

Debarpita Ray Vs. West Bengal University of Health Sciences and ors.

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SooperKanoon Citation : sooperkanoon.com/887654

Court : Kolkata

Decided On : May-14-2007

Reported in : 2009(1)CHN76

Judge : Pratap Kumar Ray and ;Tapas Kumar Giri, JJ.

Acts : West Bengal Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Act, 1976 - Section 4; ;West Bengal Commission for Backward Classes Act, 1993; ;[Constitution of India](#) - Article 14; ;Mysore Public Works, Engineering Department Services (Recruitment) Rules, 1960

Appeal No. : A.S.T. Nos. 286, 289 and 306 of 2007 and W.P. No. 6979(W) of 2007

Appellant : Debarpita Ray

Respondent : West Bengal University of Health Sciences and ors.

Advocate for Def. : L.K. Gupta, ;Joydeep Acharya, ;Malay Kumar Basu, ;Achinta Kumar Banerjee, ;Indranil Roy, ;Runa Palit and ;Feroze Ahmed, Advs. for Respondent No. 1

Advocate for Pet/Ap. : Ranjit Chatterjee and ;Avijit Dey, Advs.;Subrata Das, Adv.

Judgement :

Pratap Kumar Ray, J.

1. Heard the learned Advocates appearing for the parties.

2. In terms of our earlier order the appeal as arose out of rejection of the interim order, as prayed for, and the writ application both are taken up for final bearing. The respective parties have filed their respective affidavits-in-opposition and the replies thereof. Since the issue involved herein relates to the simple question as to whether 100 point roster as was directed to be followed by issuing information Booklet and the brochure for admission and on the basis of which selection process started for selecting the meritorious candidates for admission in the Master of Dental Surgery course, hereinafter referred to as MDS course for brevity, could be changed and modified after rank position of the respective candidates in the written test was declared and very precisely at the time of counselling by any roster schedule, namely, 1050 point roster by starting the roster point from the initial first point of such 1050 point roster. In view of such position, this Court directed the counselling authority, the delegatee of the West Bengal University of Health Sciences, hereinafter referred to for brevity WBUHS, to file affidavit answering the point. In response thereof, the respondent No. 2, Prof. Jayasri Mitra who is holding the post of Director of Medical Education, has filed an affidavit by contending, inter alia, that there is no Government order, rules and regulations to follow the 1050 point roster as was considered by her at the time of counselling of the candidates and on the basis of which the candidates were allowed to be admitted following the first point of such 1050 point roster in respect of the five open seats as available to the candidates. It has been contended therein that 1050 point roster was followed only because 50% of the seats which are All India Quota, has been filled up by the concerned authority following 3020 point roster to match that huge number of candidates selected for admission in the different courses. Before going through in the nucleus of the writ application, more precisely the grievance as raised by the writ petition/appellant, the factual matrix of the case is required to be discussed.

3. The admission in the said MDS course is controlled by the two authorities; one by the said University as referred to, in respect of 50% of the Quota which is called

the State Quota whereas the rest 50% of the total seats which is All India Quota is filled up following the procedures by the authority of the Central Government. It is an admitted position that in the academic sessions 2007 total 14 seats were declared to be filled up for undergoing MDS course by the eligible candidates. Out of these total 14 seats, naturally 50% was All India Quota and another 50% remained under the State Quota. The State Quota is also subdivided into two parts; one Government sponsored candidates and another non-Government sponsored candidates which has been declared by the University in their brochure as open seat by fixing the number of the respective categories, namely for Government sponsored quota two seats and for open seat quota five seats. The University authority issued information Booklet containing the rules for admission to MDS course of the year 2007 and in the website this Information Booklet also was introduced for the purpose of understanding of the rules by the eligible candidates. In this Booklet under Clause 6.2 under the heading 'Reservation of Seats'. It has been specifically provided that 100 point roster as is being maintained by the University would continue and the starting point of such roster would be 14 in respect of open seats and in respect of Government sponsored candidates 5. Clause 6.2 reads such:

6.2 Seats at the rate of 22%, 6% & 3% will be kept reserved for the SC, ST & Physically Handicapped candidates respectively for both Govt. sponsored and Open seats. 'Physically Handicapped' means 'persons with disabilities' as defined by MCI, i.e., 40-60% disability involving the lower limb(s) only. The Government order and/or the Court/DCI directives which will be in force on the respective day of counselling will be followed for this purpose. 100- point rosters are maintained by the University and in 2007, the starting point is 5 for Govt.-sponsored candidates and the starting point for open seats is 14.

