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Court : Jammu and Kashmir

Decided On : May-04-1996

Reported in : AIR1997J& K11

Judge : B.A. Khan, J.

Acts : Constitution of India - Article 15(4); ;P.G. Diploma Courses in Medical Colleges - Reservation for SC, St - Rule 22

Appeal No. : O.W.P. Nos. 87 of 1995 and 77 of 1996

Appellant : Dr. Bias Dev and ors.

Respondent : The Competent Authority and anr.

Advocate for Def. : J.P. Singh and; D.C. Raina, Advs.

Advocate for Pet/Ap. : S.A. Salaria and; A.V. Gupta, Advs.

Disposition : Appeal allowed

Judgement :

B.A. Khan, J.

1. These two petitions being identical in nature involving similar issues of fact and law, are proposed to be disposed off by a common judgment.

2. The petitioners in both petitions claimed to be belonging to Scheduled Caste and Scheduled Tribe category and they want reservation to be provided for M.D./M.S./ P.G, Diploma courses in the two Medical Colleges of the State at Jammu and Srinagar in tune with Rules 22, 23 and 25 of SRO 126 of 1994 read with Clause (4) of Article 15 of the Constitution. Their grievance is that even as Part-4 of SRO 126 of 1994, dated 28th June, 1994 provided for reservation to the extent of 8% and6% respectively for Scheduled Castes and Scheduled Tribes category, the respondents were making selection to the M.D./ M.S./P.G. Diploma Courses pursuant to advertisement Notice No 14-C AEE/MD/ MS/DIP of 1995, dated 23rd September, 1994 in disregard of the mandate of the aforesaid provisions of the SRO and Article 15(4) of the Constitution. They accordingly, seek a direction to the respondents to take in regard the reservations so provided, while making selection to the courses in question and for according them consideration in the reserved category of Scheduled Castes and Scheduled Tribes.

3. The all important question that arises in the circumstances is whether SRO 126 of 1994 (J. and K. Reservation Rules of 1994) provides for a reservation for the Scheduled Castes and Scheduled Tribes for selection to the M.D./ M.S./ P.G. Diploma Courses in the two Medical Colleges of the State? The stand of the petitioners is that the controversial SRO) does provide for such a reservationwhich is being disregarded by the respondents while making selection to the Post-Graduate Courses in the Medical Colleges of the State. The respondents on the other hand assert that no such reservation is provided by the SRO or any Rule or Regulation in force.

4. At this stage, it requires to be pointed out that the respondent-Competent Authority had finalised the selection process initiated pursuant to advertisement Notice No. 10 of 1995 and some of the candidates who had sought consideration in the open merit category have filed CM P No. 32 of 1996 praying for impleadment in the present writ petitions as party respondents. Instead of allowing any formal impleadment and considering that the two writ petitions were being disposed of at motion hearing stage, the counsel for the applicants Mr. Sunil Sethi was heard in the matter.

5. He lent a new dimension to the controversy by contending that SRO 126 of 1994 suffered from lack of jurisdiction and was ultra vires Section 124 of the State Constitution and could not be acted upon, even assuming that it provided for some kind of a reservation for Post-Graduate Courses in the Medical Colleges of the State.

6. While this aspect could be dealt with later, I propose to deal with the contentions raised on behalf of both sides, which involves interpretation of some of the provisions of the SRO 126 of 1994 on which rival claims are based. The provisions are extracted herein-under:--

'Rule 2(i)(c):Available seats means seats against which admissions are to be made in respect of a course in professional institutions, hereinafter defined;Rule 2(i)(m) PROFESSIONAL INSTITUTIONS means the institutions notified from lime to lime, by the Government and shall initially include Government Medical College, Srinagar/Jammu, Government Dental College, Srinagar, Government Polytechnics, both male and female, Government College of Education and Government College of Engineering and Technology, Jammu.'

Rule 22...

Reservation in Professional Institutions :

Without prejudice to other provisions which the State will make for advancement of;

(a) Scheduled Castes;

(b) Scheduled Tribes;

(c) Socially and Educationally backward classes.

