

(1991) 03 SHI CK 0003

High Court of Himachal Pradesh

Case No: Civil Writ Petition No. 629 of 1990

Ramesh Chand

APPELLANT

Vs

Union of India (UOI)
and Others

RESPONDENT

Date of Decision: March 26, 1991

Citation: (1992) 2 ShimLC 105

Hon'ble Judges: V.K. Mehrotra, Acting C.J.; Bhawani Singh, J

Bench: Division Bench

Advocate: K.D. Sood, for the Appellant; R.L. Sood and L.S. Panta, D.A.G. for Respondent
Nos. 2 and 3 and D.C. Jishtu and D.D. Sood, for the Respondent

Final Decision: Allowed

Judgement

Bhawani Singh, J.

Through this petition, the Petitioner, Dr.Ramesh Chand, claims M.S. (Surgery) seat in Indira Gandhi Medical College, Shimla. He is G.D.O, H.P.H.S. candidate and is at Serial No. 1 on the waiting list of candidates falling in this category.

2. For admission to the M.S. Degree (Surgery) Course 1990-91/92, there are only two seats. Out of them, one seat against 25 per cent quota is to be filled on the basis of All India Entrance Examination and the other seat, falling to the share of State, on the basis of competitive examination conducted by Himachal Pradesh University. This year, as per the roster under Clause 35 of the Prospectus, two seats have fallen to Group-B, G.D.O (H.P.H.S.) candidates. Since there was only one seat available to the State quota, only one candidate from G.D.O. (H.P.H.S.) category could be admitted to the Course. Since the Government of India has not nominated any candidate against Group-A 25 percent quota, the claim between the parties is, therefore, in respect of this seat which, they say, should be filled up so that it does not go waste especially in this State where there is great need of better qualified doctors.

3. The sole question for determination in this petition is whether this seat should be given to the Petitioner or to the sixth Respondent or to any other candidate. Before deciding this question, it is important to take note of facts which have been noticed during the various stages of this case.

4. Before this petition, two petitions, namely, Civil Writ Petition No. 590 of 1990 *Girish Sharma v. Union of India and Ors.* and Civil Writ Petition No. 597 of 1990 *Rajiv Kaul v. Union of India and Ors.* were filed and the claim in these two cases was that this seat may be allotted to them since they were highest in the merit list for candidates from open category. However, it was stated by Shri D.C.Jishtu, Counsel for the University, that both the Petitioners in these two cases were securing equal marks. While disposing of the cases, the University was directed to break the tie in respect of these Petitioners in accordance with the prescribed procedure admit either of the Petitioners found entitled as a result of the tie breaking. Sixth Respondent, Dr. Girish Sharma, was found entitled to the seat but before he could actually seek the admission, the present petition was filed and this Court, by an order of November 16, 1990 in C.M.P. No. 1148 of 1990, directed that the final order dated November 5, 1990, passed in Civil Writ Petitions Nos.597 of 1990 and 590 of 1990 shall remain inoperative.

5. This matter was postponed on number of occasions with the hope that the Government of India would nominate a candidate against this seat. However, when no candidate was nominated, the matter was taken up for final hearing on 13-3-1991 on which date Shri R.L. Sood, learned Counsel for the first Respondent, again submitted that neither any candidate has been allocated against this seat nor any communication has been sent to him in this regard. Before proceeding further, it is necessary to reproduce in extenso the order passed on 11-3-1991:

The question in this petition is about the filling up of one seat of M.S. Degree in the Speciality of Surgery against 25 per cent quota for admission in Session 1990-91/92. This quota is allocated to the Government of India. It is to be filled in on all India basis. On January 9, 1991, when we were hearing the petition, and had done so for sometime, the learned Advocate General intimated the Court that he had received a communication from the Director-cum-Principal of the Medical College on January 5, 1991, saying that the Supreme Court had made some order about the fact that the seats to be filled in on All India basis should not be filled in hurriedly on the assumption that such seats had become available for being filled in by the State. We directed the matter to come upon January 15, 1991 and thereafter on January 18, 1991 with a view to enable the learned Counsel for the parties to place on record the exact text of the order. On January 18, 1991, Shri R.L. Sood, appearing for the first Respondent (Union of India, Ministry of Health and Family Welfare through the Director General of Health Services Government of India, New Delhi), stated before the Court that he had got in touch with one Dr.Srivastava, Deputy Director, Medical and Health Services (Medical Examination), New Delhi, who had informed him that

