

Dr. Anil Kumar Vs. Dr. Satheesh Kumar P.K.

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Court : Kerala

Decided On : Jul-31-2013

Judge : Hon'Ble the Chief Justice Dr. Manjula Chellur

Appellant : Dr. Anil Kumar

Respondent : Dr. Satheesh Kumar P.K.

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HON'BLE THE CHIEF JUSTICE DR. MANJULA CHELLUR & THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN WEDNESDAY, THE 31ST DAY OF JULY 2013 9TH SRAVANA, 1935 WA.No. 1145 of 2013 () IN WP(C).16697/2013
----- AGAINST THE ORDER/JUDGMENT IN WP(C) 16697/2013 of HIGH COURT OF KERALA DATED 24 07-2013
APPELLANT(S)/APPELLANT/ADDL.10TH RESPONDENT :
----- DR. ANIL KUMAR AGED 4 YEARS S/O. A.G.SREEDHARAN NAIR, CIVIL SURGEON COMMUNITY HEALTH CENTRE, VELIYANAD P.O. ALAPPUZHA DISTRICT. BY ADVS.SRI.I.V.PRAMOD SRI.B.VINOD RESPONDENT(S)/RESPONDENTS/PETITIONER & OTHER RESPONDENTS : ----- 1. DR. SATHEESH KUMAR P.K., AGED 3 YEARS S/O.P.S.KUTTIACHAN ASSISTANT INSURANCE MEDICAL OFFICER EMPLOYEES STATE INSURANCE DISPENSARY KUTTAMPEROOR P.O., ALAPPUZHA DISTRICT RESIDING AT PARAPURATHU HOUSE, KATTACHIRA P.O. EATTUMANNOOR, KOTTAYAM-

686572.

2. STATE OF KERALA REPRESENTED BY SECRETARY TO GOVERNMENT DEPARTMENT OF HEALTH AND FAMILY WELFARE, SECRETARIAT THIRUVANANTHAPURAM-695001.

3. THE COMMISSIONER OF ENTRANCE EXAMINATION OFFICE OF THE COMMISSIONER OF ENTRANCE EXAMINATIONS FOR POST GRADUATE DEGREE AND DIPLOMA COURSES 5 H FLOOR, UPPER ZONE, HOUSING BOARD BUILDINGS SANTHI NAGAR, THIRUVANANTHAPURAM-695001.

4. MEDICAL COUNCIL OF INDIA REPRESENTED BY ITS SECRETARY, POCKET-14, SECTOR-8 DWARAKA PHASE-1, NEW DELHI-110007.

5. THE DIRECTOR OF MEDICAL EDUCATION OFFICE OF THE DIRECTOR OF MEDICAL EDUCATION TRIVANDRUM-695011.

6. GOVERNMENT OF INDIA REPRESENTED BY SECRETARY TO MINISTRY OF HEALTH AND FAMILY WELFARE NIRMAN BHAVAN, NEW DELHI-110006. -
2- WA.No. 1145 o

7. NATIONAL BOARD OF EXAMINATIONS MEDICAL ENCLAVE, ANSARI NAGAR MAHATMA GANDHI MARG (RING ROAD), NEW DELHI-110029.

8. DR. SATISH C. EMPLOYEES STATE INSURANCE HOSPITAL, FEROKE CALICUT-673 631.

9. BIJUMON L. EMPLOYEES STATE INSURANCE DISPENSARY, PATHIYOOR P.O. KAYAMKULAM, PIN-690 508.

10. SREEKALA V. EMPLOYEES STATE INSURANCE DISPENSARY SADANANDHAPURAM, KOLLAM-691 531.

11. DR. SALIM K.V., AGED 4 YEARS S/O. R.BALAN, ASSISTANT SURGEON (HIGHER GRADE) PUBLIC HEALTH CENTRE, KADAKKARAPALLY, CHERTHALA ALAPPUZHA DISTRICT.

