
(2005) 09 CAL CK 0033

In the Calcutta High Court

Case No : CAN No. 086 of 2005 (stay) and MAT No. 028 of 2005 in Writ Petition No. 114 of 2005

Tanushree Ghosh

APPELLANT

Vs

A and N Administration and Others

RESPONDENT

Date of Decision : 22-09-2005

Acts Referred:

Citation : (2006) 1 CHN 18

Hon'ble Judges : Pranab Kumar Deb, J; Pranab Kumar Chattopadhyay, J

Bench : Division Bench

Advocate : Shyamali Ganguly and Babita Das, for the Appellant; Hemraj Bahadur, for the respondent Nos. 1 to 4 and Krishna Rao, for the respondent No. 5., for the Respondent

Final Decision : Allowed

Judgement

Pranab Kumar Chattopadhyay, J.—In this appeal this Court is called upon to interpret the rules relating to the benefit of reservation provided for the children of the Deputationists and Central Government employees with transfer liability to serve outside the Union Territory.

2. The petitioner herein has raised objection against the decision of the respondent authorities regarding inclusion of the name of the respondent No. 5 (Priya Singh) as the candidate under Category-II and enlisting the name of the said respondent No. 5 in the merit list published for the Academic Session 2005-2006 on the ground that the said respondent No. 5 completed her studies in the Academic Session 2004-2005 and passed the qualifying examination from a school in these Islands. It has also been submitted on behalf of the petitioner that the said respondent No. 5 along with her family members left Port Blair in the year 2004 and now studying in Chennai. It has been specifically urged before this Court that the name of the respondent No. 5 cannot be considered under Category-II as the father of the said respondent No. 5 already left these Islands after completing his tenure and he is no more in service in these Islands.

3. The petitioner herein applied for reserved seat under Category-II in MBBS Course for the Academic Session 2005-2006 and her name has been figured in the provisional merit list dated 15th July, 2005 at Serial No. 3 in respect of the reserved candidates for Category-II. The name of the respondent No. 5 has also been mentioned at Serial No. 2 for the Academic Session 2005-2006. It is not in dispute that the respondent No. 5 also applied for admission under reserved quota for the Academic Session 2004 - 2005 and her name figured at Serial No. 4. Since only two seats were available under reserved Category-II the respondent No. 5 could not get admission in the Academic Session 2004-2005. The said respondent No. 5 also applied in the Academic Session 2005-2006 under Category-II which has been opposed by the petitioner herein on the ground that the said respondent No. 5 cannot come within the purview of the zone of consideration as a candidate under reserved Category-II.

4. Undisputedly, both the petitioner and the respondent No. 5 are claiming benefits of the reservation for admission in MBBS Course for the Academic Session 2005-2006 under Category-II as per Home Ministry's Circular dated 30th May, 1996. The relevant portion of the said circular is set out hereunder:

20. The Andaman & Nicobar Islands is a far flung territory cut off from the mainland of India. It is about 1200 kms. away from Calcutta and Madras. Government provides various incentives to its employees posted in the said Islands. So it would be in the fitness of things to retain 10% seats for deputationists and Central Government Employees. This will, however, be subject to the condition that the candidates in this category should have studied the last two years in the Islands and passed the qualifying examination from a school in the Islands. Unutilised seats, if any, in this category will go to the general merit quota.

23. In short, the allocation of seats to various categories with effect from the 1996 academic session will be as under:-

Category I....

Category II Deputationists and Central Government employees with transfer liability to serve outside the Union Territory, provided the candidates in this category have studied the last two years in the Islands and passed the qualifying examination from a school in the Islands.

5. Admittedly, the father of the respondent No. 5 is a Central Government employee with transfer liability to serve outside the Union Territory and was posted on transfer at Port Blair in December, 1997 and was further transferred from Port Blair in the month of August, 2004 and at present posted at Chennai. The respondent No. 5 is also now prosecuting her studies at Chennai. The petitioner herein is also the daughter of a Central Government employee with transfer liability to serve outside the Union Territory. The father of the petitioner has been transferred to Port Blair in the month of May, 2003 and since then the father of the petitioner has been serving at Port Blair till date. The petitioner has

also completed her studies in the school at Port Blair and successfully passed the qualifying examination of Class XII from the school at Port Blair. The petitioner herein has admittedly fulfilled all the conditions for availing the benefits of the reserved quota under Category II in terms of Home Ministry's circular dated 30th May, 1996. The respondent authority concerned has also considered the respondent No. 5 as the eligible candidate for availing the benefit of the reserved quota under Category II for the Academic Session 2005-2006. The petitioner herein has raised specific objection challenging the eligibility of the respondent No. 5 for availing the said benefit of the reserved quota under Category II for the Academic Session 2005-2006.