4. The model 100 point roster speaks that point No. 14 is reserved for general category candidate, point No. 15 for the candidate of Scheduled Caste community, point Nos. 15 and 17 both for general category candidates and point No. 18 reserved for the candidates of Scheduled Caste community. Hence having regard to the total 5 open seats, it is an admitted position that in terms of the model 100/point roster, there are 3 seats wherein the general candidates are eligible and

there are two seats which is reserved for Scheduled Caste candidates. In the Information Booklet there is another provision about choice of option in at the time of counselling on the basis of the position and rank of the respective candidates in written test as it appear from Clause 5.8 which reads such:

5.8 The candidates will have the right to choose any one of the available seats at his/her rank at that point of time and the same will be allotted to him/her.

5. The said Booklet further provides that in the event of any vacancy in All India Quota seats, the said to be vested to the State Quota and to be fitted in the last available vacancy of the roster at that point of time. Similarly there is a provision that Government sponsored general candidates quota would be for open general candidates in the event there is any vacancy in such Government sponsored general candidates quota.

Clauses 6.8 and 6.9 read such:

6.8 'All India Quota' seats, if added to the 'State Quota' seats will be included in WBUHS roster following the last number of the first counselling roster. In case of last minute entry, if any, the first available vacancy of the roster at that point of time will be filled up.

6.9 All available seats after the completion of counselling of Govt. sponsored general candidates will be offered to the 'Open general candidates'.

6. In terms of this Information Booklet and the rules for admission in the MDS course, the applications were invited, the candidates appeared in the merit test, that is, the written test and the result of the written test was declared by the University. From the records it appears that in the open Scheduled caste category seats, final merit list was published containing the name of three candidates namely, Dr. Debarati Mallick (the added party in the writ application. Dr. Debarpita Ray, the writ petitioner/appellant and Priyanka Saha. The final merit list of eligible candidates for admission to the said course of MDS in respect of general category was also published by the University incorporating 10 names in order of merit. The name of respondent No. 6 Sri Kushal Chatterjee, appeared as serial No. 4 as per

his rank position. Another final merit list of the eligible candidates of the said course from the West Bengal Government sponsored Scheduled caste candidates was published wherein the name of only one candidate, Dr. S. Mishra was declared whereas for general category Government sponsored candidate only one name was sponsored, namely, Biswinnath Jana. In the writ application and the appeal we are concerned with the open seats and not of the Government sponsored seats. The legality and validity of the admission of any candidate in the Government sponsored seats is not the subject-matter of this appeal as well as the writ application. Accordingly we have not dealt with that issue.

7. 100 point roster which was declared to be followed in terms of the said Clause 6.8 of the Information Booklet, as quoted above, is the outcome of the two Acts, namely, West Bengal Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Act, 1976 and West Bengal Commission for Backward Classes Act, 1993. The West Bengal Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Act, 1976, hereinafter referred to as the SCST Reservation Act under Section 4 provides that a roster should be followed in terms of the Schedule thereof and initially the 50 point roster was scheduled and thereafter this 50 point roster was changed to 100 point roster when the West Bengal Commission for Backward Classes Act, 1993 was introduced and by Government Order 261-TW/EC/MR-103/94 issued in the Calcutta Gazette, Extraordinary, Part I dated 6th April, 1995 5% vacancy was kept reserved for the backward community. Under Clause IV of the said Schedule in terms of Section 4 of the said SCST Reservation Act it is provided that the roster will be a running account from year to year and shall be maintained accordingly and it further provides that the roster will follow the next point wherein the earlier point reached for consideration in the subsequent year. Clause 4 of the said provision reads such:

(iv) The roster is a running account from year to year and shall be maintained accordingly. If recruitment in a particular year stops at a particular point of the cycle, say at the 5th point, recruitment in the subsequent year shall begin at the next point, i.e., at the 6th point.

