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

+ W.P.(C) 350/2013 & CM.727/2013

% **Judgment dated 04.03.2013**

MS MAMTA Petitioner

Through: Ms.Monica Kapoor, Advocate

versus

UNIVERSITY OF DELHI AND ANR Respondent

Through: Mr.Mohinder J. Rupal, Advocate for R=1

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J. (ORAL)

1. This is a rather peculiar case where the petitioner approached the respondent for admission in B.Ed. programme 2012-13 under the OBC category, after succeeding in the written examination as well as in the interview in June, 2012. The course commenced from 23.7.2012 and the petitioner started attending classes as well as the school experience programme. In August, 2012, the petitioner was informed orally that her OBC category, under which she had appeared, was not covered under the reserved category of the Central List. Petitioner was also orally informed that she could give a request in writing for consideration of her candidature under the General category. The petitioner made an application under the RTI Act seeking information regarding the marks secured by her in the written examination and interview of the entrance test of B.Ed. course 2012-13 and also the cut-off list of general category students of the said examination.
2. The petitioner also made a request in writing to the respondent no.2 to consider her candidature under the General Category. It is the case of the petitioner that the respondents kept assuring her that she would be

considered under the general category. On this assurance the petitioner kept attending classes and also school experience programme between the months of August to December, 2012, however, on 11.12.2012, the petitioner was shocked to receive a notice wherein she was informed that she has been unauthorizedly attending classes and she was directed not to attend classes in future.

3. Counsel for the petitioner contends that throughout the month of December, 2012 petitioner continued to attend classes and when she was stopped from attending the classes, she filed the present writ petition.
4. The case of the petitioner is that initially she applied under the OBC category for getting admission in B.Ed. programme 2012-13, but when she was informed in the month of August, 2012 that petitioner does not belong to the OBC category of the Central List, she immediately approached the respondent no.2 i.e. the head of the Department and requested her to treat her admission in the general category. Counsel for the petitioner submits that petitioner was under the bona fide belief that the respondents were considering her request and she had no reason to think otherwise else the respondent would not have permitted her to attend classes and in fact her work was appreciated by one of the teachers, copy of the appreciation letter has been placed on record. Ms.Kapoor submits that only in December the respondents informed the petitioner not to attend classes.
5. Counsel for the petitioner further contends that it is not in dispute that the marks secured by the petitioner in the entrance test and interview were above the cut-off marks of the general category and thus, there is no bar in her being granted admission in the general category for the B.Ed. programme 2012-13. It is also the case of the petitioner that she has been diligently attending the classes and at this stage, if she is deprived of

admission for any technical reason, a girl child will be deprived of higher education.

6. Mr.Rupal, counsel for the University submits that at no point of time the petitioner was granted provisional admission as there is no such provision for granting provisional admission. Counsel further submits that the petitioner was never called upon to deposit her fee, and thus, the petitioner was well aware that she had not been granted admission in the B.Ed. course.
7. Counsel for the respondent next contends that initially petitioner was not granted admission, as the result of her qualifying course had not been declared but even after the result was declared and prior to the last date of admission, the petitioner was declined admission, as the category of the petitioner was not in the Central List. Counsel further submits that petitioner could not have been granted admission in the general category, as she herself has chosen not to apply in the General Category, the list of which was finalized on 14.8.2012. It is further submitted by counsel for the respondent that the petitioner attended classes at her own risk and peril and no equity can flow in favour of the petitioner for her attending classes in an unauthorized manner. Counsel also submits that even in case the present petition is allowed, the petitioner would not have the requisite attendance.
8. I have heard counsel for the parties and considered their rival submissions. I have described the case as a strange case for the reason that the petitioner has secured higher marks than the cut-off in the general category, but since she had chosen to apply under the reserved category, petitioner was declined admission, as she did not belong to the OBC category of the Central List. Since the OBC category of the petitioner was covered under the Central List, in fact the petitioner's case should

have automatically been considered in the General category. Another factor which makes this case different and strange is that a student is permitted to attend classes from August to December, 2012, which is unheard of when neither fee is accepted from the petitioner, nor formal admission was granted.

9. It is not a case where the petitioner had mis-led the university or suppressed any material fact or attended classes in a clandestine manner or attended classes secretly. Her attending the classes was an open secret. A teacher has also appreciated the work of the petitioner and yet her attending classes have been termed as unauthorized. On 16.8.2012 the following letter was addressed by the petitioner to the Head of the Department, which is reproduced below:

“To,

The Head of the Department,
Central Institute of Education,
University of Delhi.

Sir,

I had got admission in B.Ed. under the OBC category but just now I came to know that my caste does not come in the central list. I want that if there is any seat vacant in General category, please I may be granted admission in General category from OBC category.

With thanks,
14/8/12

Mamta
104 'B'
Received
Sd/- (12:15)
16/8/12

Have discussed
Please meet Prof Mittal.”

10. There is no explanation in the counter affidavit, as to the fate of the above said communication. In my view this communication is extremely vital,

as this was addressed by the petitioner to the respondent prior to the last date of admissions, even though the petitioner did not appear in the second round of counselling in the General category, it is not in dispute that even on the last date i.e. 31.8.2012 when the petitioner was attending classes, seats were lying vacant.

11. Having regard to the aforesaid facts where there is no explanation as to why this petitioner was permitted to attend classes from August to December, 2012, why the case of the petitioner was not converted from the reserved category to the general category before the cut off date when the petitioner made a request on 16.8.2012 especially when the petitioner is a meritorious student and had secured marks higher than the marks of the last person in the general category, the present petition is allowed. The time spent in this court shall be deducted for the purposes of attendance and subject to the condition that the petitioner attends all the classes from 5.3.2013 onwards regularly. Petitioner is directed to deposit the requisite fee and complete all other requisite formalities within three days. This order is passed in the peculiar facts and circumstances of the case and shall not be treated as a precedent.
12. The writ petition and the application stand disposed of, in above terms.
13. DASTI to counsel for the parties under the signatures of the Court Master.

G.S.SISTANI, J

MARCH 04, 2013

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