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SooperKanoon Citation : sooperkanoon.com/899576

Court : Jammu and Kashmir

Decided On : Feb-13-1997

Reported in : AIR1997J& K100

Judge : A.M. Mir, J.

Acts : Constitution of Jammu and Kashmir - Section 103; ;[Constitution of India](#) - Article 226; ;[Evidence Act, 1872](#) - Section 115

Appeal No. : O.W.P. No. 844 of 1996

Appellant : Arshad Iqbal

Respondent : The State and ors.

Advocate for Def. : D.C. Raina, Adv.

Advocate for Pet/Ap. : D.S. Thakur, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

A.M. Mir, J.

1. This is a petition for issuance of writ of certiorari quashing item No. 6 : 3 of the Brochure which requires the candidates applying under a particular reserved

category to annexe with the application form the concerned category certificate. A further direction in the form of mandamus is also sought whereby respondents may be directed to consider the petitioner for admission to M.B.B.S. Course for the Session 1996-97 under the Reserved Category of S.T.G.B.

2. Respondent No. 2 invited applications for admission to M.B.B.S. Course in the Medical College, Jammu and Srinagar vide Notification No. 11-CAEE (MBBS/BDS/SGR of 1996 dated 15-7-1996. Last date, in terms of the Notification for submission of forms was 14-8-1996, The petitioner applied vide Form No. 11367, under Open Merit and scored off the option for being considered under reserved category as per SRO 126 of 1994, as amended from time to time. Petitioner's form was accepted. After the cut of date fixed for filling up the forms (14-8-1996), he wanted that his case should be considered under SRO 126 (supra) as he belonged to the Scheduled Tribe, of Gujjar and Bakarwals.

3. Para 5 of the Advertisement Notification reproduced the condition laid down in item 6:3 of the concerned Brochure, that the reserved category certificate should be enclosed with the form in case consideration under such category is sought and in absence of enclosing such certificate the candidate would be considered only in the Open Merit. This condition which lays an impediment in the way of the petitioner to seek consideration under the reserved category, according to the petitioner, was relied upon by the Competent Authority and his plea for such consideration was rejected. This is how this petition has been filed. The petitioner has, of course, made a prayer for annulment of such condition.

4. The objections filed by the respondents have squarely been based upon the existence of the condition precedent of enclosing reserved category certificate with the form. Whole of the stress in this behalf has been laid by the answering respondents on para 4 of the Form. According to them the petitioner has contested his claim only in Open Merit as is reflected by para 4 of the application form. Not only that he has scored off 'yes' in para 4 of the annexure to this form which left out an option with the petitioner to apply under the reserved category and enclose the certificate. He has opted for 'No' under this column and when both these entries are read conjectively, the petitioner has himself chosen to appear under

Open Merit. Therefore, the question of his consideration under a reserved category would not arise.

5. I have heard the learned Counsel for the parties at length.

6. The position admitted in the writ petition is that at the time of submission of form, the petitioner had inadvertently misplaced his reserved category certificate which was required to be annexed with the application and the position of the certificate not being available till 14-8-1996, the last date for submission of forms, persisted. According to the petitioner the ground for applying in Open Merit was that he did not want to incur the risk of applying in a reserved category and submitting the form without annexing the concerned category certificate. This, according to the petitioner was so because that way the form would remain incomplete. It was, according to the petitioner, 'after some days' of the submission of the form that he could locate the reserved category certificate. On locating the certificate he approached the Competent Authority for his consideration under the said category, which was refused. This is how the petitioner terms the action of respondent in refusing to consider him under the R.C. as 'illegal' and 'arbitrary'.

7. A bird's eye-view of the petition, as reproduced above makes it clear that at the time of filling up of the form the petitioner, for whatsoever reasons applied in Open Merit and not in Reserved Category. It will be worthwhile to reproduce para 4 of the application form and the options made by the petitioner in response to the same :--

4. Category Code(s) (i) O.M.(Write the category (ii) O.M.code(s) as given in the information brochure, (iii) O.M.

8. The information brochure thoroughly explains as to what are the different categories under which candidates can apply. It will also be pertinent to mention here that the Adv. .notice dated 15-7-1996 has in its para 5 administered a note of caution that the candidates must read the information brochure carefully before they fill in the application forms. This is to make it clear that candidates at the time of filling up of their form are supposed to know as to on what basis and under what category they intend to contest. The petitioner by opting for Open Merit in para 4

has himself impliedly scored out his contest in a reserved category. The matter does not end here. The page two of the form details out the list of enclosures which the candidate may like to enclose. At Serial No. 4 category certificate is required to be enclosed in case the candidate seeks consideration under RC as per SRO 126 of 1994. The petitioner here has opted for 'No'. This expressly shows that the petitioner has consciously contested his claim in Open Merit field and not in a reserved category.

9. Last date fixed for submission of forms in cases of such selections assumes considerable importance, because, it is up to that date that credentials or documents in support of a claim can be entertained. No document after the cut-off date can be accepted. This proposition of law was laid down by the Apex Court in (1994) 2 SCC 723 : (1994 AIR SCW 2861). In that case the candidate was allowed to appear in a part of the competitive examination though she did not fulfill prescribed educational qualification. She was not called for interview on the ground that she did not fulfill the eligibility condition on the last date of receipt of application fixed by the P.S.C. What seems to be the intention of law is that by the last date fixed for submission of forms, a candidate must know as to what are his basis of claim and he should furnish all the documents that he wants to support his claim with by that date. It also implies that circumstances coming into existence after this date are irrelevant.

