

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN

&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

WEDNESDAY, THE 23RD DAY OF SEPTEMBER 2015/1ST ASWINA, 1937

WA.NO. 1783 OF 2015 () IN WP(C).18941/2015

AGAINST THE ORDER/JUDGMENT IN WP(C) 18941/2015
OF HIGH COURT OF KERALA DATED 13-07-2015

APPELLANT(S)/PETITIONER:

SREELAKSHMI J.
FIRST YEAR P.G. MEDICAL RESIDENT
T.D. MEDICAL COLLEGE, ALAPPUZHA, RESIDING AT PRANAV
11/235A, TB JUNCTION, KOTTARAKKARA.

BY ADVOCATE SMT.V.P.SEEMANDINI (SR.)
BY ADVOCATE SHRI M.R.ANISON

RESPONDENT(S)/RESPONDENTS:

1. STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT
HEALTH AND FAMILY WELFARE DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM - 695 001.

2. THE DIRECTOR OF MEDICAL EDUCATION,
THIRUVANANTHAPURAM -695 001.

3. THE COMMISSIONER FOR ENTRANCE EXAMINATIONS
HOUSING BOARD BUILDING, SANTHI NAGAR
THIRUVANANTHAPURAM.

4. NIVIN GEORGE,
FIRST YEAR P.G. MEDICAL STUDENT IN FORENSIC MEDICINE
GOVERNMENT MEDICAL COLLEGE, THIRUVANANTHAPURAM.

R4 BY ADV. SRI.G.D.PANICKER
R4 BY ADV. SMT.JEENA JOSEPH
BY SENIOR GOVERNMENT PLEADER SHRI ROSHAN D.ALEXANDER

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON
11.09.2015, THE COURT ON 23.09.2015 DELIVERED THE FOLLOWING:

“C.R”

ASHOK BHUSHAN, C.J.

and

A.M. SHAFFIQUE, J.

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W.A. No.1783 of 2015

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Dated this the 23rd day of September, 2015

J U D G M E N T

Ashok Bhushan, C.J.

This Writ Appeal has been filed against the judgment dated 13.07.2015 in W.P(C) No.18941 of 2015 which Writ Petition filed by the appellant has been dismissed by the learned Single Judge.

2. Parties shall be referred as described in the Writ Petition.

3. Brief facts giving rise to this Writ Appeal are: Petitioner as well as the 4th respondent were selected for Post Graduate Medical Course for the year 2015-16. Petitioner obtained rank No.3108 whereas the 4th respondent obtained rank No.3232. Option given by the petitioner was for allotment of Post Graduate Forensic Medicine course and her first option was Thiruvananthapuram Medical College. The

4th respondent also gave the same option. In the third counselling petitioner was allotted seat for Post Graduate Medical Course in Forensic Medicine at the T.D. Medical College, Alappuzha. The Government took a decision to conduct spot admission on 9th June, 2015 in order to allow the candidates who got allotment in Government Medical Colleges to surrender their seats and to participate in the spot admission. The Government Order issued on 06.06.2015 has directed for spot admission on 9th June, 2015 for those candidates who wish to surrender their seats in Government Medical Colleges. On the spot admission on 09.06.2015, the 4th respondent was allotted the seat of Forensic Medicine at Medical College, Thiruvananthapuram. Petitioner, aggrieved by the allocation of seat at Thiruvananthapuram to the 4th respondent filed the Writ Petition praying for the following reliefs:

“(a) to issue a writ of mandamus or other appropriate writ order or direction directing the respondents 1 to 3 to transfer and admit the petitioner for Forensic Medicine (Post Graduate Medical) Course at Government Medical College, Thiruvananthapuram, if necessary by shifting the 4th respondent from the above college to T.D. Medical College, Alappuzha.

(b) to pass such other and further orders as are deemed just and necessary in the facts and circumstances of the case.”

4. Learned Single Judge after consideration of submission of the parties held that those candidates who wanted to take benefit of spot admission were required to surrender their seats and then participate in the spot admission and since the petitioner did not surrender her seat at Medical College, Alappuzha there was no error committed in allotting the seat at the Thiruvananthapuram Medical College to the 4th respondent. Writ Petition has been consequently dismissed.

5. Smt. V.P.Seemanthini, learned Senior Advocate appearing for the petitioner challenging the allotment of seat to the 4th respondent at the Thiruvananthapuram Medical College contended that petitioner being higher in merit to the 4th respondent, she ought to have been allotted the seat in Forensic Medicine at Thiruvananthapuram Medical College and non-allotment of seat to the petitioner is violation of the merit rule which is a rule for grant of admission and for accepting option of candidates for courses and colleges. She

has placed reliance on the judgment of the Apex Court reported in **Asha v. Pt. B.D. Sharma University of Health Sciences and Others** ([2012] 7 SCC 389).

