bench decision of this Court in *Dilip Kumar Vs. University of Jodhpur and Others*, That was a case where the petitioner was wrongly refused admission in academic year 1983 and, therefore, it was held that he should be granted admission in the next year's course. Here it is not a case where the petitioner has wrongly been refused admission. The mistake has been committed by her in spite of the specific instructions that her bona fide Certificate should be submitted with the form and she has failed to submit it before the finalisation of the-result. Moreover, she has failed to lay a factual foundation about it in the form and in the writ petition". Consequently, she is entitled to no such relief. Under these circumstances, the learned single Judge was perfectly justified in refusing admission to her.

10. In the result, this Special Appeal has no force and it is hereby dismissed.