

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 1149 of 2014**

Dr. Dilish Singh S/o Dr. S.E.Singh Aged About 29 Years Posted As
Medical Officer At Primary Health Centre, Saghawana, Block Gorella,
Distt Bilaspur, Cg

---- **Petitioner****Versus**

1. State Of Chhattisgarh And Anr. S/o Through The Secretary, Govt. Of Chhattisgarh, Health & Family Welfare Department, Mahanadi Bhawan, Mantralaya, Naya Raipur, Ps Rakhi, Distt Raipur, Cg
2. The Director, Directorate Of Medical Education, Raipur, Dist Raipur, Cg
3. Smita Tiwari, D/o KP. Tiwari through the Director, Medical Education, Raipur (CG)

-----**Respondents**

For Petitioner:	Shri Kishore Bhaduri, Advocate.
For Respondents No.1 & 2/State:	Shri Prafull N. Bharat, Additional Advocate General.
For Respondent No.3:	Shri Kshitiz Sharma, Advocate.

Hon'ble The Chief Justice**Hon'ble Shri Justice P. Sam Koshy****Order on Board****Per Navin Sinha, Chief Justice****26/04/2016**

1. The Petitioner, having passed the MBBS Examination was working as Medical Officer in the Health Department of the State Government. He appeared successfully at the Pre-P.G Examination 2013. Rule 2(9) of the Chhattisgarh Post Graduation Entrance Rules, 2013 (hereinafter referred to as 'the Rules') defined an in-service candidate. Rule 5(2) provided for 50% reservation against the State quota for an in-service candidate. A further sub-categorisation was done of in-service candidates from the Health Department and the Medical Education Wing. Preference was to be given to candidates from the health department and only in the event of vacancies still remaining

available, those from the Medical Education Wing were to be considered against the post of an in-service candidate. The Petitioner who belongs to the OBC category from the Health department claims to have secured the highest marks in his category and was third in over all merit with the two candidates above him belonging to the Medical Education Wing. He is aggrieved by the denial of first preference to him leading to his not getting admission in a discipline of his choice but another.

2. Learned Counsel for the Petitioner submitted that the advertisement and publication of results was done under the Rules as framed in 2013. Before commencement of counseling the Respondents framed fresh Rules on 6.2.2014. In the new Rules, the sub-categorisation done under Rule-5(2) of the Rules of 2013 between in-service candidates from the Health Department and the Medical Wing was done away with.

3. The Petitioner, belonging to the Health Department, was entitled to first preference in admission as per his choice as the Rules with regard to procedures for selection could not have been changed mid way arbitrarily. Had the Respondents conducted counseling under the unamended Rules of 2013, the Petitioner would have got admission in the discipline of a degree in Radiology based on his marks and the preferential option available to him. The Respondents acted wrongly by giving preference in admission to in-service candidates from the Education Wing contrary to the Rules of 2013 merely because they may have had higher marks than him.

4. Even if with the passage of time, no positive relief can be granted to the Petitioner by admission in the discipline of degree in Radiology to which he was legitimately entitled under the Rules of 2013, the conduct of the Respondent authorities being grossly arbitrary, the Petitioner may be suitably

compensated for which reliance was placed on (2012) 7 Supreme Court Cases 389 (Asha vs. Pt. B.D. Sharma University of Health Sciences) and (2014) 10 Supreme Court Cases 521 (Chandigarh Administration vs. Jasmine Kaur). The admission taken by the Petitioner in the discipline of diploma in Radiology was therefore by compulsion and not voluntary or by choice.

5. Learned Additional Advocate General appearing on behalf of the State and Learned Counsel for Private Respondent No.3 submitted that the Petitioner participated in the first round of counseling held on 27.3.2014 applying the amended Rules in force from 6.2.2014. Since the private Respondent had higher marks than him and the sub-categorisation of in-service candidates had been done away with the Petitioner was allotted the discipline of diploma in Radiology. The second round of counseling was done on 2.5.2014 and the third round of counseling was held on 28.6.2014. During the third round of counseling, the seats including for MD Radiology were allotted on lottery basis for in-service unreserved category candidates. The Petitioner was all along aware that the counseling was being held under the amended Rules of 2014, but did not protest and has come to this Court only after he did not get his choice discipline after the third round of counseling. The Writ Petition was filed on 19.6.2014 belatedly. The Petitioner has not disclosed in the Writ Petition the fact that he had participated in three rounds of counseling and only when this fact has been disclosed in the counter affidavit, the Petitioner acknowledges the same in the rejoinder. The private Respondent admittedly has higher marks than the Petitioner.

6. We have considered the submissions on behalf of the parties and are not inclined to interfere in the matter in the peculiar facts and circumstances of the case. The question with regard to applicability of the Rules is therefore left open for consideration in an appropriate case.

7. The Writ Petition is completely silent on the aspect that the Petitioner had participated in three rounds of counseling conducted under the amended Rules before coming to the Court including the fact that he had taken admission in the meantime pursuant to the first round of counseling in the discipline of diploma in Radiology. It is apparent from the facts of the case that the Petitioner right from the stage of first counseling was fully aware of the sub-categorisation between in-service candidates having been done away with. It is also not in dispute that Private Respondent No.3 has higher marks than the Petitioner and is also an in-service candidate. The aforesaid necessary facts had not been pleaded in the writ petition but have been acknowledged only in reply to the counter affidavit.

8. The Petitioner has already got admission in the diploma of Radiology. We do not consider the present a fit case where the Petitioner was wrongly and illegally denied admission so as to warrant payment of any compensation. On the contrary, the conduct of the Petitioner reveals that he acquiesced in the applicability of the amended Rules, took his chance in the counseling with the hope that he may still get the discipline of his choice, naturally in which event he would not have come to the Court. Only when he has failed to secure admission in a discipline of his choice that he has turned around and raised the issue of illegality.

9. The facts in *Asha* (supra) were completely distinguishable including the alertness with which the matter was brought to Court within a week of the second round of counseling. Moreover, the present is not a case where candidates of lesser merit have been granted admission overruling or ignoring the marks and suitability of a candidate with better credentials. Resultantly, a candidate of higher merit was denied admission as discussed in paragraph-24, a fact fundamentally distinct and different in the present case.

10 Similarly, in Jasmine Kaur (supra) the guiding principles as discussed in paragraphs 33.1 to 33.10 lastly observe that the principles set out would have to be applied in the unique and distinguishable facts and circumstances of each case. In the facts of the present case as discussed we do not find any reason to grant compensation to the Petitioner.

11. The Writ Petition is dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE