

Dr. Deeksha Sharma Vs State Of H.P. And Ors

Court: High Court Of Himachal Pradesh

Date of Decision: March 28, 2024

Acts Referred: Constitution Of India, 1950 " Article 14, 19, 21

Hon'ble Judges: Satyen Vaidya, J

Bench: Single Bench

Advocate: K.B. Khajuria, Y.P.S. Dhaulta, Vishal Mohan, Praveen Sharma, Aditya Sood

Final Decision: Disposed Of

Judgement

,First Round,Second Round,Third Round

Posts will be advertised by

the Principal concerned of

the institution",End of November,End of March,End of July

The details of vacancies to

be published","Vacancies as on date +

vacancies anticipated

(on the basis of

completion of tenure of

incumbents occupying

the posts) till end of

January","Vacancies as on date +

vacancies anticipated (on

the basis of completion of

tenure of incumbents

occupying the posts) till

end of May","Vacancies as on date +

vacancies anticipated (on

the basis of completion of

tenure of incumbents

occupying the posts) till

end of September

Advertisement | of Post in, "Second week | of

December", Second week of April, Second week of August

Personal appearance for

verification of documents to

be conducted in", "First fortnight of

January", First fortnight of May, "First fortnight of

September

Sr. No, Detail, Marks,

1, "MBBS Marks (Cumulative total marks of 1st 2nd and 3rd

Professional Examination", Total marks obtained/ maximum marks x 30,

2, "P G (MD/MS/MDS/DNB) Degree/Diploma Marks (in concerne

specialty)", Total marks obtained/maximum marks x 40,

3, Period of service of State, As per Annexure -2,

4, "Publication of papers in Indexed Journals as 1st author 2nd author

or corresponding author (Published papers of papers in respect of

which letter of acceptance has been issued shall be counted)", "2 marks for each published work subject to

maximum of 20 marks.",

12. The eligible candidates have to apply in a prescribed format of application. On receipt of application, the Principal concerned is required to send",,,

the list of all the candidates including GDOs and direct candidates to the Director Health Services for issuance of NOC with regard to the completion,,,

of the mandatory periphery service/one year Senior Residency in new Government Medical College/Institution and to scrutinize any discrepancy in,,,

status of a candidate with respect to being a GDO or a direct candidate. The Director Health Services is then required to furnish the entire,,,

information within a week. In the meanwhile, Principal is mandated to draw provisional specialty-wise merit list based on the documents submitted at",,,

the time of making applications. The criteria for drawing merit list has also been prescribed which includes MBBS marks (cumulative total marks of,,,

1st, 2nd and 3rd Professional Examination). Thereafter, date for counselling/ physical appearance for the purposes of verification of documents is",,,

required to be fixed by Director Medical Education and Research, H.P., which is required to be intimated by the Principal concerned through College",,,

Website for wide publicity amongst the candidates. The candidates are mandated to remain present during the verification of documents with an,,,

exception when the candidate is unable to present himself/herself in person due to unavoidable circumstances, he/she may authorize any person to",,,

represent him/her alongwith original documents. It is after the verification of the documents and issuance of NOC by Director Health Services, the",,,

Principal concerned allots the post of Senior Resident/Tutor Specialist in merit in the concerned Specialty/Department. Once that is done, the Principal",,,

is required to forward the result/section list alongwith waiting panel to Director Medical Education and Research within one week, who then works out",,,

the entire result/selection list of the College/Institution and recommends the names of selected candidates to the Government for appointment to the,,,

post of Senior Resident/Tutor Specialist. Lastly, on the basis of approval conveyed by the Government, the Director Medical Education and Research, ",,,

issues appointment order in this regard, accordingly.",,,

13. In the entire above Scheme, there is no requirement to draw a specific time schedule. In any case, respondent No. 4 had drawn the schedule. The",,,

question thus arises whether any variance in time schedule as prescribed by respondent No. 4 is sufficient to deny a meritorious candidate the,,,

