
(2019) 05 UK CK 0053

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 896 Of 2019

Naman Kuriyal

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 07-05-2019

Acts Referred:

Citation : (2019) 05 UK CK 0053

Hon'ble Judges : Sharad Kumar Sharma, J

Bench : Single Bench

Advocate : Aman Rab, Suhass R. Joshi, Parikshit Sain, Shilendra Nauriyal

Final Decision : Dismissed

Judgement

Sharad Kumar Sharma, J

1. There was a writ petition filed before this Court numbered as Writ Petition No.1640 of 2018 in which the following controversy was raised :

1. Petitioners of that petition were granted admission in M.S. (General Surgery) after mop up round.

2. Any such admission which were made after last admission, on the available left over seats.

3. Petitioners were granted admission in the said course.

4. It was thereafter that mop up round was conducted by University after the directions of Honâ??ble Apex Court extending the date of counselling till 31.05.18 for all colleges.

5. Consequently name of petitioners stood deleted after the last counselling, in their place other seven respondents of WPMS No.1640 of 2018 were given admission based on placement on merits.

2. This writ petition was ultimately dismissed by the coordinate bench of this Court vide its judgment dated 11.06.2018. The coordinate bench held :-

(a) Candidates who despite of being higher in merits then the petitioners could never get knowledge about the vacancy made available on 18.05.2018.

(b) Though they were higher in merit never had any opportunity and knowledge to participate in counselling.

(c) They were deprived to participate in counselling held to fill the vacant seats after last mop up round.

(d) As the seats, thus which were made vacant later was never brought to their knowledge as there was no declaration made.

(e) Ultimate held the cancellation of selection on M.S. (General Surgery) of the petitioners as a valid act of considering the merits of the candidates.

3. The coordinate bench in the judgment dated 11.06.2018 held that in such cases where the seats were never declared as vacant, no further

observation was required and consequently, the Court held that there is no merit in the writ petition and the same was dismissed. There was another

writ petition being Writ Petition No.1495 of 2018 which invoked identical controversy, which was dismissed for want of prosecution on 03.12.2018.

4. After taking into consideration the orders which have been recorded in the order sheet of WPMS No.1495 of 2018 pertaining to unilateral act of the

petitioner of not pursuing the writ petition, the Court while considering the restoration application had observed that the order dated 03.12.2018

dismissing the writ petition in default would be treated that relief claimed in the writ petition and the dispute raised has attained is finality. The Writ

Petition No.1495 of 2018 â??Jitesh Talwar vs. State of Uttarakhand and othersâ?, in fact has been closed for all practical purposes and thus the

question so far as it related to the challenge given by the petitioner to the selection of the private respondents on 18.05.2018 had attained finality by the

judgment dated 11.06.2018 and order dated 03.12.2018.

5. Considering the impact of dismissal of the writ petition in default, the Court clarified the said order, that consequent to the dismissal of the writ

petitions, the seats should be treated to be vacant and they are required to be filled up exclusively on the basis of their placement on merits.

Subsequent to the order dated 03.12.2018 as well as 08.03.2019 the fresh counseling was conducted by respondent No.4 on 30.05.2018 and

31.05.2018 and new admissions have been granted on the basis of the respective merits. Ultimately seeking their re-admission after dismissal of the writ petition No.1495 of 2018, the petitioner had represented his re-induction into the seat on which he stood selected before Swami Ram Himalayan

University. The said order is shown to have been passed on 21.07.2018 whereby the claim of the petitioner for their readmission and reinstatement to

the MS (General Surgery) was rejected on the ground that their admission has been cancelled by State Counseling Board on the directions of the High

Court of Uttarakhand as given by the judgment dated 18.05.2018, 11.06.2018, and 03.12.2018 and the date of P.G. Medical programme which was

extended by Honâ??ble Apex Court till 31.05.2018 that has also lapsed. The petitioner on denial made by Swami Ram Himalayan University, to grant

readmission to his admission in MS (General Surgery). It is informed by learned counsel for respondent No.2 that the petitioner had preferred a Writ

Petition bearing No.2610 of 2018 â??Naman Kuriyal Vs. State of Uttarakhand and othersâ? and the same was dismissed as withdrawn in order to

enable the petitioner to pursue his remedies in accordance with law. The said order finds placed as annexure 11 to the writ petition which reads as

under:-

â??Learned counsel for the petitioner has given a statement before this Court that he wants to withdraw the present Writ Petition with liberty to

pursue his remedy in accordance with law.

In view of the above statement, the Writ Petition is dismissed as withdrawn with the aforesaid liberty.â??

6. After dismissal of the said writ petition as withdrawn on 29.08.2018, the petitioner has preferred the present writ petition on 01.04.2019 praying for

the following reliefs:-

i. To issue a writ order or direction in the nature of mandamus commanding the Respondents to forthwith restore the admission of the petitioner in MS

(General Surgery) Course in Respondent No.3 and also to permit the petitioner to resume his studies in the said course.

or in the alternative;

To issue a writ order or direction in the nature of mandamus commanding the Respondents to grant admission to the petitioner on the vacant seat in

MS (General Surgery) Course in Respondent No.3 college.

ii. To issue any other suitable writ, order or direction which this Honâ??ble Court may deem fit and proper in the circumstances of the case.

iii. To award the cost of the writ petition in favour of the petitioner.

7. This Court is of the considered view that when the petitionerâ??s admission in MS (General Surgery) stood cancelled in pursuance to the

judgments passed by this Court on 11.06.2018 and 03.12.2018 which were affirmed by Division Bench and subsequently when the writ petition was

dismissed for want of prosecution and the order was clarified by this Court and his candidature was rejected by order dated 12.07.2018, which has

attained finality after withdrawal of the Writ Petition No.2610 of 2018 â??Naman Kuriyal vs. State of Uttarakhand & othersâ? preferred by the

petitioner by the judgment dated 29.09.2018 in fact now the present writ petition for a writ of mandamus would not be tenable at all because the order

of rejection dated 21.07.2018 has attained finality. Even because the order of rejections of claim for readmission which was rejected by Respondent

on 21.07.2018, has not been challenged nor set aside, no such writ petition would be tenable to claim for readmission, and also because the relief

claimed runs contrary to the earlier judgments rendered by this Court.

8. Thus, this Court is of the considered view that the writ petition lacks merit and the same is accordingly dismissed.