

(2015) 06 SHI CK 0031
In the High Court Of Himachal Pradesh
Case No : CWP No. 2285 of 2015

Satyendra Sharad

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 04-06-2015

Acts Referred:

Citation : (2015) 06 SHI CK 0031

Hon'ble Judges : Mansoor Ahmad Mir, C.J; Tarlok Singh Chauhan, J

Bench : Division Bench

Advocate : Dilip Sharma, Senior Advocate and Manish Sharma, for the Appellant; Shrawan Dogra, Advocate General, Anup Rattan and Romesh Verma, Additional Advocate Generals, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Tarlok Singh Chauhan, J.—The petitioner is physically challenged and has sought writ of mandamus against the respondents to offer him a seat in the Post Graduate Degree in Radio Diagnosis against roster point No. 69 as per the instructions dated 2.5.2012.

2. The petitioner claims that as per the conditions of the prospectus, 3% reservation to physically handicapped is provided to which 200 point reservation roster is applicable, therefore, the respondents are bound to offer him the seat at point 34, 69 and for this purpose he has relied upon the instructions issued on 2.5.2012 whereby the points at 34, 69 have been earmarked for the physically handicapped against the 3% reservation quota.

3. The official respondents in the reply have submitted that in so far as the instructions dated 2.5.2012 are concerned, the same are only applicable to the case of appointments made by way of direct recruitment and therefore, not applicable to the cases of admission particularly when these admissions are to be based solely on merit. It is then averred that since the admissions have to be made strictly on the basis of merit, therefore general combined merit list was

prepared. The petitioner was called as per his General Combined Merit by searching the handicapped candidate in physically handicapped category down in the general combined merit list. The required percentage had been given to the category of the petitioner. He was considered in the counseling at higher rank only on the basis of his performance in the entrance test. The decision to invite the most meritorious candidates out of the physically handicapped category for counseling first is on the basis of court decision. It was only when required number of vacancies reserved for a particular category are not filled on the basis of combined general merit list that the candidates lower in merit are picked up for counseling so that the required vacancies meant for these categories are filled up and merit is not sacrificed.

4. It is further pleaded that the position indicated in 200 point roster does not give any indefeasible right to the petitioner, as he has to rank higher in combined general merit list for the purpose of counseling in order to avail more specialties as per his choice. It is further submitted that the petitioner has already been allotted seat in the specialty of Pharmacology at IGMCI and after depositing the fee, he has already joined. It is further submitted that the petitioner was ranked 136 in the general combined merit and was allotted 41 seat only to give representation to the handicapped category.

5. The private respondents have filed their reply, wherein they have stated that respondent No. 3 had secured 1250.115/1500 marks and respondent No. 4 had secured 1180.34/1500 marks, whereas the petitioner had only secured 742.99/1500 marks, which prima facie demonstrates the difference between the petitioner and these respondents.

We have heard the learned counsel for the parties and have gone through the records of the case.

6. It cannot be disputed that admissions to MD/MS courses have to be made strictly in accordance with the merit. This question was considered in detail by this Bench in CWP No. 5419 of 2014 title Dr. Disha Sharma v. State of H.P. and ors. decided on 4.11.2014, wherein this court like in the present case was dealing with admission to MD/MS courses and after taking into consideration the ratio of judgement passed by the Hon'ble Supreme Court in Priya Gupta Vs. State of Chhatisgarh and Others, AIR 2012 SC 2413 : (2012) 5 SCALE 328 : (2012) 7 SCC 433 : (2012) AIRSCW 3354 and Asha Vs. Pt. B.D. Sharma University of Health Sciences and Others, AIR 2012 SC 3396 : (2012) 6 JT 283 : (2012) 6 SCALE 287 : (2012) 7 SCC 389 : (2012) AIRSCW 4073 : (2012) 4 Supreme 511 , it was held as under:--

"13. Undoubtedly, the judgments of the Hon'ble Supreme Court referred hereinabove in Priya Gupta's case (supra) and Asha's case (supra) relate to MBBS and BDS Courses, however, nonetheless the broader guidelines and principles laid down therein can be applied to the facts of the present case as has been held by a co-ordinate Bench of this Court in CWP No. 5587 of 2012, Richa

Kaushik versus State of Himachal Pradesh and others.

14. The aforesaid exposition of law by the Hon"ble Supreme Court makes it absolutely clear that admissions have to be made in a fair and transparent manner and, therefore, no admissions can be made without disclosing the vacancies available and by publishing the same through the newspaper and displaying the same on the notice board. Every effort has to be made by all concerned to ensure that the admissions are made on merit after due publicity and in no manner which is ex-facie arbitrary and casts the shadow of favouritism. The admissions have to be made on merit and merit alone. In fact, merit, fairness and transparency are the ethos of the process of admissions to such courses and it will be a travesty of justice if the rule of justice is defeated by inefficient or improper methods of admissions."

7. Once merit alone is the criteria for making admissions, then the petitioner can claim no right by alleging that respondents are bound to offer him a seat in Radio Diagnosis against roster point No. 69, because the same would otherwise amount to sacrificing the merit.

8. Learned counsel of the petitioner has then made a faint attempt to canvass that in case the petitioner is not offered a seat at roster point 69 in the discipline of Radio Diagnosis then this would amount to filling up the seat on individual merit basis and would therefore defeat the very purpose of reservation.

9. We are afraid that this contention is without any substance for the simple reason that it is only by virtue of reservation that the petitioner has managed to get admission despite his securing only 742.99/1500 marks as against the marks of 1250.115/1500 secured by respondent No. 3 and 1180.34/1500 marks obtained by respondent No. 4.

10. In view of the aforesaid discussion, we find no merit in this petition and the same is dismissed, leaving the parties to bear their own costs.