12. DR. SANJAY SAHADEVAN LECTURE IN ANESTHESIA, DEPARTMENT OF ANESTHESIA THIRUVANANTHAPURAM MEDICAL COLLEGE RESIDING AT JANAKI MANDIRAM, JANARDHANAPURAM, VARKALA THIRUVANANTHAPURAM-695 141.

13. DR.ASHOK KUMAR LECTURER, GEN.MEDICINE, ALAPPUZHA MEDICAL COLLEGE ALAPPUZHA-688 001.

14. DR.ELIZABETH MATHAI LECTURER, CHEST AND TB DEPARTMENT ALAPPUZHA MEDICAL COLLEGE, ALAPPUZHA-688 001.

15. DR.P.SOMASUNDARAN, AGED 4 YEARS S/O. KARUNAKARAN, ASSISTANT SURGEON PRIMARY HEALTH CENTRE, KUNDUTHODU, CALICUT DISTRICT RESIDING AT PANNIYOOKKIL, KODUVALLY P.O. KOZHIKODE DISTRICT. R1 BY SRI.P.A.SALIM R2, R3, R5 BY GOVERNMENT PLEADER R4 BY SRI.ALEXANDER THOMAS, SC, MCI R6 & R7 BY ADV. SRI.S.KRISHNAMOORTHY, CGC R10 BY SRI.P.LEELAKRISHNAN R11 BY SMT.SNEHA ROSE R12 BY SRI.P.SANKARANKUTTY NAIR R13 & R14 BY SRI. S. SUJIN R15 BY SRI.V.A.MUHAMMED THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 30-07-2013, ALONG WITH WA. 1148/2013, THE COURT ON 31.7.2013 DELIVERED THE FOLLOWING: MANJULA CHELLUR, C.J & K.VINOD CHANDRAN, J.

----- W.A.No. 1145 of 2013 & W.A.No. 1148 of 2013
----- Dated this the 31st day of July, 2013
JUDGMENT Manjula Chellur, C.J.

These two Writ Appeals arise out of a common judgment in W.P(C).No.1667 of 2013 and other connected cases. Appellant in W.A.No.1145 of 2013 was the 10th respondent before the learned Single Judge and appellant in W.A.No.1148 of 2013 was the 9th respondent.

2. The Writ Petition came to be filed by one Dr.Satheesh Kumar, who was working as Assistant Insurance Medical Officer, Employees State Insurance Dispensary, Kuttamperoor, Alappuzha. The stand of the writ petitioner before the learned

Single Judge was that he being a candidate aspiring for admission to Post Graduate Medical/Diploma Courses in Kerala is aggrieved by communication at Exhibit P6 lowering the eligibility benchmark for admission laid down by the Regulations of Medical Council of India. According to him, the WA.1145 & 1148/13 2 prospectus for admission to Post Graduate Diploma Courses in the State of Kerala, in so far as method of selection for in- service candidates, once eligible, then selection is purely based on seniority in view of the Kerala Medical Officers Admission to Post Graduate Courses Under Service Quota Act, 2008 (Act 29 of 2008) (hereinafter referred to as 'the Service Quota Act'). Therefore, writ petitioner challenges Exhibit P6 as ultra vires to statutory regulation of Medical Council of India (MCI) in total violation of the eligibility benchmark contemplated in the regulations at Exhibit P3 and prospectus at Exhibit P1, therefore, they have sought for the following reliefs: "(a) Issue a writ of certiorari or any other appropriate writ or order or direction quashing/setting-aside Exhibit P6 to the extent it affect the admission to Post Graduate Medical Courses Kerala 2013. (b) Issue a writ of mandamus or any other appropriate writ or direction directing the 6th respondent to recast the Rank List ignoring the lowering of the eligibility benchmark based on Exhibit P6. (c) Issue a writ of mandamus or any other WA.1145 & 1148/13 3 appropriate writ or direction directing the State Authorities respondents 1, 2 & 4 not to include any candidate in the Rank List of in-service quota who don't have the required minimum percentile as per MCI Regulations. (d) Issue any other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case." Along with W.P(C).No.16697 of 2013, other Writ Petitions came to be disposed of including W.P(C).No.15361 of 2013.