Seats shall be reserved for members of these groups in each course of professional institutions which shall be nearly as may be, constitute such a percentage of the available seats in that course as shown against each group as below:--

(i) Scheduled Castes 8%

(ii) Scheduled Tribes;

(a) Gujjars and Bakerwals 6%

Rule 24-- The half of the available seats from each of the above categories as indicated in Rules 22 and 23 shall be filled up from the female candidates in M.B.B.S. and B.D.S. Courses. In case sufficient female candidates are not available, the seats shall be filled up from amongst the male candidates from the respective categories:

Provided that where the 'total available seats' are in odd number, the last seat remaining available after apportionment of seats between male and female candidates, shall be filled up by the higher merit holder amongst all candidates.'

7. The petitioner place all their stakes on the provisions of Rule 22 and according to them, this Rule provides a reservation for members of the Scheduled Castes and Scheduled Tribes against available seats in each course of professional institutions to the extent of percentage laid down therein. On this parity of reasoning it is projected that the words 'in each course of professional institutions' are required to be given a plain meaning and since M.D./M.S./P.G. Diploma Courses are also the courses run by the two Medical Colleges, which are admittedly professional institutions, the respondents are obliged to implement the reservation provided against the available seats in these colleges proportionate to the prescribed ratio. It is submitted in this regard that the Rule in question does not talk of seats to be reserved in professional courses of the two institutions. On the contrary, it provides for reservation of seats for Scheduled Castes and Scheduled Tribes in each course run by the professional institutions like the two Medical Colleges of the State.

8. It is further contended that SRO 158 of 1995 (J. and K. Government Medical Colleges Selection of Candidates for Post-Graduate Degree and Diploma Courses Procedure Order of 1995) is only a procedural order which can't whittle down or negate the provisions of reservation made in the Reservation Rules (SRO 126 of

1994) a substantive piece of legislation applicable to recruitment and promotion as also to admission against available seats in professional colleges.

9. The respondents interpret the crucial Rule 22 on their own terms. According to Mr. J. P. Singh learned Sr. A.A.G., the expression 'each' occurring in crucial Rule 22 refers to professional institutions and not to the courses run by these institutions. He finds support for this in the provisions of Rule 24 which specifies and limits the courses to MBBS and BDS. He argued that the author of the Reservation Rules of 1994, had never intended to provide for reservation for Post-Graduate courses in the two Medical Colleges of the State, as could be gathered from its previous actions reflected in SROs passed by it from time to time and from the contemporaneous record relating to the passing of SRO 158 of 1995 which regulates admission to these courses. The relevant notification which governed the manner and method of selection to the M.D./M.S./P.G. Diploma Courses was SRO 168 of 1995 and as this SRO had not made any provision for reservation in case of Scheduled Castes and Scheduled Tribes, the petitioners could not claim such reservation on the basis of an allied SRO inasmuch as they knew for sure that they had to sink or swim in accordance with the terms of regulatory SRO 168 of 1995. Hesubmitted the relevant record to show that the State-respondent, being conscious of the observations made by the Supreme Court in Indra Sawhney v. Union of India (AIR 1993 SC 477) had placed on record that these observations related to 'non-provision of reservation for specialities and super-specialities', while considering the passing of Rules for selection to the M.D./M.S./P.G. Diploma Courses, culminating in SRO 168 of 1995. Mr. D. C. Raina learned Counsel representing the Competent Authority submitted that even if it be assumed that SRO 126 of 1994 provides for reservation for every and each course run by the professional institutions, still MD/MS could not be regarded as a course. On the other hand, it was a speciality and had always been regarded so as distinct from the MBBS and even University Statutes provide for distinguishing features between the two. He was at pains to clarify that a course was to adhere to a general prescribed syllabi and as against this, for M.D. and M.S. a candidate had to undertake a research work under the guidance of a Guide and had to submit his thesis. Such a candidate could not be declared to have failed and, therefore, even when some Government Notification described the M.D. and M.S. courses, the

use of such expression could not be construed to mean that these were not a speciality. In such a case the expression used required to be read down by invoking the doctrine of reading down.