opportunity of appointment as Senior Resident/Tutor Specialist?,,,

14. In S. Krishan Sradha Vs. State of Andhra Pradesh and Ors., (2020) 17 SCC 465, a three judges bench of Hon'ble Supreme Court has held as",,,

under:-,,,

"12. However, the question is with respect to a student, a meritorious candidate for no fault of his/her has been denied admission",,,

illegally and who has pursued his/her legal rights expeditiously without delay is entitled to any relief of admission more particularly in the,,,

courses like MBBS the relief of compensation as held by this Court in Asha (Supra).The aforesaid question is required to be considered,,,

only to the cases where (i) no fault is attributable to the candidate; (ii) the candidate has pursued her rights and legal remedies,,,

expeditiously and without delay; (iii) where there is fault on the part of the authorities and apparent breach of rules and regulations; and,,,

(iv) candidate is found to be more meritorious than the last candidate who has been given admission.,,,

12.1. At the outset, it is required to be noted that the question is with respect to a student/candidate seeking admission in the medical course",,,

more particularly in MBBS course. For a student/candidate seeking admission in professional courses more particularly the medical course,,,

each year is very important and precious. Similarly, getting admission in medical course itself is very important in the life of a",,,

candidate/student and even a dream of man. In light of the above, the question for consideration is whether compensation for a meritorious" ,,,

candidate, who has been denied the admission illegally and arbitrary having approached the court in time can be said to be just and" ,,,

equitable relief? ,,,

12.2. The right to equal and fair treatment is a component of Article 14 of the Constitution. As held by this Court Asha (Supra) that a ,,,

transparent and fair procedure is the duty of every legal authority connected with admissions. In such cases, denial of fair treatment to the" ,,,

candidate would not only violate his/her right under Article 14 but would seriously jeopardize his/her right under Articles 19 and 21 of the ,,,

Constitution of India. A natural corollary of declaring that an administrative act more particularly the denial of admission illegally and for ,,,

no fault of a candidate/student violates principles of Article 14 is that the citizen0 injured must be put back to his/her original position. In ,,,

that sense, the primary relief is restitutionary. As observed hereinabove, for a meritorious student seeking admission in medical course is" ,,,

very important in the life of student/candidate and denial of admission to a meritorious candidate though no fault of his/her violates his/her ,,,

fundamental rights ,,,

Compensation could be an additional remedy but not a substitute for restitutionary remedies. In case of medical admissions, even the" ,,,

restitutionary remedy of providing a seat in the subsequent year would lead to loss of one full academic year to a meritorious candidate," ,,,

which cannot be compensated in real terms. Thus compensation for loss of year could be provided, but denial of admissions to a meritorious" ,,,

candidate cannot be compensated in monetary terms. Thus denial of admission in medical course to a meritorious candidate for no fault of ,,,

his/her and though he/she has approached the Court in time and despite the same not granting any just and equitable relief would be denial ,,,

of justice. Therefore, the question is what relief the Court can grant by which right to equal and fair treatment to a candidate are protected" ,,,

and at the same time neither there is injustice to other candidate/student and even compromising with the quality education. Therefore, a" ,,,

balance is required to be struck. However, at the same time it can safely be said that the view taken by this Court in Jasmine Kaur (Supra)" ,,,

that the only relief which can be granted to such a candidate would be the compensation only is not good law and cannot be accepted. Even ,,,

granting a relief to such a candidate/student in the next academic year and to accommodate him/her in the next year and in the sanctioned ,,,

intake may even affect the right of some other candidate/student seeking admission in the next academic year and that too for no fault of,,,

his/her.,,,

Therefore we are of the view that in the exceptional and in the rarest of rare cases and in case where all the conditions stipulated in,,,

paragraph 33.3 in the case of Jasmine Kaur (Supra) are satisfied, the Court can grant exceptional relief to the candidate of granting",,,

admission even after the cut off date is over.,,,

13. In light of the discussion/observations made hereinabove, a meritorious candidate/student who has been denied an admission in MBBS",,,

Course illegally or irrationally by the authorities for no fault of his/her and who has approached the Court in time and so as to see that,,,

such a meritorious candidate may not have to suffer for no fault of his/her, we answer the reference as under:",,,