3. Counter affidavit on behalf of the first respondent State in WP(C).No.15361/2013 was filed by the Deputy Secretary to Government, Health and Family Welfare Department, Thiruvananthapuram. The said counter affidavit came to be adopted by the State of Kerala in the Writ Petition pertaining to the above Writ Appeals. In the counter affidavit para-wise details are given, how amendment to the Post Graduate Medical Education Regulations, 2012 came into existence, wherein a decision was taken to conduct a single eligibility- cum- Entrance Examination viz, National Eligible cum Entrance Test for admission to Post Graduate Medical Course (NEET-PG) for the entire country. The scheme had

wide publicity as per WA.1145 & 1148/13 4 the directions of the Joint Secretary to Government, Ministry of Health and Family Welfare, Government of India indicating the scheme of examination as prescribed in the MCI/DCI Regulations.

4. It is also brought on record that the State of Kerala informed the Joint Secretary and others that the State Government was willing to participate in the NEET-PG Entrance Examination subject to condition that the State Government will hold counseling of State quota seats, since the State has its own criteria for communal reservation, regional reservation and special reservation. Guidelines also came to be issued by the Government as per GO(Rt)No.3288/12/H&FWD dated 5.10.2012. As per this, prospectus for admission to Post Graduate Medical Courses will be issued by the Director of Medical Education with the prior approval of Government every year. It referred to reservation principles for admission from the year 2013 onwards. Therefore, candidates aspiring for post graduation in medical field had to qualify the NEET-PG test. The Prospectus is at Exhibit P4 dated 19.4.2013. The Prospectus referred to various aspects how the selection and allotment in the State quota seats will be conducted. Clause VII of the WA.1145 & 1148/13 5 Prospectus relates to reservation of seats for service quota, which includes Medical Education Service Quota (MESQ), Health Service Quota (HSQ), Insurance Medical Service Quota (IMSQ) and Municipal Service Quota (MSQ). Clause VIII(d) prescribes eligibility criteria, including minimum duration of service weightage for rural and difficult rural service etc. By referring to Section 3 and 4 of the Service Quota Act, it is contended that, according to the scheme of the Act, notwithstanding anything contained in MCI Act or any Rule, Regulation so far as selection of medical officers for admission to Post Graduate study in the State of Kerala under service quota, it shall be made only under the provisions of the Service Quota Act. According to the State, majority of the population in the State primarily consist of common people, who depend on public health care system, which is manned by in-service doctors, therefore, the State intends maximum number of qualified in- service candidates to secure admission. Therefore, provision is made in the Prospectus for transfer of seats from in-service quota to general quota only if any seats under in-service quota are not filled up. According to them, the changes adopted for the year 2013 is beneficial to in-service candidates at large. WA.1145 & 1148/1

5. The learned Single Judge, advertent to the Prospectus issued by the State of Kerala as per Exhibit P4, with reference to relevant clauses of Exhibit P1 Information Bulletin for NEET- PG Examination and so also regulations of Medical Council of India at Exhibit P3, opined that Exhibit P6 communication dated 31.5.2013 is wholly arbitrary. So far as admission of candidates in the State of Kerala in respect of in-service quota, Exhibit P6 communication cannot be enforced and the learned Single Judge further opined, in the absence of Government of Kerala making any request to lower the minimum marks for general category or physically disabled category with regard to the State quota seats, there was no justification to issue communication like Exhibit P6. Declaring that Exhibit P6 communication cannot be enforced as regards the admission of candidates in general category and physically disabled category or the in-service quota of the State, the Writ Petitions came to be disposed of. Aggrieved by the same, the present two Writ Appeals at the instance of the appellants, who were the respondents before the learned Single Judge are filed.

