
(1990) 02 BOM CK 0014

In the Bombay High Court

Case No : Writ Petition No's. 2729 and 2788 of 1989

Vd. Prashant

APPELLANT

Vs

Dean, Govt. Ayurvedic College and Others

RESPONDENT

Date of Decision : 15-02-1990

Acts Referred:

Admission to M.D. (Ayurved) Course Rules, 1989 — Article 90
Constitution of India, 1950 — Article 226

Citation : (1990) 2 BomCR 44 : (1990) 92 BOMLR 277 : (1990) MhLj 643

Hon'ble Judges : M.B. Ghodeswar, J;H.W. Dhabe, J

Bench : Division Bench

Advocate : P.V. and N.P. Hardas, for the Appellant; A.M. Tayade, Asst. Govt. Pleader for respondents 1 to 3, W.S. Munishi and S.K. Sanyal and A.P. Shinde, for the Respondent

Final Decision : Allowed

Judgement

M.B. Ghodeswar, J.

1 The petitioners have challenged the selection 1st prepared by respondent No. 1 to on 29-9-1989 for admission to Post Graduate Courses in the subjects of Kaya Chikitsa and Ras Shastra in the Government Ayurved College at Nagpur. Both the petitions involve common questions of facts and law and, therefore, they can be conveniently disposed of by a common judgment.

2. The respondent No. 1 gave advertisement on 31-8-1989 of filling in 10 seats-four in Ras Shastra and six in Kaya Shastra. Out of these 10 seats, five seats were reserved for backward classes, two for Scheduled Casts, one for Scheduled Tribe, one for Nomadic Tribe and one for O.B.C. The last date for receipt of the application forms was 15-9-1989. Both the petitioners have applied as per this advertisement. After scrutiny the respondent No. 1 prepared a provisional selection list showing the allocation of seats and waiting list of candidates in the subjects concerned. The petitioner in Writ Petition No. 2729/1989 is shown at Sl. No. 2 in the waiting list in the subject of Kaya Chikitsa. The name of petitioner in

Writ Petition No. 2788 of 1989 is not included in the waiting list. The allocation of seats subject wise is as under :

Kaya Chikitsa :

3 in service persons, 1 general seat, 1 O.B.C. and 1 Scheduled Casts. From student category-2 students were admitted on general seats and 1 Scheduled Tribe.

Rasa Shastra :

2 seats were allotted to in service persons, 1 general, 1 D.T.W.T. 1 Scheduled Caste seat to other University students and 1 seat for O.B.C.

3. The petitioners felt aggrieved by this selection list as they are not admitted and, thereafter, they challenge the selection list. The petitioners are also challenging the advertisement on the following grounds :

(a) Excessive Reservation is given to backward classes, i.e. 50% five of 10 seats.

(b) Subjectwise reservation is not indicated in the advertisement.

(c) 50% reservation for in-service personnel is not mentioned, and

(d) One more reserved seat is allotted to backward class.

4. The respondent No. 1 in the Return has stated that the reservation of backward class seats is worked out on the total seats available. i.e. 10 and as per Rule 3(b) the seats for backward class are to be given by rotation and the reserved seats are worked out by following 100 point roster sanctioned by the Government. Accordingly, the respondent No. 1 has given five seats to backward class candidates. In the written submission filed in Writ Petition No. 2729/1989 by the respondent No. 1, it is stated that in fact out of 10 seats six seats, have gone to open category inclusive of O.B.C. The learned Assistant, Government Pleader has brought the model roster for perusal. As per roster the reservation shown as under :

Though it is mentioned in the return that Shri S.S. Bhoyar is admitted from open category, it is not borne out from the roster. No material is placed before us that Shri S.S. Bhoyar has been given a seat from open category. Ku. Chhaya Butte, student, is admitted in O.B.C. category. As per reservation the percentage allotted to Other Backward Communities is 10 percent. In provisional selection list it is shown that Shri S.S. Bhoyar, in service person, is allotted a seat in O.B.C. category. Hence, once seat allotted to O.B.C. is in excess. No provision is brought to our notice as to how the seat is allotted in excess of reservation percentage. On the contrary, Rule 9(e) of the Rules for admission provides that after taking into consideration the admissions given to O.B.C. on merit in open category, the reservation of should be made to the extent of shortfall of the prescribed percentage of 10 for them. Even for the reserved categories of S.C., S.T. and D.T.M.T. although the total percentage of 24 prescribed for them is

