

Court No. - 39

Case :- WRIT - C No. - 27128 of 2023

Petitioner :- Anunay Kumar

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Siddharth Khare, Sr. Advocate

Counsel for Respondent :- C.S.C, Ayank Mishra

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Shiv Shanker Prasad, J.

1. Heard Sri Siddharth Khare, learned counsel for the petitioner, Sri Ayank Mishra, learned counsel for respondent no.2 and learned Standing Counsel for the State.
3. Counter affidavit has been filed. Time has been prayed by learned counsel for the petitioner to file rejoinder affidavit.
4. For the reasons noted below, the prayer is declined.
5. Upon hearing the matter at the fresh stage, we had passed following order in the matter:-

"1. Heard Shri Ashok Khare, learned Senior Advocate assisted by Shri Siddharth Khare, learned counsel for the petitioner and Shri Ayank Mishra, learned counsel for the respondents.

2. Submission of learned senior counsel for the petitioner is, despite earlier decision of the coordinate Bench of this Court in Anmol Deep Vs. State of U.P. and 3 others, Writ-C No. 23936 of 2018, decided on 30.08.2016, no change has been made to the law applicable to the facts of the present case, inside the State of U.P.

3. Thus, for the purpose of grant of admission pursuant to NEET-2023, there exists no stipulation as may prevent the participation of the petitioner in the counselling for the purposes of allotment of college and course while considering him to be Dependent of a Freedom Fighter. Here, reliance has been placed on the substantive reservation provided for under Chapter-II of the Brochure. It does not exclude dependent of freedom fighters from other States. Thus, it has been submitted, exclusion of reservation as Dependent of Freedom Fighters, solely on the basis of office to issue of such certificate, is wholly in the teeth of earlier pronouncement of this Court in Anmol Deep (supra) which has attained finality.

4. On the other hand, Shri Ayank Mishra has placed reliance on the decision of the Punjab & Haryana High Court in Parneet Kaur (minor) through her father Dr. Parminder Singh Vs. State of Punjab and others; Neutral Citation No:2023:PHC:098513-DB. He would submit that earlier decision of this Court in Anmol Deep (supra) has been distinguished. At present, respondents are not relying on Section 2(d) of U.P. Act No. 4 of 1993. Rather, the respondents rely on the stipulation point-2 under Chapter-II (?) pertaining to horizontal reservation. Since the certificate being relied by the petitioner is with respect to Dependent of Freedom Fighter and has been

issued by an authority outside the State, the petitioner's claim cannot be considered in the State counselling. He has also pointed out that counselling is over and all seats are full, however, admissions are to continue till 2.9.2023.

5. In view of the pre-existing decision of this Court that has attained finality, and further in absence of any restrictions placed under Chapter-II, Clause ? (2) providing to restrict reservation to Dependent of Freedom Fighters (DFF) of the Uttar Pradesh only, the decision of Punjab and Haryana High Court in Parneet Kaur (supra) may not apply, in terms. The effect of the certificate issued by an authority outside the State unless doubted or found false may not cause the effect of disentitlement.

6. Prima facie, we find, the matter requires serious consideration.

7. Respondents are represented by Shri Ayank Mishra. He prays for and is granted three weeks' time to file counter affidavit. Petitioner shall have two weeks thereafter to file rejoinder thereto.

8. List on 6.10.2023 in top ten cases.

9. In the meanwhile, subject to any seat becoming vacant / available for the purposes of allotment against the state counselling on or before the last date of admission, the petitioner may be provisionally granted admission against the same by way of horizontal reservation under DFF category subject to other similar claim in order of merit.

10. Appropriate order may also be passed on the last date of admission to that effect. "

6. Today upon query made, learned counsel for the petitioner fairly states that no seat became available and in any case the petitioner has not been offered admission pursuant to the NEET 2023.

7. Undisputedly, the admissions are over and the course is underway.

8. In view of the above fact, the cause of action brought before the Court has been rendered infructuous in the changed circumstance, noted above.

9. Keeping this petition pending or seeking to decide the same would only be an academic exercise of no real benefit.

10. Thus leaving the issue open to be dealt with in an appropriate case, at present the writ proceedings are consigned as infructuous.

Order Date :- 21.11.2023

Abhishek Singh

(Shiv Shanker Prasad,J.) (Saumitra Dayal Singh,J.)