8. The model 100 point roster was introduced keeping an eye of the reservation of different Scheduled caste candidates, Scheduled Tribe candidates and/or backward classes in the ratio, that is, 22% for SC, 6% for ST and 5% for the backward community. Under the aforesaid Order No. 261-TW/EC/MR-103/94 published in the Calcutta Gazette, Extraordinary, Part I dated 6th April, 1995, as referred to, it is provided that the Governor was pleased to direct that for the purpose of implementation of 5% reservation quota for the backward classes of citizens, a separate 100 point roster by fixing the points, namely, 9th, 29th, 49th, 69th and 89th of the 100 point roster should be reserved for backward classes of the State and it shall be maintained. The said Gazette notification dated 6th April, 1995 reads such:

No. 261-TW/EC/MR-103/94.-Whereas by Notification No. 346-TW/EC/M-6/82(1) dated the 13th July, 1994 the Governor has been pleased to specify in the list below the said notification for the backward classes for the purpose of the West Bengal Commission for Backward Classes Act, 1993 (West Bengal Act 1 of 1993);

And whereas by Order No. 347-TW/EC/M-6/82(1) dated the 13th July, 1994 (hereinafter referred to as the said order), the Governor has been pleased to reserve 5% of vacancies in services and posts under the Government of West Bengal and statutory authorities constituted under any State Act Corporations in which 51% of the paid-up share capital is held by the State Government, Universities, Colleges affiliated to the Universities, Primary, Secondary and Higher Secondary Schools, other educational institutions which are owned or aided by the State Government, and public sector undertakings, to be filled by direct recruitment for the backward classes citizens;

Now, therefore, the Governor is pleased hereby to direct that for the purpose or implementation of 5% reservation quota for the backward classes of citizens in direct recruitment in pursuance of the provisions of the said order, a separate 100-point roster (as per the model 100-point roster annexed hereto) in which 9th 29th, 49th, 69th and 89th points shall be reserved for the citizens belonging to backward classes from the competent authority as specified below:

(i) in the District, the Sub-divisional Officer of the sub-division concerned, and

(b) in Calcutta, the District Magistrate, South 24-Parganas or such Additional District Magistrate, South 24-Parganas, as may be authorised by the District Magistrate, South 24-Parganas, in this behalf.

Model' 100-Point Roster

1. S.C. 2. General 3. General 4.S.T. 5. General 6. General 7. S.C. 8.General 9. B.C. 10. General 11. S.C. 12. General 13. General 14. General 15. S.C, 16. General 17. General 18. S.C. 19. General 20. General 21. S.C. 22, General 23. General 24. S.T. 25. General 26. General 27. General 28. S.C. 29. B.C. 30. General 31. General 32. S.C. 33. General 34. General 35. General 36. S.C. 37. General 38. General 39. General 40. S.C. 41. General 42. General 43. S.T. 44. General 45. General 46. General 47. S.C. 48. General 49. S.C. 50. General 51. S.C. 52. General 53. General 54. S.T. 55. General 56. General 57. S.C. 58. General 59. General 60. General 61. S.C. 62. General 63. General 64. General 65. S.C. 66. General 67. General 68. S.C. 69. S.C. 70. General 71. S.C. 72. General 73. General 74. S.T. 75. General 76. General 77. General 78. S.C. 79. General 80. General 81. General 82. S.C. 83. General 84. General 85. General 86. S.C. 87. General 88. General 89. B.C. 90. S.C. 91. General 92. General 93. S.T. 94. General 95. General 96. General 97. S.C. 98. General 99. General 100. General.

9. The aforesaid 100 point roster as was considered for the reservation of vacancy in respect or employment was considered pro tanto and applied for reservation of the seats or the educational institutions by notification dated 12th September, 1995 issued under No. 905 TW/EC/SCO/MR 1/95(1) by the Government or West Bengal Scheduled Castes and Tribes Welfare Department which is appearing at page 70 of the stay application. The relevant provision under Clause I(a)(v) and Clause Kb) are set out hereinbelow:

1(a)(v) all Government, Government sponsored and recognised non-Government aided Colleges including Medical and Dental Colleges, Engineering and Technological Colleges, Homoeopathic, Ayurvedic and Nursing Colleges.

(b) For admission to the courses, B.A. (Hons.), B.Sc.(Hons.), B.Com.(Hons.), M.A., M.Sc, M.Com., B.Tech., M.Tech., M.Sc.(Tech), B.Ed., M.Ed., LL.B., LL.M., B.Lib., Sc., M.Lib., Sc., Master's Degree courses in Engineering and Architecture, Master of Business Management/Master of Business Administration, M.Phil., and the like in different subjects, an SC or ST candidate getting admission should have in the previous examination qualifying marks which are not lower by more than 25% from the marks obtained by the last candidate of the general category, however, in any case, such a candidate obtaining marks lower than the marks as prescribed by the regulations of the University for admission to the relevant course will not be eligible for admission. The candidates included in the general merit list will not be counted towards these reserved quota.