6. Shri P.I. Davis, learned Senior Government Pleader refuting the submissions of the learned counsel for the petitioner contended that the State Government by its Order dated 06.06.2015 (which has been referred to in Ext.P4) has clarified that in the spot admission fixed for 09.06.2015 only those candidates shall be allowed participation who furnished a written resignation letter to the Principal of the allotted Government Medical Colleges before 12 noon on 08.06.2015. Petitioner did not surrender her seat in the Alappuzha Medical College hence the 4th respondent who was the only available candidate was allotted the seat in the Medical College, Thiruvananthapuram.

7. We have considered the submissions of learned counsel for the parties and perused the records.

8. Petitioner was allotted Forensic Medicine Course in Medical College, Alappuzha in the third counselling held on 03.06.23015. The 4th respondent at that time was working

at Rajagiri Medical College. The State Government issued Government Order dated 06.06.2015, a copy of which has been placed before us by the learned Senior Government Pleader. It is useful to extract the said Government Order which is to the following effect:

“As per Government Order read as 1st paper above, Government have approved the Prospectus of the Post Graduate Medical Degree/Diploma Courses for the academic year 2015-16. Later the Honourable Supreme Court of India has ordered the schedule for the completion of the admission process. As per the Schedule June 10th is the last date for completion of the admission process under the State Quota. Government as per the order read as 3rd paper above has amended the Clause 11.1.1 so as to conduct a third round of manual counseling for which the Commissioner for Entrance Examination issued Notification read above and conducted the third round of allotment during 13 of June 2015.

Now, Government are in receipt of representations from candidates who attended the third round of counselling. The specific complaint is that the candidates who got allotment in the first and second round of allotment were not allowed to surrender their seats during 3rd allotment and this resulted in holding of seats of least preference by the complainants.

Government have examined the matter in detail in the light of the Schedule fixed by the Honourable Supreme Court and are pleased to order the following:

The Director of medical Education will notify and give wide publicity that there will be a Spot Admission on 9th of June 2015

and those candidates who wish to surrender their seats in Government Medical Colleges shall furnish a written resignation letter to the Principal of the allotted Government Medical Colleges before 12 noon on 08.06.2015.

The College authorities shall report the details of such surrendered seats to the Director of Medical Education at 3 p.m. on 08.06.2015.

The Director of Medical Education in turn publish the details of such seats for Spot in the Website at 5 p.m. on 08.06.2015.

No surrender application will be entertained beyond the above stipulated schedule.

After issuance of the Government Order on 06.06.2015, the Government issued another Order on 08.06.2015, the relevant portion of which is quoted below:

“As per Government Order read as 4th paper above, sanction was accorded to the Director of Medical Education to conduct a spot admission on 9th of June, 2015 in order to allow the candidates who got allotment in Government Medical Colleges to surrender their seats and also to participate in the Spot Admission.”

9. On 09.06.2015 spot admission was conducted in which the 4th respondent was allotted the seat at the Thiruvananthapuram Medical College. The 4th respondent had surrendered his seat in the Rajagiri Medical College and participated in the spot admission on 09.06.2015. A counter

affidavit has been filed by the 4th respondent where the above fact has been specifically stated in paragraph 4.

10. It is not the case of the petitioner that she surrendered her seat at the Alappuzha Medical College by submitting written resignation to the Principal on 08.06.2015 so as to become entitled to participate in the spot admission. Petitioner having not surrendered her seat in the Government Medical College, Alappuzha could not have been offered Thiruvananthapuram Medical College seat in the spot admission on 09.06.2015. When petitioner did not surrender the Alappuzha seat, the Alappuzha seat was not under the fold of admission process of allotment and the only seat for Forensic Medicine which was available was the Thiruvananthapuram Medical College seat and the 4th respondent being the only available candidate was rightly given the college. Learned Single Judge has rightly come to the conclusion that no error has been committed in allotting seat to the 4th respondent at the Thiruvananthapuram Medical College.

11. Learned counsel for the petitioner emphasised

that the merit rule cannot be violated in the matter of allotment of course or college which is a well established law as laid down by the Apex Court. Reliance has also been placed on the judgment of the Apex Court in **Asha v. Pt. B.D. Sharma University of Health Sciences and Otherse** (supra).