13.1 That in a case where candidate/student has approached the court at the earliest and without any delay and that the question is with,,,

respect to the admission in medical course all the efforts shall be made by the concerned court to dispose of the proceedings by giving,,,

priority and at the earliest.,,,

13.2 Under exceptional circumstances, if the court finds that there is no fault attributable to the candidate and the candidate has pursued",,,

his/her legal right expeditiously without any delay and there is fault only on the part of the authorities and/or there is apparent breach of,,,

rules and regulations as well as related principles in the process of grant of admission which would violate the right of equality and equal,,,

treatment to the competing candidates and if the time schedule prescribed " 30 th September, is over, to do the complete justice, the Court",,,

under exceptional circumstances and in rarest of rare cases direct the admission in the same year by directing to increase the seats," ,,,

however, it should not be more than one or two seats and such admissions can be ordered within reasonable time, i.e., within one month",,,

from 30th September, i.e., cut off date and under no circumstances, the Court shall order any Admission in the same year beyond 30th",,,

October. However, it is observed that such relief can be granted only in exceptional circumstances and in the rarest of rare cases. In case",,,

of such an eventuality, the Court may also pass an order cancelling the admission given to a candidate who is at the bottom of the merit list",,,

of the category who, if the admission would have been given to a more meritorious candidate who has been denied admission illegally," ,,,

would not have got the admission, if the Court deems it fit and proper, however, after giving an opportunity of hearing to a student whose",,,

admission is sought to be cancelled.,,,

13.3 In case the Court is of the opinion that no relief of admission can be granted to such a candidate in the very academic year and,,

wherever it finds that the action of the authorities has been arbitrary and in breach of the rules and regulations or the prospectus affecting,,

the rights of the students and that a candidate is found to be meritorious and such candidate/student has approached the court at the,,,

earliest and without any delay, the court can mould the relief and direct the admission to be granted to such a candidate in the next" ,,,

academic year by issuing appropriate directions by directing to increase in the number of seats as may be considered appropriate in the,,

case and in case of such an eventuality and if it is found that the management was at fault and wrongly denied the admission to the,,,

meritorious candidate, in that case, the Court may direct to reduce the number of seats in the management quota of that year, meaning" ,,,

thereby the student/students who was/were denied admission illegally to be accommodated in the next academic year out of the seats allotted,,

in the management quota.,,,

13.4 Grant of the compensation could be an additional remedy but not a substitute for restitutorial remedies.,,,

Therefore, in an appropriate case the Court may award the compensation to such a meritorious candidate who for no fault of his/her has to" ,,,

lose one full academic year and who could not be granted any relief of admission in the same academic year.,,,

13.5 It is clarified that the aforesaid directions pertain for Admission in MBBS Course only and we have not dealt with Post Graduate,,

Medical Course.,,,

15. In Asha Vs. Pt. B.D. Sharma University of Health Sciences and Others, (2012) 7 SCC 389, Hon'ble Supreme Court has held as under:-" ,,,

"38. Now, we shall proceed to answer the questions posed by us in the opening part of this judgment." ,,,

ANSWERS,,

38.1 The rule of merit for preference of courses and colleges admits no exception. It is an absolute rule and all stakeholders and concerned,,

authorities are required to follow this rule strictly and without demur.,,,

38.2 30th September is undoubtedly the last date by which the admitted students should report to their respective colleges without fail. In the,,

normal course, the admissions must close by holding of second counseling by 15th September of the relevant academic year [in terms of the" ,,,

decision of this Court in Priya Gupta (supra)]. Thereafter, only in very rare and exceptional cases of unequivocal discrimination or" ,,,

arbitrariness or pressing emergency, admission may be permissible but such power may preferably be exercised by the courts. Further, it",,,

will be in the rarest of rare cases and where the ends of justice would be subverted or the process of law would stand frustrated that the",,,

courts would exercise their extra-ordinary jurisdiction of admitting candidates to the courses after the deadline of 30th September of the",,,

current academic year. This, however, can only be done if the conditions stated by this Court in the case of Priya Gupta (supra) and this",,,

judgment are found to be unexceptionally satisfied and the reasons therefor are recorded by the court of competent jurisdiction.",,,