10. In a case titled Anjum Arav. State of J. & K., reported in 1986 Kash LJ 539 : (AIR 1988 J&K; 69), notification inviting applications for admission prescribed that reserved category certificate should be filed by those candidates who apply in Reserve Categories, be filed. The notification also maintained that in case of such candidates failure to file such certificate, the applications forms would be incomplete and would not be entertained. The petitioner although applied in a Reserved Category did not file the certificate with the application. She however, tendered the certificate during the interview. The Court held that the provisions of notifications were not complied with, therefore, the petitioner's claim for admission on basis of Reserve Category was turned down.

11. The case in hand marks a visible departure from Anjum Ara's case (supra). In Anjum Ara's case, the candidate had boldly asserted her claim in a Reserved Category. In response to para 7 of the notification, as to whether the candidates belonged to any Reserved Category, and if so, which was the categories; she had boldly written 'Yes. Bakward Area'. The next feature of that case was that she had produced the certificate at the time of appearing, in the interview.

12. Here in the present case the position is altogether different. The petitioner has opted for Open Merit and expressly given up his claim from a Reserved Category. He has not moved his little finger up to the date fixed for submission of forms in a changing his stand in respect of the category position. The Adv. Notification has in the present case been very categoric and unequivocal in cautioning the candidates about the following:--

(1) That the brochure should be carefully gone through and the form filled up in accordance with the direction given therein.

(2) That the last date of filing of the form was 14-8-1996.

(3) That in case of application made under a Reserved Category, a Reserved Category certificate should be filed along with the application form.

13. In Anjum Ara's case (AIR 1988 J&K; 69) (supra), the touch-stone on which the case was decided was the compliance or otherwise of the Adv. notification. In case I accept the petitioner's version in the present case, I will have to do it after allowing him to have not complied with the conditions laid down in the Adv. notice itself. Taking that view, will be equivalent to paying premium to the carelessness of the petitioner and rendering infructuous the scheme contemplated by the Adv. notice. I am afraid lest such line of action goes against the basic spirit of independence of an autonomous body especially in drawing up its procedure in conducting of public examinations, and fixing time based schedule. From that point of view, this Court will not be justified in disturbing the schedule fixed by the notification.

14. A similar point came up for adjudication before a Division Bench of this Court in Naresh Singh v. State of J. & K., reported in AIR 1994 J&K; 42. That case also related to admission in pre-entrance examination. The candidate applied under a Reserved Category. The admission brochure stipulated that category certificate must accompany the application. The candidate submitted his form without the category certificate. The notification of advertisement also made a stipulation that original certificates could be produced at the time of admission. The candidate wanted to make use of the second stipulation and wanted the court to show its indulgence in asking the Competent Authority to allow the candidate to produce his category certificate at the time of admission. The Court turned down the request and held that the second stipulation was not available to the candidate. In this, case the candidate was considered in the Open Merit and his challenge to such consideration was also rejected by the court. In this case the admit card allowed the petitioner to appear in the Open Marked The candidate appeared and his challenge to such consideration was rejected on the principle of appropriate and re-appropriate. In the present case also I have no reservation in dismissing the petition on the same principle of appropriate and reappropriate because, the petitioner has with his wide open eyes applied in the Open Merit and he will be estopped from disallowing the Competent Authority from considering him under Open Merit.

15. Mr. D. S. Thakur. appearing for the petitioner has vehemently tried to rely upon the judgment of a Single Bench of this Court delivered in 'Raghubir Singh Dogra v. University of Jammu', reported in 1991 Kash LJ 204.

16. I have gone through the judgment. Raghubir Singh while applying for MBA Course did not lay claim to the Reserved Category. He latter on submitted an application for being considered under the Reserved Category along with requisite certificate. No specific bar under the University Statute could be pointed out before the Court. This Court of course held that consideration of the candidate in Reserved Category was not barred, but such finding was mainly given on the following considerations :--

i) That there was no specific bar under the University Statute.

ii) That the application form contained no warning or caution that in case of non-filing of the requisite certificate from consideration under the Reserved Category.

iii) That no rule, regulation, or statute provided for non-consideration of the claim without producing the category certificate.

17. The facts of the present case are squarely distinguishable. Here the brochure in its item No. 6.3 makes a clear and positive provision in this behalf. The Advertisement Notice as also the admission form carries a note of caution with respect to the concerned question. Hence the plea of waiver as taken in the objections cannot be safely ruled out.

18. Therefore, on facts of the case, I do not find the proposition of law laid down in Raghbir Singh Dogras case (1991 Kash LJ 204) applicable to the present case.

19. An unsuccessful attempt has been made by the petitioner to call in question item No. 6.3 of the examination brochure. I call it unsuccessful because, only a prayer to that effect has been made. There are absolutely no grounds taken in support of this challenge. Therefore, this challenge has to fail and fall down like a house of cards.

20. Keeping in view the aforementioned observations, I find that a candidate at the time of applying for admission is bound by the stipulations made in the Advertisement Notice and also the statutes brochure of the organisation. A candidate cannot be allowed to resile from the stand he has taken in his application form which he is supposed to have filled up after going through the relevant stipulations and conditions contained in the Advertisement Notice and also the brochure or statute.

21. That being so, I do not find any of the rights of the petitioner having been violated. Therefore, I dismiss the petition.

22. No orders cost.