6. According to the appellants, the learned Single Judge by declining to extend the benefit of communication at Exhibit WA.1145 & 1148/13 7 P6 to general and physically handicapped in-service candidates, injustice is done to the general candidates. According to them, the procedure and regulations were not properly applied in the State of Kerala, therefore, the best way to remedy the situation was to consider in-service candidates, who has secured 50% of marks in NEET-PG, 2012 plus an additional 30% of marks as per Exhibit P3 regulations, again spelt out in Exhibit P1. According to them, equal protection of law is to be extended irrespective of the State to which they belong to, therefore, State of Kerala cannot be excluded from getting admissions as per Regulations and Prospectus, and the modifications made by the competent authority; here, the Central Government by Exhibit P6.

7. According to the appellant in W.A.No.1148 of 2013, Exhibit P6 is the communication issued by the 6th respondent relaxing the qualifying percentile of general, SC/ST/OBC and also physically disabled from 50/40/45 to 50%/40%/45% marks respectively and Exhibit P6 is perfectly legal and valid as it is in tune with the Regulations of 2012, Exhibit P3 as well as Prospectus at Exhibit P1; that the

discretionary power conferred on the Central Government to lower the minimum WA.1145 & 1148/13 8 marks is subject to only one stipulation that such discretionary power can be exercised only in consultation with MCI; Exhibit P6 having been issued in consultation with MCI, there was no need for any request from the Government of Kerala; that the Regulations at Exhibit P3 are statutory in nature, therefore, it is binding on everyone concerned; that there is no justification to single out the in-service candidates belonging to the State of Kerala. Contending that the opinion of the learned Single Judge is incorrect, they sought for allowing the Writ Appeal dismissing the Writ Petition.

8. Learned Central Government Counsel and the Medical Council of India asserting that the Regulations of 2012 empowers the lowering of minimum marks required for admission to Postgraduate courses for candidates belonging to all or any of the categories mentioned therein contended that communication at Exhibit P6 clearly in unequivocal terms applied to all the the categories and not just SC/ST and OBC. As against this, learned Senior Counsel for the party respondents Sri.Kurian George Kannanthanam took us through relevant provisions of Regulations, information bulletin at Exhibit P1 and Prospectus of the State Government at Exhibit P4 to contend WA.1145 & 1148/13 9 that the letter addressed by the Chairman of the National Commission for SC/ST shows dearth of candidates only in the category of SC/ST/OBC and not in respect of general or physically disabled candidates, therefore, the situation and circumstances did not warrant lowering the minimum mark with regard to general and physically disabled category. Such lowering of minimum marks without ascertaining the factual situation would affect the prospects of other candidates. He further contends that there is no automatic lowering of minimum marks and it requires statistics and application of mind. It is not in dispute that by virtue of amendment to Postgraduate Medical Education Regulations, 2012 eligibility criteria was based on percentile and not percentage. As per clause 9 sub-clause III, the minimum mark shall be at 40th percentile, so far as SC/ST/OBC. In so far as candidates with locomotory disability of lower limbs, the minimum marks was fixed at 45th percentile and general category at 50th percentile. The percentile shall be determined on the basis of highest marks secured in All India Common Merit list, which is known as NEET-PG course.

9. The proviso says, when sufficient number of candidates WA.1145 & 1148/13 10 in the respective categories failed to secure minimum marks as prescribed in NEET-PG test held in any academic year for admission to post graduate courses, the Central Government, in consultation with the Medical Council of India, may at its discretion, lower the minimum marks required for admission to post graduate course for candidates belonging to respective categories and marks so lowered by the Central Government shall be applicable for the said academic year only. This amended regulation was clearly spelt out in Exhibit P1 information bulletin in NEET-PG for 2013 admission. So far as this information bulletin, it is based on the regulation mentioned above brought by amendment in 2012. Prospectus at Exhibit P1 itself further says, the reservation of seats in medical colleges/institutions for respective categories shall be as per laws prevailing in States. A merit list of all India basis as well as State-wise would be prepared indicating the eligible candidates purely based on the marks obtained in NEET exam. This criteria was again reflected in the Prospectus issued by the Government of Kerala under clause IV(d) under the heading "Qualifying Criteria". Looking at this eligible criteria reflected in the Prospectus of the State, though in pari materia, what was WA.1145 & 1148/13 11 provided under Postgraduate Education Regulations adopted in the information bulletin at Exhibit P1, is brought into Prospectus of the State at Exhibit P4, but only with one difference. It says, the decision to request to lower the minimum marks for any category will be vested with the Government of Kerala with regard to State quota seats for 2013.

