
(2009) 12 UK CK 0004
In the Uttarakhand High Court
Case No : Special Appeal No. 27 of 2006

State of Uttarakhand and Others	Vs	APPELLANT
Neha Singh		RESPONDENT

Date of Decision : 08-12-2009

Acts Referred:

Citation : (2009) 12 UK CK 0004

Hon'ble Judges : J.S. Khehar, C.J.; B.C. Kandpal, J

Bench : Division Bench

Advocate : Sudhir Singh, Brief Holder for State, for the Appellant; Navneet Kaushik, for the Respondent

Final Decision : Dismissed

Judgement

J.S. Khehar, C.J.—State of Uttarakhand has assailed, through the instant special appeal, the order passed by a learned Single Judge of this Court on 01-03-2006 disposing of writ petition No. 1074 (M/S) 2005. The Respondent- Neha Singh in the instant appeal had appeared for the Uttaranchal Pre Medical Test 2005 (hereinafter referred to as the "PMT") for gaining admission to a B.A.M.S. course.

2. Having appeared in the aforesaid examination, she was placed at a merit position, which would have entitled her to admission in the B.A.M.S. course at Rishikul Government Ayurvedic College, Haridwar. Despite her merit position, she was not granted admission by the Appellants, on account of their belief, that the Respondent- Neha Singh was ineligible to appear for the PMT held in the year 2005.

3. While disposing of the writ petition (M/S) No. 1074 of 2005, the learned Single Judge declared her eligible and on the basis thereof, issued a direction to the Appellants to allow her admission to the B.A.M.S. course.

4. The order passed by the learned Single Judge on 01-03-2006 was assailed by way of the present appeal, wherein on 04-05-2006, a Division Bench of this Court stayed the operation of the judgment dated 01-03-2006. It is, therefore,

that the Appellants never accorded admission to the Respondent- Neha Singh.

5. Insofar as, the eligibility of the Respondent is concerned, it is the acknowledged position at the hands of the learned Counsel for the rival parties that the same is to be determined in terms of the information brochure available on the record of the instant appeal as Annexure No. IV.

6. In the afore-stated information brochure, eligibility for appearing in the PMT was depicted in the following manner:

??????, ??, ?????? :

(i) ????? qualifying exam, (?) ????? "Domicile" ()

(ii) ????? qualifying exam, (?) ????? "Domicile" ()

(iii) ????? qualifying exam, (?) ????? "Domicile" ?? |

7. During the course of hearing, learned Counsel for the rival parties informed us that the Respondent- Neha Singh was not a domicile of the State of Uttaranchal, in as much as, she was a resident of Bijnor, which is located in the successor State of Uttar Pradesh. Based on the aforesaid acknowledged factual position, it is apparent that the eligibility of the Respondent- Neha Singh, cannot be determined under the first two clauses contained in the extract of the information brochure reproduced above. The issue to be considered is, whether the Respondent - Neha Singh, was eligible for appearing in the PMT conducted in the year 2005, on the basis of the conditions stipulated in the third clause of the eligibility clauses extracted above. Under the third clause, a candidate who had passed the qualifying examination from the State of Uttaranchal, was treated as eligible. Alternatively, a candidate who had taken the qualifying examination within the State of Uttaranchal, was also treated as eligible. Even though, such candidate was not a domicile of the State of Uttaranchal. In the determination of the present appeal, therefore, we have been called upon to determine whether the Respondent- Neha Singh could be treated as eligible under Clause (iii) extracted above. Whilst it is the case of the learned Counsel for the Appellants that she is not eligible, under the aforesaid Clause (iii), it is the case of the learned Counsel for the Respondent that she fulfils the conditions stipulated in Clause (iii).

8. In order to demonstrate the ineligibility of the Respondent- Neha Singh, it is the vehement contention of the learned Counsel for the Appellants, that she had not acquired the qualification of intermediate science from an institute from the State of Uttaranchal. In this behalf, it was submitted that Neha Singh had appeared for the senior secondary examination conducted by the National Institute of Open Schooling, New Delhi. It was also submitted that the Respondent- Neha Singh had not completed the intermediate examination from the T.C.G. Public School, Kotdwar as a regular student and further that the above mentioned Institute had not granted her a certificate of having qualified the intermediate examination. It was also submitted that the mark-sheet, provisional

certificate and migration certificate of the Respondent- Neha Singh had not been awarded to her by any Educational Institute in the State of Uttaranchal. It was therefore, pointed out that the aforesaid Certificates by themselves, revealed that the Respondent had acquired the qualification of senior secondary examination from the National Institute of Open Schooling, New Delhi.

