

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 13th August, 2010.

+ **W.P.(C) 5492/2010 & CM No.10813/2010 (for stay).**

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TEJ PAL YADAV

..... PETITIONER

Through: Mr. R.K. Saini, Advocate.

Versus

UNION OF INDIA & ORS

..... RESPONDENTS

Through: Mr. Rashi Bansal for Mr. Ankur Chhibber, Advocate.
Mr. Atul Kumar, Advocate for R-4.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may be allowed to see the judgment? Yes.
2. To be referred to the reporter or not? Yes.
3. Whether the judgment should be reported in the Digest? Yes.

RAJIV SAHAI ENDLAW, J.

1. The petitioner had appeared for the All India Pre-Medical/Pre-Dental Entrance Examination held by the respondent no.4 Central Board of Secondary Education for admission to the 15% All India seats quota in the Medical Colleges all over the country. The said test as per the prospectus comprises of two parts Preliminary Examination and the Final Examination, with only those who qualify the Preliminary Examination being eligible for appearing in the Final Examination. The petitioner appeared in the Preliminary Examination as an OBC candidate. While the qualifying marks for the General Category candidates in the Preliminary Examination were 50%, those for OBC candidates were 40%. The petitioner secured 49.2%

marks in the Preliminary Examination and being in the OBC Category was found eligible for appearance in the Final Examination and so appeared in the Final Examination.

2. The petitioner claims to have secured 72.3% marks in the Final Examination and was given All India Rank of 3017 and Counselling Category Rank of “2965 (OBC – 1179)”; on the Rank Letter dated 23rd May, 2010 issued to the petitioner in the column “Result”, it was mentioned “Qualified in Wait List – Eligible for (OBC) Seats only”.

3. The petitioner appeared for counselling on 10th August, 2010 as per his Counselling Category Rank of 2965. Though seats in the General Category are stated to have been available on that date but the seats reserved for OBC Category were filled up. The petitioner was thus not considered for admission.

4. The petitioner has filed this petition contending that his having secured 72.3% marks in the Final Examination, was entitled to be considered in the General Category i.e. for Unreserved seats also and not in the OBC category only.

5. The counsel for the petitioner has today in Court handed over the mode of implementation of OBC and PH Reservation in 15% All India Quota (MBBS/BDS) Seats, stated to have been downloaded from the website of Directorate General of Health Services and referred to in the prospectus aforesaid under the column “Reservation”. Attention is invited to the following paragraphs:-

“OBC candidates have Rank in the Unreserved category and as well as in OBC category. Therefore, they have the right to claim over UR or OBC seats at any of the said ranks as per their choice. However, if OBC seats remain unfilled after exhausting the UR merit list, these seats will be filled by the concerned State Quota candidates as per their existing rules and regulations.

As per the present practice, the counselling/allotment of UR, SC and ST seats under All India Quota is being done as per the 2200 Point Reservation Roster. MBBS/BDS seats in whichever Medical/Dental college are available at their rank at that time, will be allotted to the candidate of any category as per Reservation Roster and as per their choice. Therefore, entire seats are open to all the categories i.e. for UR, SC & ST. This procedure will not be followed for OBC candidates as the OBC reservation is not the exactly 27% of the total number of the seats and as the OBC reservation is only in some participating Central Institute under All India Quota and these seats are reserved for OBC candidates only. Therefore, the Directorate General of Health Services has formulated the following procedure for implementation of OBC reservation in Central Medical Institution under 15% All India Quota:-

The allotment will be done as per the “2200 Point Reservation Roster” which is already followed in the 15% All India Quota since the year 2007-08. The candidates will be called as per the Reservation Roster and the seat (which is not reserved for OBC in the OBC list) will be allotted to the candidates whatever the seats in whichever Medical/Dental Colleges are available at their rank at that time. As and when a candidate comes at his/her Unreserved Rank and having the OBC Rank also, he/she can choose/opt either the seat which is not reserved for OBC or the seats exclusively reserved for OBC. If he/she opts the seat of unreserved category he/she will not be counted in the reserve category. This type of candidate will be counted in the category in which he/she gets the seat allotted. If an OBC candidate qualified under OBC Quota only will have claim over the seat which is reserved for OBC only. In the event of exhausting of OBC seats under All India Quota no OBC candidates can claim OBC seats. The seat if not filled for want candidate, they can be treated as with UR as in the case of SC/ST.”

6. The counsel for the CBSE appearing on advance notice has contended that CBSE is only the examination holding agency and the counselling is done by the respondent no.2 Directorate General of Health Services. He has however invited attention to the last five lines aforesaid in the paragraph relied upon by the counsel for the petitioner to contend that if an OBC candidate qualifies under the OBC quota only, his claim for a seat will be only for those reserved for OBC and not for the Unreserved seat.

7. The counsel for the respondent no.2 Directorate General of Health Services also appearing on advance notice states that the petitioner qualified in the Preliminary Examination as an OBC candidate only having not secured the minimum 50% marks required to be secured by candidates claiming admission in Unreserved category and thus has qualified under the OBC quota and his claim will be for OBC seat only.

8. The counsel for the petitioner has in rejoinder contended that the qualification in the Preliminary Examination as an OBC candidate is irrelevant in as much as the petitioner has in the Final Examination secured more than 50% marks which are required by a candidate in a Unreserved category to be considered for counselling and has thus not qualified as an OBC candidate.

9. I am unable to dissect the Entrance Examination in two portions. The qualification in the Preliminary Examination cannot be lost sight of while determining whether the petitioner has qualified in the OBC quota or in the Unreserved quota. The very presence of the petitioner in the Final Examination was attributable to the lowering of standard of eligibility for the OBC candidates.

10. Though the Supreme Court recently in ***Jitendra Kumar Singh Vs. State of UP*** AIR 2010 SC 1851 has held that relaxation of eligibility conditions for preliminary examination for reserved category candidates, where marks of preliminary examination are not included for determination of final merit, would not prevent a candidate from being considered in unreserved category, but in that case the relaxation was with respect to age only. The Supreme Court expressly observed that by relaxation of age, standard was not lowered for candidates belonging to reserved category. The present case as aforesaid is of lowering of standard and the petitioner having reached the stage where he is, owing to lowering the standard. The petitioner is therefore a candidate who has qualified under the OBC quota

and can have claim over seat reserved for OBC only.

The fact remains that but for the lower eligibility for the OBC candidate for the Preliminary Examination, the petitioner would not have appeared in the Final Examination and would not have been entitled to admission at all. For the paragraph aforesaid to apply, the OBC candidate should have secured more than 50% marks in both Preliminary as well as Final Examination and which the petitioner has not.

11. I therefore do not find any merit in the petition, the same is dismissed.
No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

13th AUGUST, 2010
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