10. Mr. Sunil Sethi attacked the very basis of SRO 126 of 1994 and submitted that it lacked in jurisdiction as much as it had been passed in exercise of the powers provided in Section 124 of the State Constitution. Healso tried to bring out the distinction between Article 16 of the Indian Constitution and Section 5 of the State Constitution in support and pleaded that the provision for reservation in the State of Jammu and Kashmir could only be made by the Legislature and that the Executive had no power to do so.

11. This position was countered by Mr.A. V. Gupta who relied upon AIR 1963 SC649 and submitted that the provision forreservation pursuant to Article 54 of theConstitution could be made eyen by an executive order and did not require any formal legislation to be passed by the Legislature.

12. I propose firstly to confine to primary contention related to the interpretation of the provisions of the Reservation Rules (SRO 126 of 1994) and it would be only in case of need to advert to the other constitutional questions raised by Mr. Sethi.

13. Before adverting to the controversial provisions of SRO 126 of 1994, it requires to be noticed that advertisement Notification No. 14--CAEE/MD/MS/DIP of 1995, dated 23-8-1995 does not provide for any reservation for Scheduled Castes and Scheduled Tribes. Nor is any such reservation provided in SRO 168 of 1995 which governs and regulates admission to the Post-Graduate Courses in the Medical Colleges of the State. Therefore, all that requires to be seen is whether the Reservation Rules of 1994(SRO 126 of 1994) provides for such a reservation or not? A conjoint reading of the relevant provisions of the SRO, extracted hereinabove, leave no manner of doubt as to the resultant confusion created by the vague wording of this provision with regard to the provision of reservation for Post-Graduate courses in the Medical Colleges of the State. Para 4 of the SRO provides for reservation in professional institutions for Scheduled Castes, Scheduled Tribes and Socially and Educationally backward classes to the extent of the proportion prescribed therein. It further lays down that seats shall be

reserved for those classes/groups in each course of these professional institutions. The expression 'each course of professional institutions' moreso in Rule 22 of the SRO creates all the confusion and suffers from ambiguity. It is not clear whether the reservation provided is for each course run by such professional institution or whether it is for only a particular course conducted by each professional institution. Though both sides placed their own interpretation on this expression, the actions and the contemporaneous record of the State-respondent shows that it had not intended to provide for any reservation for Scheduled Castes and Scheduled Tribes for any M.D./M.S. and P.G. Diploma Courses run by the two Medical Colleges of the State. This is evident from the notings borne by the record and culminating in SRO 168 of 1995, which governs the admission to these courses. But even so, it is not possible for this Court to place an interpretation on this expression one way or the other, as that may tantamount to re-writing and re-casting the provisions of Rule 22 which is beyond the powers of this Court. It is not the function of this Court to legislate, but to interpret the legislation. It can't add or delete a word and is required to adopt a construction which would carry the obvious intention of the Legislature. But where the provision is so ill-drafted that even the intention of the author becomes doubtful, it becomes difficult for the Court to interpret it authoritatively.

14. Therefore, taking in regard that the provisions of the crucial Rule 22 of SRO 126 of 1994 are so ill-drafted as to make it hazardous for the Court to place any interpretation thereon, coupled with the assertion and intention of the State-respondent that it never intended to provide for any reservation for Scheduled Castes and Scheduled Tribes in M.D./M.S./P.G. Diploma Courses, it is not possible to hold at this stage that the controversial SRO makes any such provision for reservation, which can be made applicable to the selection conducted pursuant to advertisement Notification No. 14 of 1995. It would, therefore, be just and appropriate to dispose of these writ petitions with a direction to the State-respondent 10 clarify the position by recasting and making suitable amendment in the relevant provisions of SRO after taking appropriate steps within four weeks from the date of this order, for future.

15. All this obviates the necessity of examining the constitutional validity of SRO 126 of 1994, as agitated by Mr. Sethi or to examine whether the provisions of SRO 126 of 1994 are attracted despite non-provision of reservation by SRO 168 of 1995, which regulates the admission to M.D./ M.S./P.O. Diploma Courses.

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