

Indu Kant Dr.

Vs

State of U. P. and others

Writ Petns. (C) Nos. 493, 456, 381,547,564 and 565 of 1992

(N. M. Kasliwal, K. Ramaswamy JJ)

11.08.1992

JUDGEMENT

KASLIWAL, J.:-

1. All the above cases relate to the Doctors who had appeared in the entrance examination of 1990-91 for admission to Post-Graduate Medical Courses of seven medical colleges in the State of Uttar Pradesh. In some of these cases the candidates have filed Writ Petitions under Article 32 of the Constitution directly in this Court while in some cases the candidates first approached the High Court and being unsuccessful in the High Court have filed Special Leave Petitions against the orders of the High Court and there are some Special Leave Petitions filed by the State of Uttar Pradesh or by the Principal of the Medical Colleges against the orders of the High Court where the High Court had passed the orders in favour of the candidates. Though the points raised in all these cases are identical but in some cases, the notice has not been served on the respondent candidates and in some Special Leave Petitions the defects pointed out by the office have not been removed by the petitioners. In view of the circumstances mentioned above we are stating the facts of the Writ Petitions filed by the Doctors under Article 32 of the Constitution and decision in these cases would cover the controversy in all these cases.

2. All the above writ Petitions have been filed by the doctors who had appeared in the entrance examination of 1990 and 1991 for admission to Post-Graduate Medical Courses of Medical Colleges in the State of Uttar Pradesh. All the petitioners secured less than 50% marks in the general category and less than 40% marks in the SC/ ST category necessary to qualify for admission to the Post-Graduate Course. The petitioners have challenged the aforesaid rules by which the minimum percentage of marks has been kept as 50% for general category and 40% for SC/ ST category. This Court in a recent decision in State of Uttar Pradesh v. Dr. Anupam Gupta, AIR 1992 SC 932: (1992 AIR SCW 746) had already held that the prescription of 50% cut off marks for the students of general category and 40% for SC/ STs was valid. The aforesaid decision was affirmed in Writ Petitions (Civil) Nos. 451, 454, 525, 545 of 1992, Ombir Singh v. State of U. P. decided on July 30, 1992 (reported in 1992 AIR SCW 3218) and it was held that any challenge to the above rule laying down minimum percentage of marks for eligibility for admission to Post-Graduate Courses was no longer res integra.

3. It was, however, contended on behalf of the petitioners that while deciding the case Ombir Singh v. State of U. P., (1992 AIR SCW 3218) (supra) relating to the entrance examination for the year 1992, this Hon'ble Court had made a recommendation that the State Government may take suitable

steps for redressing the long felt grievance of the doctors to fill up all the seats which remained vacant after the admission of those candidates who had secured the minimum qualifying marks in such entrance examination. It has been submitted that a similar direction may be given in respect of seats which remained vacant in the years 1990 and 1991 also. In this regard it was submitted that the State Government itself in a chart submitted before this Court has admitted that 256 seats remained Vacant in 1990 and 180 seats in 1991. It was further submitted that such direction be given in respect of all those petitioners who have approached this Court or the High Court in this regard.

4. The above prayer has been opposed on behalf of the State Government. It has been submitted on behalf of the State that there is no provision for carrying forward the vacant seats of any particular year to the subsequent years. It has been submitted that if the candidates of 1990 and 1991 batch are admitted now, they will have to join along with 1992 batch and this would increase the total strength of Post-Graduate students for the year 1992. It has been pointed out that the maximum number of seats for Post-Graduate Courses in 1992 is 535 out of which 318 have been filled by the candidates securing more than 50% marks and for the remaining vacancies the Government is trying to adjust the candidates of the year 1992 in terms of the recommendation made by this Hon'ble Court in Ombir Singh's case (1992 AIR SCW 3218). It has also been submitted that it would not be just and proper to grant admission to such candidates only who have filed the petitions before this Hon'ble Court under Article 32 or under Article 226 of the Constitution in the High Court and to deny such right to other candidates who have secured much higher marks in merit in the entrance examination of 1990 and 1991, but did not approach the Court. It was submitted that such action would be arbitrary and violative of Article 14 of the Constitution.

5. We have, given our thoughtful consideration to the entire facts and circumstances of the case. We have already held that the rule laying down the minimum percentage of marks in the entrance examination is valid and no direction can be given to the State Government to fill up any vacant seats by the candidates securing less than the minimum qualifying marks. We had of course, made a recommendation to the State Government in respect of the vacant seats of Post-Graduate Course for 1992 but we find no valid justification to make such recommendation in respect of the candidates of the earlier years of 1990 or 1991. The candidates who had not secured the minimum qualifying marks in the years 1990 or 1991 had an opportunity to appear in the entrance examination of 1992 and to make up the deficiency. We find justification in the difficulties pointed out by the State Government in doing so. Granting admission to the candidates of 1990 and 1991 batch now and to allow them to join with the batch of 1992 is bound to increase the total strength of Post-Graduate students in 1992. This would not only be in violation of the directions of the Medical Council of India, but would also put an additional financial burden on the State Government. In any case, the State Government itself is vehemently opposing such request made on behalf of the candidates of 1990 and 1991 and we cannot give any direction to the State Government in this regard.

6. In the result, we find no force in these writ petitions Nos. 493,456, 381,547,564,565 of 1992 and the same are dismissed with no order as to costs.

7. These Special Leave Petitions are dismissed in terms of the Judgment passed in W. P. Nos.493, 456, 381, 547, 564, 565 of 1992.

8. Special Leave granted.

9. This appeal by the State of U. P. is directed against the judgment of the High Court dated 22-10-1991. It is allowed in terms of the judgment passed in W.P. Nos.493, 456, 381, 547, 564, 565 of

1992 and the order of the High Court dated 22-10-1991 is set aside.

10. I.A. No. 3 filed by Dr. Neena Raizada in Writ Petition (Civil) No. 451 of 1992 was directed to be tagged along with Special Leave Petition No. 6343 of 1992. This application for intervention filed by Dr. Neena Raizada is now dismissed as we have already dismissed the Writ Petitions of the Doctors of 1990-91 Batch.

11. The Court while delivering judgment in W.P. Nos. 493, 456, 381, 547, 564, 565 of 1992 delink above Special Leave Petitions heard with these writ petitions and direct issue of notice in S.L.P. (C) Nos. 5621 & 6343 of 1992 returnable within six weeks and mentioning in the notice that these Special Leave Petitions may be disposed of at the notice stage itself. Pending notice, there shall be interim stay of the operation of the impugned judgment of the High Court. The other remaining Special Leave Petition Nos. (sic) of 1992 are defective. Two weeks' time is allowed to cure the defects and such cases be listed after removal of the defects.

Order accordingly.

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