

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.3164 OF 2016

[Dr. Sandip s/o Shamrao Dadmal .vs. Maharashtra University of Health Sciences, Nashik and others]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri N.S. Badhe, counsel for the petitioner,
Shri V.P. Gangane, AGP for respondent nos.2 and 3,
Shri Sadavarte, counsel for respondent no.4.

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CORAM : SMT. VASANTI A. NAIK AND
MRS. SWAPNA JOSHI, JJ.

DATED : JULY 05, 2016.

By this writ petition, the petitioner seeks a declaration that the action on the part of the respondent no.2 - Director of Health Services-cum-Chairman of the Counseling Committee in not following the reservation policy meant for the physically handicapped persons and not giving the preference to the petitioner in terms of the said policy is illegal, arbitrary and is liable to be quashed and set aside. A prayer is made by the petitioner for a direction to the respondents to allot the seat of M.D. Radio-diagnosis at B.J. Government Medical College to the petitioner.

The petitioner passed the M.B.B.S. degree course from the Government Medical College and Hospital at Nagpur on 15.2.2008 and completed his internship soon thereafter. The petitioner was appointed as a Medical Officer at Mandva on 4.7.2012. The petitioner applied for post graduation in medical science courses as an in-service-candidate on the basis of his appointment as Medical Officer. In the brochure, 3% seats were shown to have been reserved for the physically challenged. The petitioner claims to be suffering from post polio residual paralysis of right lower limb with 48% disability.

It is the case of the petitioner that the lower limbs of the petitioner are extremely weak. In all, 182 candidates were selected and the petitioner was placed at Sr.No.121. There was only one more physically challenged candidate, who was placed at Sr.No.134 in the select list. In all, 61 seats were earmarked in various disciplines for post graduation in medical sciences. The counseling took place on 24.5.2016. It is the case of the petitioner that the petitioner was granted admission in general surgery against his wish, though he is not in a position to take up the admission to the said course due to the physical disability suffered by him. It is the case of the petitioner that the petitioner immediately informed the respondent no.2 about his inability to get admitted in the post graduation course in general surgery and surrendered his admission on 25.5.2016. According to the petitioner, on 24.5.2016 the seat in M.D. Radio-diagnosis was available and the respondent no.2 could have granted the same to the petitioner, however, that was not done and the seat in general surgery was thrust on him. According to the petitioner, the action on the part of the respondent no.2 in not granting the seat in M.D. Radio-diagnosis to the petitioner is clearly illegal and arbitrary. The petitioner has sought admission in M.D. Radio-diagnosis by cancelling the admission granted to the respondent no.4.

Shri Gangane, the learned Assistant Government Pleader appearing on behalf of the respondent nos.2 and 3 states, on instructions, that the petitioner had opted for general surgery in the first round of counseling on 24.5.2016 and considering his merit and the availability of the said seat, he was admitted to the said seat. It is stated that as there was a change in mind of the petitioner, he surrendered the seat in general surgery on 25.5.2016, that is, on the next day. It is stated that no grievance or complaint whatsoever was ever made by the petitioner before

the respondent no.2 or for that matter any other authority in regard to the refusal on the part of the respondent no.2 to grant the seat in M.D. Radio-diagnosis to the petitioner. It is stated that, for the first time in the writ petition, the petitioner has made a grievance that he was wrongfully denied admission on the seat of M.D. Radio-diagnosis. It is stated that as the seat in M.D. Radio-diagnosis was available on 24.5.2016, the seat could have been allotted to the petitioner, had he asked for the same. It is stated that the preference of the petitioner was for general surgery and the said seat was allotted to him. It is stated that the counseling took place in the presence of all the candidates and hence a candidate cannot be permitted to make a grievance that a particular seat was thrust upon him though she had desired for some other seat.

Shri Sadavarte, the learned counsel for the respondent no.4 sought for the dismissal of the writ petition. It is stated that the respondent no.4 is admitted to the seat in M.D. Radio-diagnosis since long and he has started attending the classes.

On hearing the learned counsel for the parties, we find that the relief sought by the petitioner cannot be granted. There is word against word. We are not inclined to believe the statements made on behalf of the petitioner. The petitioner claims that the seat in general surgery was thrust upon the petitioner on 24.5.2016. The petitioner should not have accepted the seat on that particular day. The petitioner accepted the seat and surrendered the same on the next day. In the letter of surrender, there is no mention that the seat in general surgery was thrust upon him against his wish. Also, there is no mention that he had sought for the seat in M.D. Radio-diagnosis and the same was not granted to him. A candidate, who is not desirous of seeking admission in a particular discipline, would not agree for his admission in that discipline in the first place and if at all,

he is forcibly admitted, he would make a grievance immediately before the concerned authorities. Neither was a complaint lodged in respect of the illegal action of the respondent no.2 before the respondent no.2 itself nor was a complaint filed before any other authority of the State Government. In the writ petition filed on 31.5.2016, a grievance is made that the petitioner was granted the seat in general surgery against his wishes. It is the case of the petitioner that considering the ailment, he could not have opted for general surgery. It is quite possible that on 24.5.2016 the petitioner may have thought of securing admission to the seat in general surgery and on second thought, he may have given up that idea and surrendered his seat in general surgery on 25.5.2016. Since the facts averred by the petitioner in the instant petition are seriously disputed by the respondent no.2, it would not be possible to hold that the seat in general surgery was forcefully thrust on the petitioner. In the circumstances of the case, we are not inclined to set aside the admission of the respondent no.4 in M.D. Radio-diagnosis, more so when the admission process came to an end on 31.5.2016 and the respondent no.4 is taking education in the discipline of M.D. Radio-diagnosis, since a month.

For the reasons aforesaid, we dismiss the writ petition with no order as to costs.

JUDGE

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