

Nishu Vs. State of J and K and ors.

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Court : Jammu and Kashmir

Decided On : May-25-2007

Reported in : 2008(1)JKJ358

Judge : Nirmal Singh, J.

Appellant : Nishu

Respondent : State of J and K and ors.

Judgement :

Nirmal Singh, J.

1. A short but important question of law has been raised in this petition regarding interpretation and application of Rule 17 of the Jammu and Kashmir Reservation Rules, 2005 (here-in-after called the rules). The said rule reads as under:

17. Allotment of discipline etc.: A reserved category candidate, if selected against the Open Merit sent, may be considered for allotment of discipline/stream/college allocable to him in his respective category on the basis of his merit and preference. The resultant discipline stream/college in the Open Merit category shall be allotted to the served category candidate who gets selected consequent upon the reserved category' candidate getting selected in the Open Merit Category.

2. A perusal of the above rule shows that if a reserved category candidate is selected against Open merit seat, he is to be considered for allotment of discipline/stream/college allocable to him in his respective category on the basis of his merit and preference. This rule further makes it clear that the resultant seat in the reserved category which falls vacant is only to be allotted to a reserved candidate.

3. In 1992 Supp (3) SCC 217, *Indra Sawhney v. Union of India*, their Lordship of the Supreme Court have held as under:

In this connection it is well to remember that the reservations under Article 16(4) do not operate like a communal reservation. It may well happen that some members belonging to, say, Scheduled Castes get selected in the open competition field on the basis of their own merit; they will not be counted against the quota reserved for Scheduled Castes; they will be treated as open competition candidates.

4. In : [1996]2SCR695 , *Ritesh K. Sah v. Dr. Y.L. Yamul and Ors.* it has been held asunder-.In view of the legal position enunciated by this Court in the aforesaid cases the conclusion is irresistible that a student who is entitled to be admitted on the basis of merit though belonging to a reserved category cannot be considered to be admitted against seats reserved for reserved category. But at the same time the provisions should be so made that it will not work out to the disadvantage of such candidate and he may not be placed at a more disadvantageous position than the other less meritorious reserved category candidates. The aforesaid objective can be achieved if after finding out the candidates from amongst the reserved category who would otherwise come in the open merit list and then asking their option for admission into the different colleges which have been kept reserved for reserved category should be considered and they be allotted seats in whichever colleges the seats should be available. In other words, while a reserved category candidate entitled to admission on the basis of his merit will have the option of taking admission in the college where a specified number of seats have been kept reserved for reserved category but while computing the percentage of reservation he will be deemed to have been admitted as an open category

candidate and not as a reserved category candidate....

5. The Board of Professional Entrance Examination (In short BPEE) conducted an entrance test in the year 2007 for determining the eligibility/merit of students for admission to Post Graduate degree/diploma Courses in different disciplines in the Medical Colleges of the State. The test was conducted in accordance with the provisions of BPEE Act, 2002; Jammu and Kashmir Reservation Act, 2004; Jammu and Kashmir Reservations Rules, 2005. As per the information Brochure, for entrance examination, the availability of seats in different courses any colleges in the State was given in Clause 6 i.e. Government Medical College, Jammu, Government Medical College, Srinagar, Shere-I-Kashmir Institute of Medical Sciences, Soura, Srinagar; and Acharya Shri Chander College of Medical Sciences, Sidhra, Jammu. The Post graduate Medical Degree and diploma courses for the purpose of reservation and distribution of seats has been given in Clause 7 of the Brochure as under:

(i) Open Merit category 65%(ii) Reserved Category 35%....

Petitioner in the present case belongs to Open merit category. She claims that her merit position was 8th and had secured 202 marks. It is stated that her first preference regarding discipline and the college was Dermatology in Government Medical College, Jammu.

6. The grievance of the petitioner is that instead of allotting the Course and the college as per the option exercised by her, she has been allotted the discipline of. Anesthesiology.