10. Notification No. 271-TW/EC/MR 1/95(1) dated Calcutta the 22nd May, 1996 issued by the order of the Governor by the Secretary to the Government of West Bengal, Scheduled Castes & Tribes Welfare Department, speaks that the Governor was pleased to include Post-graduate and Doctoral courses in Medicine, Dental Science and Nursing in the earlier notification dated 12th September, 1995 by replacing the words 'and the like in different subjects' in Clause 2(b) of the said notification. The relevant notification dated 22nd May, 1996 annexed at page 72 of the application for appropriate order reads such:

In continuation of Notification No. 905/TW/EC/SC/O/MR-1/95(1) dated 12.9.1995, I am directed by order of the Governor to any that the Governor is pleased to order as follows:

(1) The words 'and the like in different subjects' in Clause 2(b) of the said notification shall be replaced by the words 'Post-graduate and Doctoral courses in Medicine, Dental Science and Nursing'.

(2) Sub-clause Kb) shall be inserted in the said notification after Sub-clause 1(c) as follows: In case the number of seat reserved for Scheduled Castes and Scheduled Tribes in Post-graduate and Doctoral courses in Medicine, Dental Science and Nursing is less than Order 5 in each stream, 50 point roster adopted vide Notification No. 1601-1 dated 02.09.1994 shall be followed for filling up of seats.

11. Having regard to such, 100 point roster accordingly was introduced even in the educational institution for admission of the students thereof in the respective seats. There is no doubt on that issue by any of the parties before us.

12. After the result was declared in terms of the Information Booklet published by the West Bengal Universities of Health Sciences, as referred to above, when the starting point was required to be followed in terms of 100 point roster from 14, unfortunately at the time of counselling it was not followed. The counselling of successful candidates, though under the Information Booklet and the Rules, was vested with the University authority, but they delegated this power to the Departmental of Health and Family Welfare, Government of West Bengal (Director of Medical Education) issuing a notice issued by the Deputy Registrar, the West Bengal University of Health Sciences. The said notice reads such:

Notice

The Counselling of successful students of the West Bengal Post-Graduate Medical (Degree and Diploma including DPH/DIH/DMCW) Admission Test and West Bengal Post-Graduate Dental Admission Test will be conducted by Department of Health and Family Welfare, Government of West Bengal (Director of Medical Education). The candidates are requested to look for the advertisement to be published by the Government of West Bengal. The clauses pertaining to the counselling published in the Information Booklets (Admission), 2007 for MD/MS/PG Diploma in Modern Medicine, MDS and DPH/DIH/DMCW courses in [www. the wbuhs.org](http://www.the.wbuhs.org) in November, 2006 are hereby cancelled.

13. Being delegated as such, the Director of Medical Education, Dr. Jayasri Mitra, was vested with the duties of counselling. It is alleged in the writ application and the stay application in connection with appeal that very surprisingly Dr. Mitra followed 1050 point roster and that too from point No. 1 without following the 100 point roster as was being maintained since long back by the University authority and as was directed to be maintained in terms of Clause 6.2 as already referred to and quoted above. In view of introduction of 1050 point roster and that too from serial No. 1 thereof, the category-wise admission of the respective categories of candidates namely, general candidates, Scheduled Caste and Scheduled Tribe