6. The benefit of the reserved quota is extended to the children of the Deputationists and Central Government employees. Admittedly, Government provides various incentives to its employees posted in these Islands and the petitioner herein is now entitled to avail the benefit of the aforesaid incentives being the daughter of the employee posted in these Islands who fulfilled all other conditions in this regard.

7. It has been urged on behalf of the respondent No. 5 that the said respondent No. 5 has fulfilled all the eligibility conditions and therefore her claim for consideration as a candidate under reserved Category II cannot be ignored on the ground that her father now posted outside the Islands.

8. It has also been submitted on behalf of the respondent No. 5 that the transfer of the father of the respondent No. 5 cannot disqualify the said respondent No. 5 as there is always a time gap between the date of examination and between the date of allotment of seats and since the father of the respondent No. 5 was very much in service in these Islands at the time of passing the qualifying examination her claim for admission cannot be rejected on the ground that at the time of allotment of seats the father of the said respondent No. 5 was not posted in these Islands.

9. In our opinion, the respondent No. 5 has unnecessarily complicated the issue. The claim of the said respondent No. 5 was duly considered for the Academic Session 2004-2005 at the time of allotment of seats, even though the father of the said respondent No. 5 was not posted at Port Blair at the time of allotment of seats for the Academic Session 2004-2005. The respondent No. 5 again claimed the benefit under reserved Category II for admission in MBBS Course for the Academic Session 2005-2006 even though her father was posted at Chennai long before the initiation of the selection process for admission of the students in MBBS Course for the Academic Session 2005-2006. Furthermore, the respondent No. 5 herein also has been prosecuting her studies now at Chennai i.e. outside these Islands.

10. In the aforesaid circumstances, it cannot be said that for the last two years the respondent No. 5 has studied in these Islands, as admittedly the respondent No. 5 has been prosecuting her studies since last academic session in a college

at Chennai. The respondent No. 5 therefore did not fulfill the condition mentioned in the Home Ministry's Circular dated 30th May, 1996.

11. The Government of India provides various incentives to its employees posted in the Islands including the benefits of reservation of seats for the children of such employees and the petitioner being the daughter of an employee now posted in the Islands is entitled to enjoy the said benefit of reservation disregarding the claim of a candidate whose father had already been transferred to the mainland.

12. Mr. Hemraj Bahadur, learned Counsel for the respondent Nos. 1 to 4 specifically submitted before this Court that the incentive is to be accorded to the persons who are presently posted in these Islands in terms of the expression used by the Secretary to the Government of India, Ministry of Home Affairs. Mr. Bahadur further submitted that the claim of the respondent No. 5 cannot be considered in the facts of the present case as the said respondent No. 5 and also her father left these Islands. Mr. Bahadur specifically submitted that the father of the respondent No. 5 now being posted elsewhere cannot claim any benefit under the reserved Category II for the purpose of admission in MBBS Course for the Academic Session 2005-2006.

13. We are in complete agreement with the aforesaid submission made on behalf of the respondent Nos. 1 to 4 for the reasons mentioned hereinbefore. It cannot be said that the respondent No. 5 is entitled to enjoy the benefit of reservation for the Academic Session 2005-2006. The claim of the respondent No. 5 for admission in MBBS Course under reserved Category II was duly considered for the Academic Session 2004-2005 and she could not be admitted in MBBS course for non-availability of the adequate number of seats. The respondent No. 5 cannot stake her claim as a candidate under reserved Category II on successive occasions disregarding the rightful and legitimate claims of the candidates of the current session including the petitioner herein.

14. For the aforementioned reasons, we are unable to affirm the judgment and order passed by the learned Single Judge as we are of the view that the claim of the respondent No. 5 has been erroneously allowed by the learned Single Judge.

15. Having regard to the above, we set aside the order passed by the learned Single Judge and direct the respondent authority herein to admit the petitioner in place of the respondent No. 5 in the MBBS Course for the Academic Session 2005-2006 as a candidate under reserved Category II subject to fulfilment of other formalities in accordance with the prescribed rules, if any.

16. This appeal thus stands allowed.

17. There will be no order as to costs.

18. Urgent certified xerox copy of this judgment and order be given to the concerned parties if applied for after observing all required formalities.

Pranab Kumar Deb, J.

19. I agree.