9. As against the contention of the learned Counsel for the Appellants noticed in the foregoing paragraph, it is the submission of the learned Counsel for the Respondent, that two alternatives were provided in the eligibility Clause (iii), a candidate should be an individual, who had passed the qualifying examination from the State of Uttaranchal, or alternatively, the candidate should have appeared in the qualifying examination from within the State of Uttaranchal. It is not a matter of dispute between the parties, according to the learned Counsel for the Respondent, that the Respondent appeared for the senior secondary examination at the Government Inter College, Dugadda in District Pauri Garhwal. It is, therefore, asserted that Neha Singh obviously fulfilled the later alternative mentioned above. Although, it is submitted that the Respondent satisfies even the former alternative, yet it is submitted that there is no need for her to demonstrate this in view of the unambiguous position expressed above, namely, that Neha Singh had taken the qualifying examination at the Government Inter College, Dugadda in the District of Pauri Garhwal and as such, there could be no doubt about her eligibility to appear in the PMT during the year 2005.

10. Having heard learned Counsel for the rival parties, we are satisfied that the submissions advanced by the learned Counsel for the Respondent has to be accepted. In our instant determination, we are satisfied that the Respondent fulfilled the eligibility condition incorporated in Clause (iii). The eligibility of Neha Singh stands fully demonstrated and established by the fact that undisputedly she appeared for the qualifying examination from within the State of Uttaranchal. She had to demonstrate nothing further to establish her eligibility.

11. Insofar as the submissions advanced by the learned Counsel for the Appellants are concerned, we are of the view that it was not essential for the Respondent to demonstrate her eligibility under Clause (iii) by showing that she was a regular student at a school located in the State of Uttaranchal. No such precondition emerges from Clause (iii) of the conditions extracted hereinabove. The submission advanced by the learned Counsel for the Appellants to the effect that neither the mark-sheet nor the provisional certificate nor the migration certificate of the Respondent had been awarded by any Educational Institute in the State of Uttaranchal, in our view, is also beyond the purview of the conditions stipulated in the information brochure for eligibility to the 2005 PMT.

12. In paragraph 3C of the counter affidavit filed on behalf of the Appellants, in response to the writ petition filed by the Respondent- Neha Singh, it has been asserted at the hands of the Appellants, that the Respondent was not the domicile of the State of Uttaranchal and as such, could not claim eligibility to appear in the PMT during the year 2005. We are satisfied that the Respondent

does not claim eligibility on the basis of her domicile in the State of Uttaranchal. In fact, her claim is under Clause (iii) of the information brochure extracted hereinabove, wherein eligibility (under specified conditions) is available also to non-domiciles. Since, we have concluded hereinabove that the Respondent was eligible under Clause (iii), wherein domicile is not a pre-condition, we are of the view, that the insistence of the Appellants, that the Respondent should have been a domicile of the State of Uttaranchal to claim eligibility, is also misconceived.

13. The Respondent had filed writ petition (M/S) No. 1074 of 2005 claiming admission on the B.A.M.S. course at the Rishikul Government Ayurvedic College, Haridwar. This claim raised by Neha Singh had been granted to her by a learned Single Judge of this Court. She was, however, deprived of admission, on account of the filing of the instant special appeal No. 27 of 2006 because this Court passed an interim order dated 04-05-2006 staying the operation of the judgment rendered by the learned Single Judge on 01-03-2006. Although, the claim of the Respondent- Neha Singh for admission to the B.A.M.S. course was upheld by the learned Single Judge and has also been upheld by us during the course of disposal of the present appeal, yet justice has not been done to her. We are of the view that, in the facts and circumstances of the present case, so as to do justice to the Respondent- Neha Singh, a direction should be issued to the Appellants to grant her admission to the B.A.M.S. course in the following academic session by reserving one seat for her at the Rishikul Government Ayurvedic College, Haridwar, if she makes a request in this behalf to the Appellants, with a certified copy of this order, within three months from today. Ordered accordingly.

14. The special appeal stands dismissed in the aforesaid terms.