

State of Orissa and Another

Vs

Dr. Asim Kumar Mohanty and Others

Civil Appeals Nos. 2374-75 of 1989

(Rangath Misra, Kuldip Singh JJ)

24.07.1989

JUDGMENT

RANGANATH MISRA, J. –

1. These are two appeals by special leave and are directed against a common judgment of the Orissa High Court dated August 3, 1988, whereby the High Court directed the two respondents and another to be admitted to the two years in-service medical post-graduate course for the session 1988-89.
2. The Prospectus published by the State Government indicated at the total number of seats were 113 out of which 17 seats were reserved for scheduled castes candidates while 6 were so reserved for scheduled tribe candidates. Paragraph 5.3 of the Prospectus indicated the various classifications and it was stated therein : 'number of general seats to be filled up by inservice doctors of Government of Orissa is 69'.
3. The note under paragraph 1. 2 of the Prospectus defined 'inservice doctor' as 'one who is in the employment of the Government of Orissa, Government of Orissa Public Sector Undertakings and other organisations under the Orissa Government and Government of India. This includes all categories of employment like ad hoc, temporary, contract, regular or substantive on the date of application'. Paragraph 5.5 laid down that in case of non-availability of candidates for any of the reserved seats, the same will be filled up by general candidates. As against the 23 seats reserved for scheduled caste and scheduled tribe candidates, 10 were available and 13, therefore, were to revert to the general category.
4. Six (sic sixty-nine) seats, as it appears from paragraph 5.3, were originally reserved for candidates belonging to public sector undertakings and other organisations of Government of Orissa and Medical Officers who are permanent residents of Orissa and serving under Government of India and their public sector undertakings. When 13 seats became available the State Government allotted 8 out of them to in-service doctors under Government of India and their public sector undertakings. Three of the candidates who were inservice doctors of Government of Orissa challenged the diversion of 8 put of the 13 reserved seats to Government of India and their public sector undertakings by filing separate writ petitions. The High Court considered the provisions of the Prospectus and the respective stands taken by the parties before it and ultimately held that the 8 reserved seats which reverted to the general category could not have been filled up by the inservice doctors under Government of India or their public sector undertakings.
5. The conclusion of the High Court is unassailable. The combined effect of the provisions

contained in paragraphs 5.3 and 5.5 of the Prospectus is that 69 out of the 113 seats were intended to be filled up by inservice doctors of Government of Orissa and these were the general seats. When reservation made for any of the categories indicated in paragraph 5.3 in respect of 44 out of the total 113 seats did not work out and any seat remained unfilled, such seat was to be treated as a general seat coming within the last group in paragraph 5.3 of the Prospectus. 'General seat' having not been explained or defined anywhere in the Prospectus, the High Court was right in its analysis and conclusion. Of the 13 seats which came from the scheduled cast and scheduled tribe categories, therefore, would have come to the inservice doctors of Government of Orissa and the number of 69 in the Prospectus should have gone up to 82. The State Government having bound itself by the terms of the Prospectus was not justified in allotting 8 out of the 13 seats to a category other than the general category.

6. Counsel for the appellant-State produced before us the merit list prepared in terms of the Prospectus and contended that the 8 candidates had secured more marks than the respondents and had been selected on the basis of their own respective merit apart from being allottees under a specified category. He referred to paragraph 5.3.3 of the Prospectus to support this submission. That paragraph states that candidates claiming eligibility for admission to reserved seats specified in paragraphs 5.2 and 5.3 may apply for only one reserved category of seat as well as for general seats. This submission has got to be rejected as unsustainable in view of the fact that none of the 8 doctors who secured admission on the basis of the impugned government order was qualified to apply for a seat in the general category.

7. Counsel for the State contended that the High Court has not disturbed the admission of the 8 doctors in terms of the government order as they were not impleaded in the proceedings before the High Court. Of the three candidates who went before the High Court challenging the government order, one has already been given admission by the government and, therefore, the question of admission of the remaining two candidates is in issue. According to appellants' counsel, a waiting list had been drawn up in the various specialities and the candidate included in such list had secured higher marks than the two candidates before us. Therefore, they could not be preferred to the candidates in the waiting list. This contention appears not to have been placed before the High Court and has been raised for the first time in the present forum at the time of argument. The time for admission into the particular academic session is long over and none of the wait-listed candidates came forward to press his or her claim. Though ordinarily the more meritorious candidates, if there were any, would have been entitled to preference over the respondents, in the circumstances stated we are not of the view that the objection raised by the State has any force.

8. The appeals fail and the decision of the High Court stands affirmed. The respondents shall be entitled to their costs of the appeals. Consolidated hearing fee is assessed at Rs. 3000.

9. Before we part with the appeals, we would like to notice the fact that contempt action is pending in the High Court on the allegation that the appellants have failed to implement the direction of the High Court. Counsel for the State has stated to us that the order of the High Court shall be given effect to within a week from pronouncement of our order and in view of such statement, respondents' counsel made a statement in course of the hearing that the contempt action in the High Court need not be pursued. In these circumstances, the contempt proceedings before the High Court shall be taken as closed.

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