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**(2016) 09 AHC CK 0047**

**In the Allahabad High Court**

**Case No : Writ Petition No. 22784 (MS) of 2016**

Shankar Charan Tripathi

APPELLANT

Vs

Union of India

RESPONDENT

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**Date of Decision : 27-09-2016**

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2016) 10 ADJ 318 : (2017) 1 AILLJ 488 : (2016) 119 ALR 251

**Hon'ble Judges :** Devendra Kumar Arora, J.

**Bench :** Single Bench

**Final Decision :** Dismissed

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## **Judgement**

Devendra Kumar Arora, J.—; Heard Sri Ashok Kumar Pandey, learned Counsel for the petitioner, Dr. Deepti Tripathi, Counsel for the Union of India and Sri Sanjay Bhasin, Counsel for the State Government.

2. In the instant writ petition, petitioner has inter-alia sought for a direction to the respondents to extend the privileges and benefit of reservation of Ex-serviceman to the petitioner for admission in MBBS course in the State of Uttar Pradesh, for which examination has been conducted by NEET-2016. It has further been prayed that the respondents authorities be directed to nominate the petitioner for admission in MBBS course in any of the Medical Colleges being managed and controlled by the respondents.

3. According to learned Counsel for the petitioner, petitioner is an Ex-service man, who was discharged from the Indian Air Force in the year 1990. Thereafter the petitioner was selected in Madhya Pradesh PCS Examination and served as Jail Superintendent. While working as Jail Superintendent, he was selected in UPPCS and at present he is working as Joint Commissioner in Commercial Tax Department. The petitioner is an Astrologer and is serving the public through astrology including medical astrology but as he want to serve the humanity through Gathbandhan (Co-relation) of Medical Science and Medical Astrology and

so, he wanted to pursue MBBS course.

4. In furtherance of pursuing MBBS course, petitioner appeared in NEET-(UG)-II-2016 with Roll No. 81408640 and Registration no. 6029827 and secured 16.051601 percentile whereas in JIPMER his name finds place in the merit list prepared by JIPMER.

5. It has been contended by the Counsel for the petitioner that in the distribution of seats and definition of categories, nowhere reservation for Ex-servicemen has been provided which is wholly unreasonable and unjustified when the petitioner at the time of filling up the form in NEET has mentioned his category as Ex-serviceman.

6. It has also been submitted that the petitioner participated for Counselling at SGPGI, Lucknow on 15.9.2016 along with his records but his Counselling was refused on the ground that reservation is for wards and dependents of Ex-servicemen and not for Ex-servicemen. It is relevant to mention here that wards and dependents are getting the reservation because of being dependent and wards of Ex-servicemen whereas when Ex-serviceman himself is applicant, he is legally entitled to be given preference over the wards of Ex-servicemen.

7. To strengthen the aforesaid assertions, the petitioner has relied upon the decisions of the Apex Court rendered in Dilwan Singh and others v. State of Haryana and others (1996) 8 SCC 369 and the decision of Punjab & Haryana High Court in Ishwar Singh v. Kurukshetra University and others (decided on 11.4.2013).

8. Refuting the allegations of the petitioner, it has been argued on behalf of the respondents that the petitioner has no legal or statutory right for being nominated as one of the candidates to pursue MBBS Course in a Government Medical College. The petitioner has failed to show that there is a reservation for Ex-Service Man in the NEET-2016 and he has been denied the said benefit in an unjustified manner.

9. It has been submitted that in the Brochure for NEET-2016 vertical reservation has been provided to SC, ST and OBC in the ratio of 21%, 02% and 27% respectively. There is also provision for Horizontal Reservation in respect of children of Freedom Fighters and Ex-service man [disabled during war/retired/martyr]. However, there is no provision for admitting candidates, who themselves are Ex-servicemen.

10. Having examined the submissions made by the parties, firstly it would be apt to mention that before petitioning a writ of Mandamus, it must be preceded by a distinct demand for performance of the duty, in order to give the party an opportunity to consider whether he should comply or not, and such demand must be shown to have been met by a refusal either by words or conduct, so that the Court may be satisfied that the party complained of, is determined not to do what is demanded. In simple words, the demand must be made prior to the

petition/application.