candidates accordingly suffered a sea change. As per 1050 point roster which is annexed by Dr. Mitra in her affidavit, it appears that out of total 5 seats which are open seats, the first 4 seats go to the category of general candidates and the 5th seat is reserved for Scheduled Caste candidate whereas in the Information Booklets and the Brochure as already referred to issued by the University authority, it was provided that 100 point roster should be followed with starting point of 14 and ending at 18 whereby 2 seats were reserved for Scheduled Caste candidates and 3 seats for general caste candidates. Following the said 1050 point roster, four candidates of general category were admitted in the MDS courses and one candidate for Scheduled Caste category was admitted thereof in the last seat, that is, the 5th seat. The respondent No. 6, Dr. Kushal Chatterjee, by this process got admission even securing 4th position in the merit list from the general category and the added respondent securing 1st position in the merit list of Scheduled Caste category got her admission as the last candidate in the 5th seat as reserved for Scheduled Caste candidate in terms of 1050 point roster, though in term of 100 point roster she was eligible to be the 2nd candidate for admission in the course with a right to exercise option of study course as per her desire in terms of the Information Booklets and the Brochure already quoted above. The added respondent, the 1st candidate from the Scheduled Caste category, accordingly prayed to be added as a party in this proceeding and this Court allowed her application and now she is added as a party, being respondent No. 7. With that admitted factual position, now the matter to be disposed of. The affidavit of Dr. Mitra, the Director of Medical Education, is very vital for effective adjudication of the matter. Dr. Mitra by our earlier order was directed to answer as to why 100 point roster was not followed with the starting point from 14 and why 1050 point roster was followed and that too from point No. 1 and by this process when, as per Information Booklets, two candidates from Scheduled Caste candidates were eligible to be admitted, one was denied such right of admission, namely, the writ petitioner/appellant. It appears that Dr. Mitra was very candid in her affidavit by contending, inter alia in paragraph 4(f) of her affidavit affirmed on 4th May, 2007 that there was no Government order/notification for implementation of 1050 point roster, but she introduced it as per her choice following the All India roster as was considered for filling up the seats reserved for All India quota. The

said Paragraph 4(1) reads such:

4(f) This is being admitted that there is no Government Order/Notification for implementation of such rosters either in this State or in the Central Government. It is further stated that such Rosters are not Rosters which may repeat after every 50 candidates (50 point Roster) or after every 100 candidates (100 point Roster) as followed in this State for entry into Government service; or after every 200 candidates (200 point Roster) meant for Central Government Services. It continues till the last point where all categories of candidates are accommodated in a uniform serial sequence.

14. There was, however, no answer about the source of 1050 point roster and further there is no answer whether there is any support of any rules and regulations or orders issued by the statutory body to introduce 1050 point roster. On a bare perusal of 1050 point roster it appears that there is no quota reserved for backward classes which is reserved in 100 point roster. In the 1050 point roster, Scheduled Caste and Scheduled Tribe candidate's reservations remains in the same ratio of earlier one with one addition of physically handicapped to the extent of 3%, but on a mere analysis of the said roster as annexed it appears that in the 1050 point roster save and except point No. 35 marked for physically handicapped there is no point reserved for physically handicapped person and 3% quota reservation for physically handicapped as is the reason for making this 1050 point roster, also was not satisfied.

15. Another affidavit filed by the Joint Commissioner for Reservation and Ex-officio Joint Secretary to the Government of West Bengal, Backward Classes Welfare Department, respondent No. 4 herein, is very vital for adjudication of this case. In the said affidavit affirmed on 4th May, 2007 by Sri Asit Kumar Purkait holding the said post, the gentleman has categorically admitted that his department is not concerned with the 1050 point roster, but the department is only concerned about 100 point roster as introduced by Government notification. The detailed answer to that effect has been given in paragraph 4 of the said affidavit which reads such:

4. With reference to the source of 1050 point Reservation Roster and its application I say that:

a) The Reservation Cell of Backward Classes Welfare Department is not concerned about 1050 point roster. According to the West Bengal Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Act, 1976 this Department is concerned about 100 point, and 50 point roster in the case of direct recruitment and promotional matter respectively.

b) Government of West Bengal by publishing a notification being numbered ay 905-TW/EC/SC/O/MR-1/95(1) dated 12th September, 1995 has passed an order to ensure to reservation in admission of candidates belonging to Scheduled Caste and Scheduled Tribes communities in educational institution.

(c) In continuation of Notification No. 905-TW/EC/SC/O/MR-1/95(1) Government of West Bengal has made another two Notifications being numbered as 271-TW/EC/MR-1/95(1), dated 22nd May, 1996 and 426-TW/EC/MR-1/95(1) dated 14th August, 1996.

16. Having regard to the factual matrix of this case, the following points emerge for our adjudication:

(1) whether after written test was completed and marks and rank position was published on merit following the 100 point roster as was introduced and on that basis when the merit list was published merit-wise for general candidate Scheduled Caste candidate, at the time of counselling 1050 point roster could be introduced even if it is considered that 1050 point roster was validly introduced?

