

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR.

ORDER.

Dr. Ghewar Ram vs. The State of Raj. & ors.

S.B.Civil Writ Petition No.2406/2005 under Article
226 of the Constitution of India.

Date of Order: May 26, 2005.

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. Anand Purohit, for the petitioner.
Mr. N.M. Lodha, Addl. Advocate General.

BY THE COURT

The petitioner is aspirant for getting one of the seats of post-graduate MD/MS/Degree and Diploma in any one of the specialties for the academic year 2005 as the petitioner has already completed his course of M.B.B.S. and is eligible for the above course.

The petitioner has raised grievance against the method adopted for giving admission in Pre.PG Entrance Examination. There are two categories of persons who are entitled to appear in Pre.PG Entrance Examination, (i) in service candidates and (ii) non-service candidates. As per the policy decision, the seats are reserved for SC/ST candidates

which is relevant in this writ petition.

In the writ petition, the petitioner's contention is that the respondents in violation to policy decision on finding that sufficient SC/ST candidates are not available for admission to the above test, they started filling up the said seats reserved for the SC/ST candidates by offering the seats to the candidates of general class. According to the petitioner, the government issued direction on 31.3.2004 which clearly provides that for the in-service candidates, the procedure as provided in the department letter No.15(7))(MI) Group-1/94 dated 29.4.2002 be followed. Copy of the letter dated 29.4.2002 is also placed on record as Annx.2.

In the writ petition, substantially the contention of the petitioner is only to the extent that the respondents offered the seats of reserved category to the candidates of general category, obviously, to the non-service SC/ST candidates.

The respondents submitted reply to the writ petition and pointed out that 216 seats for admission in PG Course in relation to State Quota were available. The seats are available for in-service candidates/doctors and non-service candidates/doctors in ratio of 50:50. In such

circumstance, 108 seats were to be filled in from in service candidates/doctors and remaining 108 seats were to be filled in from non-service candidates/doctors. The roster system is applicable and, therefore, the seats were earmarked as under:-

	In-service	Non-Service
Gen.	57	57
OBC	22	22
SC	17	17
ST	12	12
TOTAL	108	108

During admission process, it was found that in in-service category against category of SC, only 9 candidates were available and against the category of ST, 5 persons were available. Therefore, according to the respondents, after giving admission to these 9 and 5 persons from SC and ST, in-service candidates, remaining seats of SC/ST categories were passed over to the same category of non-service quota. Because of transfer of left out seats of SC/ST candidates of in service quota seats to non-service candidates seats, the strength of SC/ST candidates in non-service category increased to 25 and 17 respectively. All these 25 and 17 seats were given to SC/ST candidates. Therefore, the respondents have given full benefit of the reservation to the candidates of the SC/ST and have not left out any seat reserved for the SC/ST candidates.

The petitioner submitted rejoinder and in rejoinder, the petitioner submitted that in fact, the procedure adopted by the respondent as given in the reply is contrary to the decision dated 29.4.2002. According to the petitioner, the seats reserved for in-service SC/ST candidates should not have been transferred to the non-service candidates but by keeping the seats in the category of in service candidates, the seats should have been offered to the candidates of SC category of non-service, whereby the petitioner could have got the admission in a speciality of his choice. According to the learned counsel for the petitioner, the seats should have been offered to the non-service SC/ST candidates immediately on roster point at the time of giving admission for in-service candidates from the non-service candidates. According to the learned counsel for the petitioner, the above procedure was followed in the previous year 2003 which is proved from the chart submitted along with the writ petition (page 31 and onwards).

The learned counsel for the respondents submitted that the petitioner cannot develop a case in rejoinder. The petitioner's total case in the writ petition was to the effect that the seats of SC/ST candidates are being offered and given to the upper class candidates and that is not

found proved and now the petitioner has developed entirely a new case in rejoinder and rejoinder cannot be treated to be writ petition.

In the above circumstances, since the matter is of urgency and the admission process is required to be completed within the time schedule as held by Hon'ble the Supreme Court in Medical Council of India vs. Madhu Singh and others ((2002) 7 SCC 258), therefore, the opportunity was given to the learned counsel for the respondent to explain the position to avoid the delay, upon which an affidavit has been submitted by the learned counsel for the respondents.

Arguments heard.

It appears from the fact that there is no dispute that there is a quota of seat for SC/ST candidates in both the categories, i.e. In-service and non-service candidates. The seats available as per the reservation for SC/ST candidates is 17 and 12 respectively, therefore, in-service SC/ST candidates are entitled to have their right to get admission against 17 and 12 seats. The government circular dated 29.4.2002 very clearly provides that all the seats of C.A.S., P.G in service, reserved for SC/ST candidates shall be filled in from the candidates only and shall not be filled in from the candidates of general category. It appears that

confusion has been created by use of the word “general(*samanya*)” at two places in government circular dated 29.4.2002. A careful reading of the above circular makes it clear that the word “general (*samanya*)” used first is not relating to the candidates of general category (other than SC/ST candidates or candidates of upper class) because after using the word general category, it has been mentioned that from SC/ST candidates.” There cannot be SC/ST candidate in upper class or other than SC/ST/OBC candidates' list. Therefore, it means that the government decision dated 29.4.2002 conveys only that all the seats reserved for SC/ST candidates should be filled in by the candidates of SC/ST and shall not be filled from other than SC/ST.