38.3 Wherever the court finds that action of the authorities has been arbitrary, contrary to the judgments of this Court and violative of the",,,

Rules, regulations and conditions of the prospectus, causing prejudice to the rights of the students, the Court shall award compensation to",,,

such students as well as direct initiation of disciplinary action against the erring officers/officials. The court shall also ensure that the",,,

proceedings under the Contempt of Courts Act, 1971 are initiated against the erring authorities irrespective of their stature and",,,

empowerment. Where the admissions given by the concerned authorities are found by the courts to be legally unsustainable and where there",,,

is no reason to permit the students to continue with the course, the mere fact that such students have put in a year or so into the academic",,,

course is not by itself a ground to permit them to continue with the course.Ã¢â€â€",,,

16. In Modern Dental College and Research Centre and Others Vs. State of Madhya Pradesh and Others, (2016) 7 SCC 353, it has been held as",,,

under:-",,,

Ã¢â€â€166. It is well known that study of medicine is much sought after by students in India. Due to the high demand for admission in medical",,,

colleges and limited number of seats, selection and/or screening methods have evolved to select the crÃ¢â€me de la crÃ¢â€me. Given the surfeit of",,,

academically well- qualified applicants, the selection method ought to become highly competitive by placing exceptionally high academic",,,

thresholds. It is in this context that ""merit"" comes into play in determining the parameters for admissions in institutions of higher education.",,,

167. Merit is the cumulative assessment of worth of any individual based on different screening methods. Ideally, there should be one",,,

common entrance test conducted by the State both for government colleges and for private unaided educational institutions to ensure",,,

efficacy, fairness and public confidence. As rightly contended by Mr Purushendra Kaurav, Additional Advocate General for the State of",,,

Madhya Pradesh appearing for AFRC, a common entrance test conducted by the State is more advantageous viz.:",,,

(i) having adhered to the time schedule as laid down in Mridul Dhar case;,,,

(ii) multiple centres of examination and counselling throughout the State and a single-window system for admission;,,,

(iii) standard question papers, preservation of question papers and answer books, prevention of leakage of question papers and fair",,,

evaluation; and,,,

(iv) minimal litigation.,,,

That apart, procedure for preparation of merit list, counselling and allotments to various colleges is subject to the Right to Information Act",,,

and thus ensures fairness and transparency in the entire process.Ã¢â€â€â€,

Thus, the merit of a candidate in a selection process has been held to be of paramount importance and in appropriate cases, the reliefs can accordingly",,,

be modified to uphold the right of a meritorious candidate.,,,

17. In the facts of the case in hand, what transpires is that respondent No. 5 has been found to be more meritorious viz-a-viz petitioner in relation to",,,

the selection process for Senior Resident/Tutor Specialist. Respondent No. 5 had raised the objection before drawl of final merit list. Otherwise also it,,,

has been noticed that in the scheme of things, the drawl of final merit list by the petitioner is not final step. There are other more importance aspects",,,

viz. the scrutiny at the end of offices of DHS/DME separately besides their being a mandatory condition for personal presence of the candidates,,,

alongwith original documents for verification on a specified date. In such circumstances, it cannot be said that respondent No. 5 by not raising",,,

objection within the time granted in the schedule had lost or waived her right to raise objection. No specific prejudice has been pleaded or proved by,,,

the petitioner. Even from the material on record, no such prejudice can be made out. The selection process was still undergoing. The call was yet to",,,

be taken by DHS and DME at their end, therefore, the cognizance of the objection raised by respondent No. 5 on 20.10.2023 by respondents No. 2 to",,,

4 cannot be termed to be wrong or illegal.,,,

18. In light of above discussion, there is no merit in this petition and the same is dismissed.",,,

19. Accordingly, the instant petition is disposed of, so also the pending application(s), if any.",,,