2) whether respondent No. 6 in terms of the roster formula for reservation of the seats would be entitled to have admission in one of the five seats in MDS course.

3) To what relief to the appellant/writ petitioner, if any.

17. All the aforesaid points are considered analogously and we answer the point Nos. 1 and 2 first for effective adjudication. The question about 1050 point roster and its applicability as well as its legal validity will not detain us for reply in view of the very admission of Dr. Mitra, the Director of Medical Education, in paragraph 4(f) of her affidavit whereby she has stated categorically that there is no Government order and notification and/or decision for introduction of 1050 point

roster. From the affidavit of the Joint Commissioner for Reservation and Ex-officio Joint Secretary to the Government of West Bengal, Backward Classes Welfare Department, Mr. Purkait and more precisely from paragraph 4 thereof, as quoted above, it is also clear that there is no such Government order/notification introducing 1050 roster. It is a settled legal position that when any statutory provision for reservation roster is furnished, in the instant case relating to 100 point roster, it cannot be changed, modified and/or varied by any executive decision and/or administrative decision unless and until by a statutory provision that reservation roster is changed or modified. In the instant case there is no circular letter. Government order and notification for introducing 1050 point roster. Hence, we are of the view that 1050 point roster got no legal sanctity for introduction by cancelling the 100 point roster. Furthermore, it is settled legal position that by administrative and/or executive decision, no statutory provision could be changed, and/or implemented. Reliance may be placed to the judgement passed in the case of *A. Umarani v. Registrar Co-operative Society and Ors.* reported in 2004(7) SCC 42.

18. It is further settled legal position that statutory Government order vis-a-vis non-statutory Government order, statutory Government order will prevail, Reliance may be placed to the judgement passed in the case of *Union of India v. Diljeet Singh and Anr.* reported in : 1999 CriLJ1626 , wherein in paragraph 11 the Apex Court held that statutory notification cannot be superseded by any executive and/or administrative decision. Reliance also may be placed to the judgement passed in the case of *Beopar Sahayak (P) Ltd. and Ors. v. Vishwa Nath and Ors.* reported in : [1987]3SCR496 .

19. In the event of conflict between the two Government orders, one statutory and another non-statutory, statutory Government order will prevail. Reliance may be placed to the judgment passed in the case of *ITC Bhadrachalam Aaperboards v. Mandal Revenue Officer, AP* reported in : (1996)6SCC634 .

20. Further it is the settled legal position that in the event of any contrary provision with the rule, administrative instruction must give way. Reliance may be placed to the judgment passed in the case of *C.I. Verma v. State of Madhya Pradesh*

reported in : AIR 1990 SC463 .

21. Having regard to the aforesaid legal position, we are of the view that 1050 point roster got no legal sanctity and also has no applicability for selection of the candidates for admission to MDS course due to the existence of the 100 point roster supported by a statutory provision, being the, outcome of the concerned Act, namely, the West Bengal Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Act, 1976 as well as West Bengal Commission Backward Classes Act, 1993, as referred to. In that view, we are of the view that introduction of 1050 point roster was not legally permissible as has been done by Dr. Mitra while counselling the candidates for admission to the said course. It appears from the factual matrix that 100 point roster is continuing for long back and in the Information Booklet for admission to MDS course in 2007, provision has been made in Clause 6.2 as aforesaid that 100 point roster will continue and the starting point would be 14. Following that, written test was taken and rank position was declared category wise in respect of different category of candidates, namely, general candidates and Scheduled Caste candidates. Hence, at the time of counselling there was no scope for introduction of 1050 point roster even if it is assumed for argument that 1050 point roster got a legal support by Government notification, though it is not, in view of the settled legal position that during the selection process following a particular rule when the process is carried on, any amendment of the said rule and/or introduction there under the rule unless the rule provides a retrospective effect, always should be considered as prospective. Reference may be placed to the judgment passed in the case of N.T. Devin Katti and Ors. v. Karnataka Public Service Commission and Ors. reported in : (1990)11LLJ456SC . Reference is also made to the cases reported in : AIR 2003 SC4062 and : (2006)11LLJ 1082 SC The point has been answered by the Constitution Bench also in the case which is quoted in the case of N.T. Devin Katti and Ors. reported in : (1990)11LLJ456SC which reads such:

