

(2009) 07 UK CK 0016

In the Uttarakhand High Court

Case No : Writ Petition No. 2042 of 2008 (M/S)

Ms. Monika Bhimaniya

APPELLANT

Vs

Counselling Board, UPMT-2008 and Others

RESPONDENT

Date of Decision : 13-07-2009

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2009) 3 UC 1553

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : A. Rab, for the Appellant; K.P. Upadhyay, Addl. Chief Standing Counsel for State of Uttarakhand, for the Respondent

Final Decision : Allowed

Judgement

Sudhanshu Dhulia, J.—The Learned Counsel for the Petitioner Sri A. Rab has given a statement at the bar that the facts of the present case are almost similar to that of Writ Petition No. 2233 of 2008 (M/S) Ms. Manisha Bharti and Anr. v. The State of Uttarakhand and Ors. 2009 (2) U.D. 227 and, therefore, this case may also be decided in the light of the said decision. However, though broadly the facts are similar, there are some distinguishing features in the present case as against the facts of the case in the writ petition No. 2233 of 2008, although the caste of the Petitioner in both the cases is similar i.e. "Chamar".

2. Admittedly, this is not a case where the father of the Petitioner belongs to Uttar Pradesh from which the State of Uttarakhand was carved out on 9-11-2000. Father of the Petitioner originally belongs to State of Haryana where "Chamar" is also notified as Scheduled Caste. Therefore, the parameters of Ms. Manisha Bharti and Anr.'s case (supra) are not applicable in the present case. However, the fact is that the Petitioner was born and brought up in the district Dehradun which is presently a part of Uttarakhand and residing in the State of Uttarakhand for more than 20 years. The judgment of the Division Bench of this Court in Writ Petition No. 316 of 2008 (S/B) Dharmendra Prasad 2009 (1) U.D.

381. State of Uttarakhand & two others squarely covers the present matter on the same fact. The Division Bench has held as under:

7. The expression "original resident" Viewy fuoklh 1/2 has not been defined anywhere. In the absence of a specific definition of this expression, we have to adopt a meaningful as well as a purposeful and constructive approach to extend a construction so as to define this expression to mean such persons who have been and or ordinarily residing in the State of Uttarakhand. One aspect which can be taken in constructing the aforesaid interpretation is to include the period of residence of 15 years so as to connote the purpose and meaning of the expression "original resident" 1/4ewy fiioklhVi- By adopting the aforesaid approach and in extending the aforesaid construction to the expression "original resident" Viewy fuoklhVi, we cannot help noticing that in the present case, the Petitioner was born in the State of Uttarakhand in the year 1976 to his parents, who had been living in the State before that date. We cannot help noticing the fact also that the Petitioner, after his birth, took up his entire education in the State of Uttarakhand and, thereafter, applied for selection while residing in the State of Uttarakhand. By no stretch of imagination nor by adopting any plausible stand, can it be argued that such a person should not be treated as a "original resident" Viewy fuoklh 1/2 of Uttarakhand State. Any such argument has to be out rightly rejected.

8. Article 14 of the Constitution of India strikes at any arbitrary action of the executive. it also disapproves taking of a stand by the executive, which is not based on objective criteria. The unreasonableness of a stand taken by the executive is also not approved by Article 14 of the Constitution. We have no hesitation in holding and saying that the stand taken by the Respondent State in the present case to the effect that the Petitioner cannot be included in the category of "original resident" is totally unacceptable by us.

9. For the foregoing discussion, the writ petition is allowed. Respondents 1 & 3 are directed to issue caste certificate to the Petitioner by treating him bona fide resident of the State of Uttarakhand.

3. Moreover, in view of the fact that no opportunity of hearing or show cause has been given to the Petitioner before her admission was cancelled. The caste certificate issued to the Petitioner still exists and has not been cancelled, revoked, modified or set aside by any authority. Therefore, the benefits of the caste are liable to be given to the Petitioner in the State of Uttarakhand. Moreover according to the Learned Counsel for the Petitioner, the Petitioner had scored 187th rank in merit and in the medical college even a student who secured 200th rank in merit has secured admission in general category. Therefore, even as a general candidate, the Petitioner was liable to be got admission. However, since the order dated 28-9-2008 is absolutely illegal and arbitrary, it is liable to be set aside and is hereby set aside. Since the order of the Principal has been quashed, the necessary consequence would be that the admission of the Petitioner has to be restored in the medical college. However,

for the reasons of prudence and practice, it is directed that the Petitioner shall commence her studies of M.B.B.S. Course from the academic session 2009-10 which according to the statement made at the bar by the Learned Counsels for the parties, will commence in July-August, 2009.

4. It is also made clear that any fees or expenses which have been deposited by the Petitioner in lieu of the earlier admission shall be adjusted for the new academic session.

5. With these observations, writ petition is allowed.