exclusive of the admissions given to the candidates of these categories on merit in open merit category, there is a ceiling of 40% provided for them also in Rule 9(b) of the Rules for admission. It is contended that respondent No. 1 is following the 100 points roster for the first time. Roster does not take care of any such aforesaid rule or provision. The respondent No. 1 should not therefore, blindly follow roster before following roster for implementing rule of reservation apart from the above rules, respondent No. 1 should consider the reservation subjectwise from three separate courses, i.e. (1) Teachers (2) Students and (3) other University Student. Thus it is clear in all six seats are allotted to backward class candidates even assuming that five reserved seats are allotted to backward classes as per roster followed by respondent No. 1 for first time in this academic session as regards reservation to backward class candidates, there will be reservation for five seats and not more than that.

5. The petitioner have also challenged the validity of Rule 5(b) of the new Rules dated 1-8-1989 providing for reservation for 50% seats for admission to post graduate degree course to be allotted to in-service personnel. It is contended by the petitioners that as per rules dated 19-6-1986 only one seat can be allotted as reserved for in service personnel. It may be seen that the Rules dated 19-6-1986 are further modified and changed on 1-8-1989 and 50% of seats for admission to post graduate courses are reserved for in-service personnel. This 50% reservation was already there as per these rules dt. 19-6-1986. The condition which was imposed as per these rules for reservation of only one seat is deleted in the rules framed on 1-8-1989. Therefore, the respondent No. 1 can fill in 50% seats for in-service personnel. In this respect the letter of Administrator (General Administration) of the Directorate of Ayurved, Maharashtra State, Bombay, to the Dean, Government Ayurvedic College, Nagpur, dated 2-12-1989 is important and very much relevant. The provision of 50% seats for in service personnel has been made in Rule No. 5(b) of the Rules dated 1-8-1989, in view of the resolution passed by the Central Council of Indian Medicine, New Delhi, in March, 1987. The perusal of this letter shows that the above provision is made after full consideration to satisfy the need. Some paragraphs of this letter can be usefully extracted here.

"4. In the post, no facilities for undertaking post-graduation training were available in Govt. as well as Private Ayurvedic Colleges. Since 1984 onwards, facilities for post-graduation are being provided in a phased manner both in Govt. as well as Private Ayurvedic Colleges. Now, many of the Ayurvedic graduates who are working in Govt. as well as private Ayurvedic Colleges as Lecturers, Readers. Professors etc. are only holding degree qualifications in Ayurvedic System of Medicine. Only a few persons are holding post-graduate qualifications in Ayurved or other states.

5. Further, all the Ayurvedic graduates have now been brought on par with Allopathic graduates and have been sanctioned U.G.C. pay scales as are sanctioned to Allopathic graduates.

6. In order to keep in line with Allopathic counterparts as well as the resolution of the Central Council of Indian Medicine, New Delhi referred to in para 2 above, a similar provision for recruitment to the post of Lecturer, Reader, Professor in Ayurvedic subjects has also been made in the recruitment rules sanctioned by Government.

It is pointed out here that in the above recruitment rules, it has been provided that though candidates having post graduate qualification may not be available such candidates may be appointed subject to the condition that such candidates will have to acquire the requisite post graduate qualification within a period of 5 years from the date of their appointment failing which they will not be eligible for promotion to next higher post.

7. Incidentally, all Ayurvedic graduates have also been sanctioned U.G.C. pay scales with effect from 1-1-1981 as are sanctioned to Allopathic post graduate qualification holders.

8. Now, the number of seats both in Govt. as well as Ayurvedic Colleges run by the Private Organisations for post-graduate training is limited as compared to Allopathic Colleges of this State.

The number of teachers in Govt. Ayurvedic Colleges (who do not possess post graduate qualification) is such, it will take atleast 8-10 years for them to complete their post graduation even if 3 or 4 in services are given the facility of undertaking post graduation in the institution in which they are working.

9. In view of the foregoing facts, it is logical that preference should also be given to the in-service persons for undertaking post graduate training along with other outside candidates in the interest of efficient teaching of the students.

10. As such, the reservation of 50% of seats has been provided for in-service candidates in the admission rules for Post-graduate Course (M.D. Ayurved) by Government."

6. It is, therefore, clear that for the present there is a real need for 50% reservation for in-service persons and there cannot be any successful challenge to this provision. The contentions of the petitioners in this regard, therefore, cannot be accepted as there is no violation of Article 14 of the Constitution of India.