12. In B.N. Nagarajan v. State of Mysore, the dispute related to the validity of appointment of Assistant Engineers. The Public Service Commission invited applications by issuing notifications for appointment to the post of Assistant Engineers in October 1958, May 1959 and April 1960. The Commission made

selection, interviewed the candidates and sent the select list to the Government in October/November, 1960. But before the appointments could be made the Mysore Public Works, Engineering Department Services (Recruitment) Rules, 1960 came into force which prescribed different provisions than those prescribed in the earlier notifications in pursuance whereof the Public Service Commission had made the selections. The validity of the appointment made by the Government on the basis of the selection made by the commission was challenged. The High Court quashed the selection and appointments made in pursuance thereof. On appeal before this Court, validity of the appointments were assailed on the ground that since the appointments had been made after the amendment of the Rules the appointments should have been made in accordance with the amended Rules. A Constitution Bench of this Court rejected the contention holding that since the whole procedure of issuing advertisement, holding interviews and recommending the names having been followed in accordance with the then existing rules prior to the enforcement of the amended Rules the appointments made on the basis of the recommendation made by the Public Service Commission could not be rendered invalid.

22. The same principle followed in another case *Y.V. Rangaiah v. J. Sreenivasa Rao* reported in : (1983)ILLJ23SC and also followed in other cases reported in 1980 Supp SCC 740 and : (1983)ILLJ502SC . The Apex Court answered the point that when a selection process is continuing following a particular rule, any modification of the rule unless specifically provided, has no applicability in such selection process. The same principle is squarely applicable in the instant case. Besides, the point as already answered that 1050 point roster has no legal sanctity and accordingly has no applicability to oust the 100 point roster which is continuing.

23. On a bare look of 1050 point roster and the policy for selection as followed by Dr. Mitra, Director of Medical Education, it appears that 1050 point roster was introduced with point No. 1 and as a resultant effect one more seat was given to the general category candidate depriving the candidate of Scheduled Caste category which normally was available to the said category in terms of the starting point No. 14 of 100 point roster. Hence 1050 point roster not no legal force and

accordingly has no applicability and even if we assume that it got some legal force though it is not, but still then the respondent failed to satisfy about the retrospective effect of such 1050 point roster. The applicability of such 1050 point roster was in fact de hors of the statutory provision. Even if 1050 point roster is introduced by giving prospective effect on cancelling the 100 point roster, still then the point of reservation should be fixed in the context of 100 point roster to identify the starting point under 1050 point roster. In the instant case, it appears that following the 100 point roster from the last year, it reached the point No. 13. Hence from this year it will start from 14 as disclosed by the University authority. Now 1050 point roster if is introduced from point No. 1 again, then the resultant effect would be that the candidates in terms of 100 point roster and more particularly the Scheduled Caste candidates as well as the Scheduled Tribe candidates will be deprived of from seeking their chance for consideration of their candidature. The said roster is meant for the Scheduled Caste and Scheduled Tribe members for whom practically reserved formula was introduced to upgrade their cultural, economic and educational status to reach the goal of egalitarian society on establishing equal opportunity as enshrined under Article 14 of the [Constitution of India](#). However, when new formula of roster is introduced, care always to be taken so that no deprivation is caused due to such introduction of new roster by changing the earlier one in respect of the candidates belonging to Scheduled Caste and Scheduled Tribe community. Furthermore it appears from 1050 point roster and 100 point roster that there is no basic difference about reservation of seats for Scheduled Caste community member and the member of the Scheduled Tribe community. In both the rosters, the percentage of reservation in respect of those two categories are identical save and except addition of physically handicapped in 1050 point roster, Hence considering the matter in that angle, we are of the firm view that 1050 point roster got no applicability in respect of the present selection of the candidates in the MDSs course. In that view of the matter, the admission of respondent No. 6 from the general candidate following the 1050 point roster is illegal and violative of the admission in terms of 100 point roster as introduced by the University authority. We accordingly set aside the admission of respondent No. 6.