10. Exhibit P6 is the communication dated 31.5.2013 after announcement of NEET-PG exam results. The power to fix eligibility criteria as per Exhibit P1 is drawn from Exhibit P3 Regulations. Exhibit P4 Prospectus came to be issued by the State of Kerala based on the information bulletin at Exhibit P1. It is also relevant to mention that the State of Kerala agreed to participate in the NEET-PG exam, conducted for the entire country. Having agreed so, when MCI Regulations are binding on all the States, it was not open to the State of Kerala to reserve the right so far as the decision to request the lowering of minimum marks for any category so far as State quota seats for 2013 to only itself. It could not ask for more than what it could have in terms of Regulations of 2012. Exhibit P1 information bulletin explains what exactly 'percentile' means, WA.1145 & 1148/13

12 which reads as under: "A percentile rank is the percentage of candidates that fall below a given score. For example, a 75 percentile would imply that you have scored higher than 75% of the total NEET-PG test-takers." Relevant clauses at Exhibits P3, P1 and P4 are relevant, which read as under: Clause 4 of Exhibit P3 Regulations: "4. Clause 9 sub-clause III, under the heading "SELECTION OF POSTGRADUATE STUDENTS", as amended vide notification NO. Medical Council of India.18(1)/2010- Med/49070 dated 21st December, 2010, following shall be substituted as under: "In order to be eligible for admission to any postgraduate course in a particular academic year, it shall be necessary for a candidate to obtain minimum of marks at 50th percentile in 'National Eligibility-cum-Entrance Test for Postgraduate courses held for the said academic year. However, in respect of candidates belonging to Scheduled Castes, Scheduled Tribes, Other Backward Classes, the minimum marks WA.1145 & 1148/13 13 shall be at 40th percentile. In respect of candidates as provided in clause 9(II) above with locomotory disability of lower limbs, the minimum marks shall be at 45th percentile. The percentile shall be determined on the basis of highest marks secured in the All-India common merit list in 'National Eligibility-cum- Entrance Test' for Postgraduate courses. Provided when sufficient number of candidates in the respective categories fail to secure minimum marks as prescribed in National Eligibility-cum-Entrance Test held for any academic year for admission to Post Graduate Courses, the Central Government in consultation with Medical Council of India may at its discretion lower the minimum marks prescribed for admission to Post Graduate Courses for candidates belonging to respective categories and marks so lowered by the Central Government shall be applicable for the said academic year only." Clause III of Exhibit P1 information bulletin: WA.1145 & 1148/13 14 "III. In order to be eligible for admission to any postgraduate course in a particular academic year, it shall be necessary for a candidate to obtain minimum of marks at 50th percentile in 'National Eligibility-cum-Entrance Test for Postgraduate courses' held for the said academic year. However, in respect of candidates belonging to Scheduled Castes, Scheduled Tribes, Other Backward Classes, the minimum marks shall be at 40th percentile. In respect of candidates as provided in clause 9(II) with locomotory disability of lower limbs, the minimum marks shall be at 45th percentile. The percentile shall be determined on the basis