11. At this juncture, it would be relevant to mention that a writ of mandamus is issued only in such cases when either the State fails to perform its duty or when the discretion exercised by the State is not done legally. In *Guruvayoor Devaswom Managing Committee v. CK Rajan* AIR 2004 SC 561, it was held that although the Court ordinarily is reluctant to assume the functions of the statutory functionaries, it will step in by mandamus when the State fails to perform its duty. It shall also step in when the discretion is exercised but the same has not been done legally and validly. To put differently, a writ of mandamus is not a writ of right and is not granted as a matter of course (*ex-debito justitiae*). Its grant (or refusal) is at the discretion of the court. Courts are obliged to refuse mandamus, unless, it is shown that there is a clear legal right of the applicant or statutory duty of the respondent and there is no alternative remedy available to the applicant. In order to obtain a writ or an order (or direction) in the nature of mandamus, the applicant has to satisfy (the court of law) that he has a legal right towards the performance of a legal duty by the party (or person) against whom mandamus is sought and such right must be subsisting on the date of the petition.

12. As far as case laws relied upon by the petitioner are concerned, it may be mentioned that in *Dilwan Singh's* case [supra] the controversy was altogether different as in the said case the Selection Board has adopted a policy of calling the ex-servicemen and the dependent children of ex-servicemen together to consider their cases for recruitment according to merit which was treated as an impediment to ex-servicemen. Similarly, in the case of *Ishwar Singh* [supra] the dependents of the defence personnel were given preference over the Ex-servicemen for admission in B.Ed (Regular) course. From the perusal of the said judgment it comes out that there was quota for Ex-servicemen fixed by the Government of Haryana and the same was specified in the Information Brochure issued by the University concerned. Here, the facts are different altogether as in the information brochure there is no provision of reservation in respect of Ex-servicemen but quota has been fixed for the children of Ex-servicemen [disabled during war/retired/martyr].

13. The instant case is to be decided in the light of the aforesaid factual and settled legal proposition. Undoubtedly, the Brochure of NEET-2016 was available with the petitioner at the time of filling the On-line application and was well aware that there is reservation for wards of Ex-servicemen and not for Ex-serviceman but he remained in deep slumber and participated in the examination without any protest and now has come with the plea as aforesaid. It may be noted that petitioner had earlier filed Writ petition No. 5681 of 2016 (MS) complaining non-acceptance of his form on account of there being defect in the software but at that time also he did not raise the plea as raised in the instant writ petition. It may be added that the petitioner has not annexed any application showing that he has given application to concerned authorities of the

State Government/Central Government or CBSE Board which conducted the NEET-2016 with regard to reservation for Ex-serviceman and it was not acted upon. More, he has not challenged the conditions of the prospectus before appearing in the NEET-2016 though it was well within the knowledge of the petitioner that no reservation has been made in favour of Ex-servicemen.

14. The petitioner wanted his nomination merely on the basis of statement made by Jawaharlal Institute of Postgraduate Medical Education and Research, Puducherry (JIPMER) in the counter affidavit filed in Writ Petition No. 22351 of 2016 filed in Madras High Court. In paragraph 12 of the said counter affidavit it is has mentioned that the Institution followed only the nominations of such candidates from appropriate central authorities. However, Ministry of Health & Family Welfare had stopped sending nominations from the year 2014-2015. Merely, on the basis of averments made an affidavit, no right is created in favour of the petitioner. Moreso, fixation of reservation is the policy decision of the Central Government/State Government, as the case may be and it is not within the domain of the High Court to provide reservation to such candidates. The petitioner has failed to bring on record any document issued by the Central Government or State Government providing reservation for such candidate, which is not being adhered to by the concerned authorities.

15. Before parting with, it would be relevant to mention that in Sankalp Charitable Trust and another v. Union of India and others (2016) 7 SCC 487, the Apex Court while holding that only NEET would enable students to get admission to MBBS or BDS studies observed that special provisions for reservation of any category are not subject matter of NEET nor are the rights of minority in any manner affected by NEET. NEET only provides for conducting entrance test and eligibility criteria for admission to the MBBS/BDS course.

16. For the reasons aforesaid, no mandamus as claimed/sought for by the petitioner can be issued to the authorities concerned. The writ petition being devoid of merits is liable to be dismissed.

17. Accordingly, the writ petition is dismissed. Costs easy.