This order nowhere conveys that the left out seats of in-service candidates reserved for SC/ST if remains unfilled, shall be transferred to the category of non-service candidates. The learned counsel for the respondents tried to justify the action of the respondents with the help of a letter dated 22.5.2002 issued by Mr. C.K. Mathew, Secretary (I) to C.M. which reads:-

“Vice Chancellor,
University of Rajasthan,
Jaipur.

Kindly find placed below a letter sent by Medical & Health Department regarding amendment in the Ordinance 278(E) and (G) in the matter of reservation to be extended

to SC/ST candidates from the seats unfilled and diverted from in-service doctors for the Pre P.G. Exams. This matter requires your urgent intervention for the convening of an emergency session of the Syndicate so that the matter is resolved at the earliest. You are requested to kindly take necessary action in this regard.

Sd/-
(C.K. Mathew)
Secretary (I) to C.M.”

According to the learned counsel for the respondents, the Syndicate considered the above communication of the Secretary(I) to C.M. Dated 22.5.2005 and accepted the recommendation of the government dated 29.4.2002 and while considering, the Syndicate took note of the word used “diverted from in-service doctors” which is mentioned in the letter dated 22.2.2005 of the Secretary(I) to C.M. According to the learned counsel for the respondents, therefore, the decision of the government is to divert the seats unfilled seats of in-service SC/ST candidates to the non-service candidates.

I am unable to endorse the view as suggested by the learned counsel for the respondents. The decision of the government is dated 29.4.2002 and the letter of the Secretary(I) to C.M. Is dated 22.5.2002 is not the decision of the government. By the letter dated 22.5.2002, the Secretary(I) to C.M. only requested the Vice Chancellor of the University of Rajasthan, Jaipur to consider the matter as it is urgent to see that the benefit of reservation be extended to the candidates for the seats

unfilled. The words “and diverted from in-service doctors for the Pre P.G. Exams.” appear to be superfluous words because there is no decision of the government to divert the seats of in-service candidates reserved for SC/ST category to the non-service candidates. If the seats remained in the category of in-service candidates and are to be filled from the candidates from non-service candidates then, certainly the candidates of SC/ST category finding their names in the merit, are to be picked up and to be offered the seats in the category of in-service candidates because these two categories are demarcated and separated is not in dispute and there is no decision to divert or transfer unfilled seats of SC/ST candidates to non-service candidates.

In addition to above, the admission given in the year 2003 also discloses that the non-service candidates were given admission, at particular roster point and the seats were never transferred to non-service candidates.

In view of the above, the contention of the petitioner raised in the rejoinder, has merit. At the cost of repetition, it may be stated that the point has been raised in rejoinder but looking to the nature and urgency of the matter, the respondents were given opportunity to meet with this objection and the petitioner was not asked to amend the writ

petition and even if the petitioner has not amended the writ petition and has raised objection in the rejoinder, that has been entertained by this Court and the opportunity of hearing has been given to the respondents on the point which was raised in the rejoinder to avoid the delay in the process of selection for such a technical course in view of the decision of the Hon'ble Supreme Court delivered in the case of Medical Council of India(supra).

The question now survives, what relief could be granted to the petitioner in view of the fact that only one candidate has challenged the entire process of admission to the candidates of SC/ST against the category of in-service candidates and according to the learned counsel for the respondents, admissions have already been given and counseling has already been completed on 16.4.2005 and in case, the respondents will be directed to re-allocate the seats to all candidates by keeping the seats of SC/ST candidates un-diverted then the whole process of giving admission will be delayed to a long extent.

It is true that the petitioner originally did not raise the objection in the writ petition. It has been raised in the rejoinder and the process of admission and counseling completed by 16.4.2005 but, at the same time, the petitioner approached this Court by filing this writ petition on

23.4.2005, which is earliest possible time for the petitioner. Still the difficulty comes in the way of the petitioner is that the petitioner has not impleaded any of the candidates to whom admission has been given against the “seat of the SC/ST in service candidates”, therefore, any relief to give admission to the petitioner straightway cannot be ordered. Therefore, it will be just and proper to order that since re-counseling is going on today for allocation and re-allocation of the seats to the willing candidates, therefore, the petitioner now may be offered a seat against the reserved seat of in-service reserved candidate. If in re-counseling any candidate to whom admission has been given against the vacancy of SC/ST candidates, at particular roster point and he, in re-counseling wishes to shift to other category, then the petitioner may be offered that seat. Meaning thereby the availability of seat in the category of SC/ST in service, shall depend upon the wish of the candidate who has already been given admission at a particular roster point where the seat should have been offered to SC/ST candidates and also depends upon the wish of the petitioner and the seat which is not of the choice of the petitioner, should not be forced upon the petitioner in re-counseling on his appearing for re-counseling.

With the above relief to the petitioner, it is held that the seats reserved for in-service category shall not be transferred in future to the

non-service category.

The writ petition of the petitioner is, therefore, partly allowed as indicated above.

(PRAKASH TATIA),J.