of highest marks secured in the All-India common merit list in 'National Eligibility-cum-Entrance Test' for Postgraduate courses: Provided when sufficient number of candidates in the respective categories fail to secure minimum marks as prescribed in National Eligibility-cum-Entrance Test held for any academic year for admission to Post Graduate Courses, the Central Government in consultation with Medical Council of India may at its discretion lower the minimum marks required for admission to Post Graduate Course for candidates belonging to respective WA.1145 & 1148/13 15 categories and marks so lowered by the Central Government shall be applicable for the said academic year only." Clause IV(d) of Exhibit P4 Prospectus: "IV. Eligibility for Admission. Xx xx (d) Qualifying Criteria: All candidates including Service Quota Candidates shall have to qualify the NEET PG 2012 and admission 2013. In order to be eligible for admission in any Postgraduate course in 2013, it shall be necessary for a candidate to obtain percentile of 50 and above in NEET PG 2012. However, in respect of candidates belonging to Scheduled Caste (SC), Scheduled Tribes (ST), Socially and Educationally Backward Classes (SEBC) the minimum percentile shall be 40. In respect of candidates with locomotory disability of lower limbs, the minimum percentile shall be 45. (Refer Clause VI(b)(xi). Sl.No. Category Passing criteria 1 General 50th percentile 2 SC/ST/SEBC 40 h percentile 3 PD 45th percentile

"Provided when sufficient number of candidates in the respective categories failed to secure minimum marks as prescribed in NEET held for any academic year for WA.1145 & 1148/13 16 admission to PG courses, the Central Government in consultation with MCI may at its discretion lower the minimum marks required for admission to PG courses for candidates belonging to respective categories and marks so lowered by the Central Government shall be applicable for the said academic year only" The decision to request to lower the minimum marks for any category will be vested with Government of Kerala with regard to State Quota seats for 2013." 11. With the above provisions, for the first time, the expression "percentile" is used to ascertain the eligible candidates to be considered for allotting seats in Postgraduate and Diploma courses. The term 'percentile' is an expression which is used to define a number in terms of a fraction of 100. In other words, it is an indicator of comparative performance of all the candidates, who take the exam. The term 'percentage' in the context refers to the rate of marks

secured by each of the candidate. The common word in both the terms 'percentile' and 'percentage' means "per hundred". Main provision though refers to percentile by 50th, 40th and 45th with reference to the three specified categories, the proviso does not indicate WA.1145 & 1148/13 17 decreasing the percentile, but it refers to lowering of the minimum marks required for admission to Postgraduate courses. This would only mean, after ascertaining the percentile, with the declaration of results, there has to be an exercise to know whether sufficient number of candidates in respect of any of the categories are deficient. If it is so, then, lowering the minimum marks required for admission to Postgraduate courses would arise. Here, the word 'percentile' is not used which would only mean that after ascertaining at which mark with reference to a particular category the list stops, if sufficient number of candidates are not there, then lowering the minimum marks with reference to particular category would come into the picture. In other words, this would mean, only after the declaration of results, 50th, 40th and 45th percentile referred to above has to be arrived at and then depending upon the factual situation the exercise contemplated under the proviso of the Regulation etc. has to be applied. Exhibit P6 communication came into existence. Reading the above three provisions with reference to Exhibits P3, P1 and P4, it is very clear that the power to lower the minimum marks required for admission to Postgraduate course WA.1145 & 1148/13 18 belonging to respective categories is to be exercised only in case sufficient number of candidates were not available and the same vests with the Central Government and such power could be exercised only after consultation with MCI. This is also at the discretion of the Central Government. So far as the note at Exhibit P4 under Column IV(d), the decision to request to lower the minimum marks for any category was vested with the Government of Kerala would mean, "except Government of Kerala, no other authority or association or institution could seek for such lowering the minimum marks". By this provision, it cannot fetter the power vested with the Central Government. In other words, even in the absence of Government of Kerala requesting to lower the minimum marks for any category, it is open to the Central Government in consultation with MCI at its discretion to lower the minimum marks required for admission to Postgraduate studies.