the seats were likely to be filled in by January 31, 1991, as examinations had already been held therefore. On this statement and on a request made in that behalf, we directed the case to be listed before the Hon"ble Vacation Judge on February 1, 1991.

On February 1, 1991, it was stated before the Court that the Union of India had sponsored a candidate and that they were going to fill up the seat on or before February 15, 1991. The Hon"ble Vacation Judge directed the matter to come up again on February 22, 1991 and, in the order passed by him, expressed his anxiety that the seat should be filled in lest it goes a waste. He recorded an assurance on behalf of the Union of India that the seat would be filled in soon.

The matter came up again before the Hon"ble Vacation Judge on February 22, 1991. On that date, Shri Rajiv appeared before the Court on behalf of Shri R.L. Sood, learned Standing Counsel for the Union of India, and prayed for a week's time to have instructions in the matter. Shri M.S. Guleria, learned Assistant Advocate General, placed on record a telegram, which had been received from the Director General, Health Services, Government of India, addressed to the Principal, Government Medical College, Shimla, requesting him that the seat be not filled in by local candidate till further intimation.

The learned Judge felt that, inasmuch as, the Session had already started in October, 1990, it would not be in the interest of the candidate, who may be ultimately given admission, to delay the filling in of the seat. It was, therefore, directed by way of last opportunity, that the Union of India may sponsor a candidate against the seat by or before the next date of hearing failing which the same will be filled in by a local candidate. The learned Judge also directed that the case be listed before the appropriate Bench after Vacation. The case has, therefore, been listed before us today.

Shri R.L. Sood intimated us that inspite of his repeated communications and also a registered letter, no instructions have been received by him from the Government of India. As such, he is not in a position to say whether a candidate has been sponsored by the Government of India or not.

The question which we will have to decide is whether the seat is to be given to the Petitioner or to the sixth Respondent, who is also laying claim to it, or to any other candidate. The petition shall be listed before us again on March 13, 1991 when it shall be heard finally at this very stage.

6. Precisely, the submission of Shri K. D Sood, learned Counsel for the Petitioner, is that one more seat is added to the State quota and must be filled in accordance with the roster prescribed under Clause 35 of the Prospectus. If so done, the Petitioner being at No. 1 in the merit list is entitled to be admitted in the Course. On the other hand, Shri D.D.Sood. learned Counsel for the sixth Respondent, contended that this seat should be filled in on the basis of merit and not on the basis of reservation and

the sixth Respondent being at No. 1 in the open competition under Group-B is entitled to the seat.

7. As already observed, there is All India Entrance Examination for filling up of 25 percent of the seats in the Degree and Diploma Course and selection for 66.6 per cent seats under Group-B in Clause 32 is to be on the basis of the examination to be conducted by the Himachal Pradesh University. Here, the seats are divided amongst the inservice regularly appointed G.D.O.-I and G.D.O.-II in Himachal Pradesh Health Services Cadre and amongst the Graduates of Indira Gandhi Medical College, Shimla. Clause 5.3 envisages that these two categories of G.D.O. (H.P.H.S.), and open candidates will compete in their own group in the competitive examination. Obviously, two separate merit lists are prepared for them and in case sufficient number of candidates in one category is not available, the unfilled seats would become available for admission to the candidates of the other category. Clause 3.5 deals with the distribution of seats in each Speciality amongst these two categories in accordance with the following roster:

3.3.1 First seat to G.D.O. (H.P.H.S.).

3.3.2. Second seat to direct candidate. 3.3.3. Third seat to G.D.O. (H.P.H.S.).

3.3.4. Fourth seat G.D.O. (H.P.H.S.).

3.3.5. Fifth seat to direct candidate.

3.3.6. Sixth seat to G.D.O. (H.P.H.S.) This roster will be repeated after every six seats.

Clause 3.6 deals with the reservation in favour of Scheduled Castes (15 percent) and Scheduled Tribes (7.5 percent) and the allocation of seats to them has to be in accordance with the 40 point roster that is maintained for the purpose. We are of the considered opinion that in case any seat falls vacant under Group-A, that adds to the seat(s) available in Group-B. There also, it would be added to the category which is entitled to admission according to the roster maintained for the purpose and applicable for that year. We have already noticed that during this year G.D.O.S., (H.P.H.S) were entitled to two seats but only one seat could be made available to them in the distribution of seats between Group-A and Group-B. Therefore, this category is entitled to one more seat this year or in the subsequent year. Since one more seat has become available during this year, the quota of two seats meant for G.D.O.S (H.P.H.S.) stands fulfilled and the Petitioner being highest in the merit list maintained for this category is entitled to be admitted. We see no reason to accept the submission raised by Shri D.D.Sood since there is no apparent basis to allow this seat to be filled by the sixth Respondent. The argument is that by allowing the seat to be filled by the sixth Respondent, the emphasis laid by the apex Court in [K.C. Vasanth Kumar and Another Vs. State of Karnataka](#), to fill seats on the basis of merit, would be more appropriate and in keeping with the specialised subject in question. It appears that this argument is based on the assumption that the seats meant for

the category of G.D.O.s, (H.P.H.S.) are reserved as against those who appear in the examination in open competition. This is not so. As a matter of fact, the Scheme of admission in the Prospectus discloses that division of seats, except in Clause 3.6 (Scheduled Castes and Scheduled Tribes), denotes the sources from where the candidates are to be selected for various categories for admission to the various courses in the Medical College. Since the seats have been divided amongst these two different categories and there is prescription of roster for filling up these seats, it is necessary to have separate merit lists for them. Allocation of certain seats to the category of G.D.O.s, (H.P.H.S.) cannot, therefore, be called reservation and the contention raised on this aspect is, therefore, rejected.

8. In view of what has been discussed above, the Petitioner is entitled to the seat in question. However, Shri L.S. Panta, learned Deputy Advocate General, wanted us to examine the matter further than this. It was contended that even if the State accepts that this seat will go to G.D.O.s, (HPHS) however, according to the roster maintained by the State, this seat will go to a candidate belonging to Scheduled Tribes. Reference to the plea raised in this connection in the reply-affidavit by the third Respondent was also made. There is no substance in this plea. The Petitioner has placed before us Annexure-P-6 to demonstrate that the seat under discussion would be the sixteenth seat in the calculation of roster under Clause 3.5 of the Prospectus and would go to G.D.O.(H.P.H.S.) candidate. Further, Annexure X-I makes this contention more clear and indisputable. It appears from the material placed before us by the third Respondent that in the working of roster, certain seats have not been included. When asked, it was explained to us that the seats which have been filled in on the basis of examination conducted for filling up the seat(s) have been calculated while those which have been filled up on the directions of the Court, have not been taken into consideration. We are convinced with the submission of Shri K.D.Sood that this kind of approach is absolutely incorrect. As a matter of fact, all seats, whether filled up through competitive examination or directed to be filled up through the Court orders, are to be taken into consideration for working the roster. Therefore, the seat will go to the Petitioner and not to the sixth Respondent or to any other candidate belonging to Scheduled Tribes.

9. Apart from what has been said above, we are told that there is no candidate belonging to Scheduled Tribe and in order to secure a candidate from this category, fresh examination has to be there. The Course has commenced on October 22, 1990. It is neither practicable nor purposeful to allow this seat to go waste.

10. In view of the aforesaid discussion, we allow this petition and direct that the Petitioner be admitted to the seat that has fallen vacant as a result of non-allocation of seat by the first Respondent against 25 per cent quota of seats under Group-A. The parties are, however, left to bear their own costs.