24. It appears from the records that the petitioner stood 2nd in the merit list amongst the Scheduled Caste candidates. In terms of the 100 point roster the last seat, that is, 18 point, is reserved for Scheduled Caste member. The added party is also a member of the Scheduled Caste and due to her merit position and being is amongst Scheduled Caste candidates, she has already been admitted in the seat in point No. 15 though the added party wanted to join in this proceeding by making out a case for exercising the choice in terms of Information Booklet which was denied to her as in the last seat she got admission following 1050 point roster. But at the time of final hearing it is the clear submission of the learned Senior Advocate, Mr. K. K. Gupta, appearing for respondent No. 7. Dr. Debarati Mallick, who is also present before us that the added party has waived her right of choice of the particular course and she will continue her study in which she has been admitted.

25. Having regard to such state of affairs, in the vacant seat as now available due to setting aside of admission of respondent No. 6, as the writ petition has satisfied in view of her rank position and being 2nd one in the merit list from amongst the Scheduled Caste candidates, she would be entitled for admission in this seat. Accordingly, we direct the respondent Nos. 1 and 2 to take all steps for admission of the writ petitioner in that seat which is now vacant, namely, the seat wherein the respondent No. 6 got admission to the said course, which now stood cancelled.

26. Since the course has already started from 2nd May, 2007, the respondent Nos. 1 and 2 are further directed to take steps for admission to the said course by three days from this date.

27. Compliance report be submitted before the High Court Registry by respondent Nos. 1 and 2.

28. In course of hearing, it is the submission of the learned Advocate appearing for the State Government as well as the University authority that there is every possibility of vesting of one seat to the State quota from All India Quota. On such eventuality Clause 6.8 is the procedure to fill up such seat as vested to the State Quota, namely, following 100 point roster as introduced. Clause 6.8 reads such:

6.8. 'All India Quota' seats, if added to the 'State Quota' seats will be included in WBUHS roster following the last number of the first counselling roster. In case of last minute entry, if any, the first available vacancy of the roster at that point of time will be filled up.

29. Learned Advocate appearing for the respondent No. 6 submits that due to rank position in merit list of general category candidates, following 100 point roster, if the All India seat is vested to the State quota, the seat would be available to the general category candidate under point No. 19 and in that eventuality respondent No. 6 would be eligible for admission. Since the same is not the subject-matter of the writ application and the appeal, we are simply observing that the respondents may be at liberty to take necessary steps in the matter following the regulation thereof and the respondent No. 6 will be entitled to avail such opportunity if the rule permits, subject to his eligibility.

30. However, it is made clear that in course of hearing though the Court suo motu raised the question about the eligibility respondent No. 6 on the issue of filling of the resignation letter for admission in the course, as those were not pleaded by the learned Advocate in the writ petition as well as in the Memorandum of Appeal, we are not going into the merits of that question.

31. By the affidavit the respondent No. 6 has answered the point to this effect that his resignation letter from the service of the State Government was accepted with retrospective effect from the date of filing of the resignation letter, by the Hon'ble Governor.

32. However, we except that the process for filling up the additional vacancy on account of vesting of seats to the State Quota from All India quota would be completed as early as possible as the course has already started.

33. Affidavit of Compliance so far as counselling and admission of the writ petitioner be filed before this Court at 10.30 a.m. on Friday next by both the respondent Nos. 1 and 2 on serving copy thereof to the writ petitioner/appellant and the other respondents.

34. Since all the parties are appearing, all formalities of the appeal are dispensed with.

35. The stay application is considered as informal Paper Book as all documents are there.

36. The writ file also has been placed before us and affidavit has been filed in respect of the writ and the appeal both.

37. Considering all the aspects of the matter, accordingly the writ petition stands allowed. The appeal as arose out of the interim order also stands disposed of in the angle as aforesaid.

38. Before parting with this matter, we have to mention another that in view of the facts of the case as the writ petitioner has suffered, we thought to impose heavy costs upon the Director of Medical Education, Dr. Mitra as a compensation, but the learned Advocate for the writ petitioner prays before us not to pass such an order. Having regard to such, we are not imposing any cost upon Dr. Mitra save and except the observation that she must be careful in future to follow the rules and regulations.

39. All the respondents will act as per communication of the learned Advocate.

40. However, it is made clear that since the judgment has been delivered in presence of the learned Advocates appearing for respondent Nos. 1 and 2 respectively, under the law it will be presumed that the judgment has been delivered in presence of the respondent Nos. 1 and 2.

41. Leave is granted to the parties to take the gist of the order for communication to the respondents.

42. The stay application also stands disposed of.

Xerox certified copy of this order, if applied for, be given.

Tapas Kumar Giri, J.

43. I agree.

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