

(2015) 01 KL CK 0093

In the High Court Of Kerala

Case No : W.A. No. 1956 of 2013 in W.P.(C). 15937/2009

Reshma K.

APPELLANT

Vs

Co-operative Academy of Professional Education (CAPE) and
Others

RESPONDENT

Date of Decision : 27-01-2015

Acts Referred:

Citation : (2015) 01 KL CK 0093

Hon'ble Judges : Ashok Bhushan, Acting C.J.;A.M. Shaffique, J.

Bench : Division Bench

Advocate : K.T. Shyamkumar, for the Appellant; V. Krishna Menon, SC,
Advocates for the Respondent

Final Decision : Dismissed

Judgement

Ashok Bhushan, Actg. C.J.—Heard learned counsel for the appellant and the learned counsel appearing for the respondent management.

2. This Writ Appeal has been filed against the judgment dated 23.5.2013 passed in W.P(C). No. 15937 of 2009 by which judgment the Writ Petition filed by the petitioner was dismissed. The petitioner, who was a student of the second respondent College was admitted in a course B.Tech Degree in Electronics and Communication in the year 2007. The admission was secured by the petitioner under the NRI quota on the basis of Regulations for admission formulated by the first respondent, as enumerated in Exhibit P1. After the petitioner got admission, the first respondent issued a publication with respect to spot-admission proposed for filling up of the seats remaining vacant under the management quota in different branches. The petitioner attended the spot-admission and she was granted admission in the branch of Electrical and Electronics at the second respondent's College and remitted the tuition fee, but, she was not permitted to join for the new branch under the management quota. The petitioner submitted representations seeking for change of the branch of study and refund of fee paid under the NRI quota. The petitioner thereafter filed the Writ Petition with the

following reliefs:

"i) To issue a writ of mandamus or any other appropriate writ, order of direction, directing the respondents 1 and 2 to adjust the security deposit and fee paid by the petitioner under NRI quota as per Exhibits P5, P6, P14, P16, P17 and P22 - towards the fee payable under Management Quota over and above the fee already paid as per Exhibit P9 and to refund the balance amount with interest at 12% per annum to the petitioner after deducting the admission and processing fee;

ia) To declare that the petitioner is liable to pay fee to the respondents 1 and 2 in the Management Quota Rate only;

ii) To issue a writ of mandamus or any other appropriate writ, order of direction, directing the respondents 1 and 2 to levy fee from the petitioner only under Management Quota rate."

3. The Writ Petition was filed by the petitioner in the year 2009. The Writ Petition could be disposed of by the learned Single Judge only on 23.5.2013. The learned Single Judge took the view that the petitioner was not entitled for any of the reliefs, except that she may be entitled to refund of the tuition fee remitted as per Exhibit P9 receipt. Challenging the said order, this Writ Appeal has been filed.

4. Learned counsel for the appellant submits that the reason for not permitting the appellant to join the course that she did not disclose the fact that she has already received admission in NRI quota was wholly baseless and could not have been a reason for not permitting the petitioner to change her stream of admission from NRI quota to management quota. The petitioner could not obtain any interim order in the Writ Petition and during the pendency of the Writ Petition she has already completed her entire course in the stream of B.Tech Degree in Electronics and Communication under the NRI quota and already paid the requisite fee.

5. The course having completed and the petitioner having studied in B.Tech Degree in Electronics and Communication as also having paid the requisite fee, at this distance of time, the prayer of the petitioner that she could have been permitted to join in the branch of Electrical and Electronics in the management quota cannot be considered. The learned Single Judge has also taken the same view in refusing to grant the reliefs to the petitioner. The learned Single Judge has rightly taken note that the Writ Petition itself was filed after lapse of two years in the year 2009 when the admission was taken in the year 2007.

6. Learned counsel for the petitioner has placed reliance on Bonnie Anna George Vs. Medical Council of India--> . In the above case the petitioner, who was pursuing the course in M.D. Pathology, had come up with the case that she was entitled to shift her P.G. course from M.D. Pathology to M.D. General Medicine in the available vacant seat under the NRI quota within the College. The petitioner in that case had received admission in M.D. Pathology and the same she wanted

to shift to M.D. General Medicine instead of M.D. Pathology. It was found by the Apex Court that she was entitled to change the course from Pathology to General Medicine and consequently the Apex Court directed payment of compensation amounting to Rs. 5 lakh. In paragraph 29 of the judgment the following has been stated by the Apex Court:

"29. Having regard to our above conclusions, we are convinced that depriving the petitioner of the opportunity to opt for the available N.R.I. seat in M.D General Medicine during the third counselling was wholly unjustified. Having reached the above conclusion when we come to the question of grant of relief as prayed for by the petitioner in this Writ Petition, the petitioner seeks for mandamus to direct the second respondent to permit her to shift her P.G. course from M.D. Pathology to M.D. General Medicine in the available vacant seat. Though, we have found that the second respondent was wholly unjustified in not making available the said vacant seat to the petitioner, as the admission schedule fixed by Medical Council of India and this Court is being scrupulously followed, we do not find any extraordinary situation to violate the said schedule fixed by us. We have held in various decisions that the time schedule should be strictly adhered to and no mid stream admission should be allowed. We are, therefore, not inclined to give such a direction as prayed for by the petitioner. However, taking into account the grave injustice caused to the petitioner for which the entire responsibility lies on the second respondent, we are convinced that second respondent should be mulcted with the liability of payment of appropriate compensation to the petitioner for having snatched away her valuable right. Though, we would have been fully justified in directing exemplary amount by way of compensation, we feel it appropriate to fix it in a sum of Rs. 5,00,000/- (Rupees five lacs only). The second respondent is, therefore, directed to pay the said sum of Rs. 5,00,000/- apart from refund the sum of Rs. 13,000/- which the petitioner had to pay for her readmission to the very same P.G course of M.D. Pathology. We are confident that since the petitioner was only fighting for her lawful rights, the same should not have any reflection in the approach of second respondent either directly or indirectly which would cause any disruption in her studies or in the completion of her course. It will always be open for the petitioner to approach the appropriate Forum or for that matter even this Court to seek for the redressal of her grievances, if any on that score. The compensation of Rs. 5,00,000/- shall be paid to the petitioner within two weeks from the date of production of copy of this order." 7. Present is a case where the emphasis was on the change of discipline, rather the petitioner wanted to get her admission changed from NRI quota to management quota. Clause 8 of Exhibit P1 contemplates that fee once paid will not be refunded. The present case is, thus, clearly distinguishable with the Bonnie Anna George's case (supra) and in the above quoted case the Supreme Court awarded payment of compensation in the facts of that case. In the present case due to the fact that the petitioner had completed the course and she paid the fee for three years after joining the course, the learned Single Judge has rightly taken the view that the petitioner was not entitled for the

reliefs.

We do not find any good ground to take a different view. The Writ Appeal is dismissed.