7. As per roster one seat was reserved for O.B.C. The respondent No. 1 has admitted two candidates for O.B.C. category, one in Kaya Chikitsa and one in Ras Shastra. It is the stand of respondent No. 1 that in order to fill in 50% reservation for in-service persons, Shri S.S. Bhoyar is admitted in open category of O.B.C. In any case taking into consideration in service persons and student candidates reserved seats cannot exceed five. Therefore, the selection of six backward class candidates is not proper and legal. The petitioner in Writ Petition No. 2729 of 1989 is shown in waiting list in the subject of Kaya Chikitsa in general category from students. He stood in 3rd position in order of merit. As

allocation of six seats to backward class is in excess of reservation. This petition Prashant Vekhande is certainly entitled to be admitted in the subject of Kaya Chikitsa.

8. As regards the petitioner in Writ Petition No. 2788/1989, the petitioner has claimed admission in Scheduled Class category. Already the respondent No. 1 has admitted two candidates from Scheduled Caste category as per advertisement. This petitioner claims that he has obtained highest marks in the subjects concerned from amongst the backward class candidates, but he has not mentioned his total marks in the petition. Besides, he is not in the waiting list as two seats are allotted to Scheduled Castes category-one in service personnel and one student from other University. This petitioner is not entitled for admission. There is thus no substance in the claim of this petitioner.

9. We have noticed glaring defects in the advertisement. The advertisement is vague and ambiguous. The respondent No. 1 published this advertisement as per Rule 3(b) of the Rules framed on dated 1-8-1989. Rule 3 reads as under:

"3. Notification of Seats :

"A notification stating the number of seats at the respective Ayurved College available for reservation for post-graduate Ayurveda Course in various Ayurvedic subjects will be notified by the Dean, at their respective Ayurveda Colleges in the academic year, sufficiently in advance, the notification will indicate the following particulars---

(a) The subject-wise availability of seats.

(b) The reservation of seats for Backward classes as prescribed Government mentioning that the category for which the seats are reserved will be given by rotation.

(c) xx xx xx xx"

As per Rule 3(a) subject wise availability of seats should be indicated in the advertisement. Four seats in Ras Shastra and six seats in Kaya Chikitsa are indicated. As per Rule 3(b) the reservation as prescribed by the Government mentioned in the category for which the seats are reserved are to be given by rotation. This rule presupposes that there should be specific indication of reservation of posts with reference to particular subject. The respondent No. 1 has not indicated the reservation in the subjects. Specific posts are not mentioned in the advertisement. Therefore, from the advertisement the candidates are not aware of the reservation in the specific posts in the subjects concerned. In this regard the observations of Full Bench decision of this Court in the case of Dr. Sureshchandra Verma and others v. The Chancellor, Nagpur University and others, reported in 1988 M.L.J. 109, are necessary, to be borne in mind. It is held in this case that, "the reservation for members of Scheduled Castes and Scheduled Tribes contemplated in section 57(4)(a) of the Nagpur University Act means reservation of specific posts, namely posts with reference

to particular subjects. The reservation under the section means reservation of identifiable posts, i.e. reservation of posts subject wise". This observation apply in this case also.

10. There is also no mention of the percentage of seats to be allotted to in-service persons in the advertisement. It is absolutely necessary to indicate this 50% reservation for in service persons and the reservation for backward class there under in the advertisement. One seat of Scheduled Casts candidate to other University student is allotted to the Scheduled caste candidate. The respondent No. 1 has not given break up of all the seats advertised. Out of ten seats, as per five percent reservation, one seat goes to other University candidate. This seat is allotted to Scheduled Caste. It is, therefore, necessary to given break up of all the seats and the reservation therein in the advertisement.

11. In order to avoid vagueness there should be some certainly. The candidates are admitted in the month of September, 1989 and this academic session is also drawing to a close. In such circumstances, we do not find it proper to disturb the admission of Shri S.S. Bhoyar.

12. In the result, we allow Writ Petition No. 2729 of 1989. We direct the respondent No. 1 to give admission to the petitioner in Writ Petition No. 2729 of 1989 by creating an additional seat for him in the subject of Kaya Chikitsa. We, therefore, direct the respondent Nagpur University to relax the last date of admission as regards this petitioner. Rule made absolute in the above terms this writ petition. Writ Petition No. 2788 of 1988 fails and is dismissed. In the circumstances, however, there is no order as to costs in both the petitions.