7. Respondents 2 to 4 have filed the reply and pleaded that 237 seats were available-at the time of issuance of advertisement notice. Out of this, 154 seats were required to be filled from amongst the candidates belonging to open merit category and 84 seats were kept for reserved category candidates. It has further been pleaded that in the discipline of Dermatology, total four seats were available and in terms of Rule 15 of the Rules, three seats were required to be filled up from open merit category and one from the reserved category. It is stated that two seats have' been allotted to the reserved category while the remaining two seats have

gone to open merit category. The detail of selected candidates has also been given in the reply, which is as under-

(i) Total No. of seats in Dermatology : 04

Details of candidates selected: Roll No. Name Marks Course College
300131 Nuzhatun 202 Dermatology GMC, Nisa Srinagar
300587 Ummer 193 Dermatology GMC, Srinagar
Yaseen 300380 Syed Shahbu 189 Dermatology GMC, Jammu
Din 300714 Mir GR Wali 187 Dermatology GMC, Jammu (Boc)'

8. The candidates namely Nuzhatun Nisa and Ummer Yaseen had opted for the discipline of Dermatology in Government Medical College, Srinagar and on the basis of their merit and the choice, they were selected and allocated the Government Medical College, Srinagar.

9. It is pertinent to mention here that one candidate namely Vikrant Gupta with Roll No. 400655 who belonged to RBA category had opted for the discipline of Radio Diagnosis as his first choice even though he had sufficient merit i.e. 207 marks and he could lay his claim for the discipline of Dermatology but due to his choice and securing the seat in the open merit category, he was allotted a seat in the discipline of Radio Diagnosis.

10. Now the question which is required to be considered is whether the seat vacated by Vikrant Gupta is to be allocated to the reserved category i.e. RBA or the same is to be allocated to a candidate belonging to Open category.

11. Respondents 2 to 4 in their reply have admitted that in the discipline of Dermatology, four seats were available and in terms of Rule 15 of the Rules, three seats were required to be filled up from open merit category and one from the reserved category. Two candidates have been admitted in the discipline of Dermatology from Open merit category in Government Medical College, Srinagar. One candidate namely Nuzhatun Nisa was having 202 marks and the other candidate namely Ummer Yaseen was having 193 marks whereas two candidates namely Syed Shahbu Din and Mir GR Wali have been admitted in Government Medical College, Jammu in the discipline of Dermatology securing 189 and 187

marks respectively in the reserved category. As per the admitted position by the respondents, only three seats in the open category are to be allocated in the discipline of Dermatology and one seat is to be allocated to the reserved category. Vikrant Gupta originally gave his preference in the discipline of Dermatology but subsequently when he came in open merit category, he opted for Radio Diagnosis as his first choice,, therefore, as per Rule 17 of the rules, the said seat vacated by Vikrant Gupta is to be occupied only by a reserved category candidate. In the reserved category, respondent No. 8 Syed Shahbu Din Bukhari is to occupy the said seat in the discipline of Dermatology. Respondents No. 2 to 1 erroneously and illegally have allocated the seat to respondent No. 4 and this has been done in violation of mandate of Rule 17 of the rules. Respondent authorities have to strike a balance for maintaining the ratio of 65 : 35 between the Open and Reserved category candidates. When there are only three seats in the Open category, then out of that one cannot be allocated to reserved category.

12. For the reasons mentioned above, this petition is allowed and the allotment of discipline of Dermatology to respondent No. 9 is quashed. Petitioner who has given her first choice for allotment of discipline of Dermatology in the open category and no other candidate in the open category being higher in merit is to be allotted the discipline of Dermatology as her first choice.

13. Respondents 2 to 4 are directed to recommend the name of the petitioner for allocating the seat in the open category in the discipline of Dermatology to respondent No. 5 Principal Government Medical College, Jammu, who on receiving the said recommendation will admit the petitioner in the said discipline. The whole exercise would be completed by the said respondents within a period of fifteen days from the date of receipt of a copy of this order by them. Disposed of accordingly.