12. In the above case the appellant as well as the respondent appeared in the entrance examination for MBBS, BDS and BAMS, 2011. Appellant was a candidate under the Ex-Servicemen (ESM) and her rank was No.13 in the ESM category. The 3rd respondent was having rank No.14 in the ESM category. In the first counselling appellant was allotted seat in BDS course. Second counselling was held on 20.09.2011. Appellant's case was that she also participated in the 2nd counselling but she was not allotted any seat in MBBS course rather the 3rd respondent, lower in merit was allotted the seat in MBBS course. Challenging the said action of the Counselling Board, Writ Petition was filed. Learned Single Judge accepted the Writ Petition and directed admission of the appellant in the MBBS course which order

was set aside by the Division Bench in appeal, thereafter the matter was taken in the Apex Court. It was found by the Apex Court in the judgment that appellant was present in the second counselling and was entitled for allotment of MBBS seat. The Apex Court reiterated that admission in the medical courses has to be on the basis of merit alone. The following was laid down in paragraphs 21 and 24:

“21. At this stage, we may refer to certain judgments of the Court where it has clearly spelt out that the criteria for selection has to be merit alone. In fact, merit, fairness and transparency are the ethos of the process for admission to such courses. It will be travesty of the scheme formulated by this Court and duly notified by the states, if the Rule of Merit is defeated by inefficiency, inaccuracy or improper methods of admission. There cannot be any circumstance where the Rule of merit can be compromised. From the facts of the present case, it is evident that merit has been a casualty. It will be useful to refer to the view consistently taken by this Court that merit alone is the criteria for such admissions and circumvention of merit is not only impermissible but is also abuse of the process of law. Ref. Priya Gupta v. State of Chhatisgarh and Another [CA @ SLP(C) No. 27089 of 2011, decided on 8th May, 2012, Harshali v. State of Maharashtra and Others, 2005 (13) SCC 464, Pradeep Jain v. UOI, 1984 (3) SCC 654, Sharwan Kumar and Others v. Director of Health Services and Another, 1993 Supp (1) SCC 632, Preeti Srivastava v. State of MP, 1999 (7) SCC 120, Guru Nanak Dev University v. Saumil Garg and Others, 2005 (13) SCC 749, AIIMS

Students' Union v. AIIMS and Others 2002 (1) SCC 428

24. The Court cannot ignore the fact that these admissions relate to professional courses and the entire life of a student depends upon his admission to a particular course. Every candidate of higher merit would always aspire admission to the course which is more promising. Undoubtedly, any candidate would prefer course of MBBS over BDS given the high - competitiveness in the present times, where on a fraction of a mark, the admission to course could vary. Higher the competition, greater is the duty on the part of the concerned authorities to act with utmost caution to ensure transparency and fairness. It is one of their primary obligations to see that a candidate of higher merit is not denied seat to the appropriate course and college, as per his preference. We are not oblivious of the fact that the process of admissions is a cumbersome task for the authorities but that per se cannot be a ground for compromising merit. The concerned authorities are expected to perform certain functions, which must be performed in a fair and proper manner i.e. strictly in consonance with the relevant rules and regulations.”

13. In the facts of the aforesaid case, the Apex Court held that injustice was meted out to the appellant since she was present in the second counselling and in spite of her presence in the second counselling she was not allotted seat in MBBS and seat was allotted to a person who was lower in merit. The following findings were recorded in paragraph 31:

“31. Having recorded that the appellant is not at fault and she pursued her rights and remedies as expeditiously as

possible, we are of the considered view that the cut - off date cannot be used as a technical instrument or tool to deny admission to a meritorious students. The rule of merit stands completely defeated in the facts of the present case. The appellant was a candidate placed higher in the merit list. It cannot be disputed that candidates having merit much lower to her have already been given admission in the MBBS course. The appellant had attained 832 marks while the students who had attained 821, 792, 752, 740 and 731 marks have already been given admission in the ESM category in the MBBS course. It is not only unfortunate but apparently unfair that the appellant be denied admission.”

In view of the facts of that case the Apex Court directed for admission of the appellant for MBBS course although in the next academic year.

14. In so far as the ratio laid down by the Supreme Court in the above case that there cannot be violation of merit rule in allotment of course or college according to candidate's preference, there cannot be any other view. It was held on the facts of that case that the appellant was eligible for admission to the MBBS seat which was wrongly offered to a candidate lower in rank, although the appellant was present in the counselling, signed the attendance sheet participated in the photography and thumb impression.

15. In the present case as noted above for

participation in the spot admission, pre-condition was surrender of seat by the candidate. Object and purpose of surrendering seat for participating in the spot admission is to make available the seat of that candidate also in the process of allotment. In event a candidate does not surrender the seat and want to participate in the spot admission, the seat held by the candidate shall not be available in the process of spot admission and if the candidate is permitted to opt for another seat, the earlier seat held by him/her shall remain vacant which is not the object and purpose of counselling. In counselling/spot admission all available seats are thrown in the common pool so as to adjust the choices and option of the candidates according to their merit. When the petitioner did not throw her seat in the common pool by not surrendering the seat, she was not rightly considered for allotment of seat which was available in the spot admission on 09.06.2015.

16. In view of the facts of the present case, the aforesaid judgment of the Apex Court is clearly distinguishable.

17. In the above view of the matter, we do not find any error in the judgment of the learned Single Judge dismissing the Writ Petition.

There is no merit in the Writ Appeal. The Writ Appeal is dismissed.

**ASHOK BHUSHAN,
CHIEF JUSTICE.**

**A.M. SHAFFIQUE,
JUDGE.**

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