12. Apparently, in the present case, there was no such request from the Government of Kerala or from any other quarter to lower the minimum marks for SC/ST/OBC category let alone for general and candidates with locomotory disability of lower limbs. In that view of the matter, whether WA.1145 & 1148/13 19 communication at Exhibit P6 has any binding effect on the Government of Kerala so far as lowering the minimum marks and whether it refers to the above three categories or one of the three categories. Exhibit P6 communication is addressed to the Director, National Board of Examination and Director, AIMS, New Delhi. This letter is addressed by the Deputy Secretary to the Government of India. From the first paragraphs of the letter we understand that a letter was addressed by the Chairman of National Commission for Scheduled Caste reporting insufficient number of candidates in the category of SC/ST/OBC. It does not refer to other two categories, i.e., general or physically handicapped candidates. The Ministry of Health and Family Welfare, on receipt of letter addressed by the Chairman, National Commission for Scheduled Caste has examined the result declared by National Board of Examination (NBE) and it has been found that the students securing marks above 40% in case of SC/ST/OBC have not been reflected in the qualifying list. Then paragraph 2 refers to Regulations (amendment) dated 15.2.2012 empowering the Central Government to relax the qualifying percentile in so far as SC/ST/OBC, unreserved candidates and physically handicapped candidates. In the third WA.1145 & 1148/13 20 paragraph they requested the Director, NBE to declare the results accordingly and the percentile relaxed by the Central Government would be applicable for the admission of Postgraduate courses. The above provisions clearly indicate that till results of NEET-PG exam is declared whether there is shortfall or not in the number of candidates in a particular category will not be ascertainable. This definitely indicates that there has to be data or statistics to know whether there is in fact shortage of candidates in a particular category in any of three categories mentioned above. The letter of Chairman, National Commission of Scheduled Caste is the basis upon which the Ministry had examined the results declared by NBE. This is also only with reference to candidates pertaining to category of SC/ST/OBC. There is no reference with regard to general candidates and physically handicapped candidates, therefore, no statistics or data was before the Ministry of Health and

Family Welfare when decision was taken to lower or relax minimum marks. In the absence of application of mind in that direction, there is no justification why such exercise of lowering the minimum marks required for admission to Postgraduate courses should be adopted, so far as general and WA.1145 & 1148/13 21 physically handicapped candidates. The entire exercise refers to the insufficient number of candidates in respect of one and only category, i.e., SC/ST/OBC. The guideline applicable to identify eligible candidates by virtue of Regulations, 2012 was properly reflected at Exhibit P1 information bulletin. Exhibit P4 Prospectus was also issued based on the information bulletin.

13. There is no application of different yardstick after publication of results on 17.5.2013. What is reflected in the Regulations followed by information bulletin again brought out in the Prospectus at Exhibit P4, is that there is no deviation from the method of percentile application. The deviation is in applying criteria of lowering minimum marks even in respect of general candidates, SC/ST/OBC candidates and physically disabled candidates. In the absence of any exercise to ascertain whether there is shortfall in number of candidates in general category and also physically handicapped category, there cannot be application of lowering of marks criteria unilaterally to all the categories. Therefore, the contention of the appellants that such a benefit must be extended to the appellant also cannot be accepted. WA.1145 & 1148/1

14. In that view of the matter, we are of the opinion, the communication at Exhibit P6 is applicable only to one category of candidate, i.e., SC/ST and OBC. Then coming to the State Act of 2008, the admissions shall be in accordance with the provisions and procedure contemplated under the State Act of 2008 so far as allotment of seats relating to in-service candidates. However, there is no challenge so far as the State Act of 2008. We make it clear that we have confined our findings to the State of Kerala and that too to the in-service candidates; which limited question is the subject matter of litigation and the findings are arrived at on the fact situation. In view of the above discussion and reasoning, we are of the opinion, none of the grounds raised by the appellants are sustainable, therefore, the Writ Appeals deserve to be dismissed. Accordingly, the Writ Appeals are dismissed. MANJULA CHELLUR, CHIEF JUSTICE K.VINOD CHANDRAN,

JUDGE vgs

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