

THE HON'BLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION Nos.17986 of 2009, 72 of 2011
&
16543 of 2009

COMMON ORDER:

Since the petitioners in these writ petitions share common grievance, this Court deems it appropriate to dispose of these writ petitions by way of this Common Order.

2. In the present writ petitions, petitioners are seeking directions to the respondents to reimburse the fee for Pharma – D Course for the petitioners at Bharat Institute of Technology (Pharmacy) for the year 2008 – 2009 by declaring the action of the 2nd respondent – Principal Secretary (Social Welfare), in rejecting reimbursement of fee as illegal.

3. Petitioner in W.P.No.17986 of 2009 belongs to Scheduled Caste and the petitioners in W.P.Nos.72 of 2011 and 16543 of 2009 belong to Scheduled Tribe and they appeared for EAMCET – 2008 (Agriculture & Medicine) and joined Pharma – D course in the respondent college, which is an unaided Pharmacy College. According to the petitioners, prior to joining in the respondent college, they made a requisition to the 1st and 2nd respondent for reimbursement of fee on the ground that they belong to weaker community.

4. It is the case of the petitioners herein that the Government has provided fee reimbursement to Scheduled Caste/Scheduled Tribe/Back Ward Class/Women/Minority students. It is the grievance of the petitioners that despite the representations made by them to the concerned authorities, no positive response has so far emanated from the respondents.

5. In the above background, the present writ petitions came to be filed. Responding to the '*Rule Nisi*' issued by this Court, Counter Affidavits have been filed, denying the averments in the writ petitions

and in the direction of justifying the impugned action.

6. Submissions/contentions of the petitioners:

1. The impugned action is highly illegal, arbitrary, unreasonable and violative of Article 14 of the Constitution of India.
2. The questioned action is in contravention of the orders of the Government.
3. Simply because the respondents followed the procedure for B Category seats, the claim of the petitioners cannot be rejected and the said action of the respondents is highly illegal and arbitrary.

7. Submissions/Contentions of the learned Government Pleader:

1. Petitioners were admitted in the respondent college in the year 2008-2009 under Management Quota, as such, they are not eligible for scholarship in terms of G.O.Ms.No.66, Social Welfare (SW.EDN.2), Department, dated 08.09.2010.
2. In view of the instructions of the Government vide G.O.Ms.No.271, Higher Education (EC-1) Department, dated 11.11.2008, all the seats in the Pharma-D course had to be considered for the academic year 2008-2009 as Management seats required to be filled by Managements of the Colleges as per the guidelines issued in G.O.Ms.No.61, Higher Education (EC.2) Department, dated 13.05.2008.
3. Petitioners did not apply for scholarship during the year 2008-2009 and they applied for the scholarship online during the year 2009-2010 as fresh candidates in the respondent Pharmacy college and the respondent pharmacy college on 05.10.2009 vide application No.200901379579 by mentioning their admission in B-Pharmacy instead of Pharma-D and the principal of the respondent college rejected the application at college level itself and the Government does not know reasons for the same. As such, the official respondents cannot sanction post metric scholarship in the absence of applications and other required documents like Caste Certificate, Income Certificate, Allotment order, Bonafide certificate etc., of the petitioners.

8. In the above backdrop, now the issue which boils down for consideration of this Court is:

“Whether the petitioners are entitled for reimbursement of fee?”

9. The Pharmacy Council of India in the month of October, 2008 accorded approvals for conducting 1st year Pharma-D Course with intake of 30 for academic year 2008-2009 under Section 12 of Pharmacy Act, 1948.

10. On the applications made by the respondent college and 3 other colleges, the Government of Andhra Pradesh, Vide G.O.Ms.No.272, Higher Education (EC-1) Department, dated 11.11.2008, accorded permission in favour of the respondent college and 3 other colleges for conducting 1st year Pharma-D Course with intake of 30 admissions in each college for the academic year 2008-2009 with the following conditions:

- (i) *Subject to fulfilment of conditions stipulated by the Pharmacy Council of India, New Delhi.*
- (ii) *Subject to obtaining affiliation from the concerned Universities.*
- (iii) *The admission process for all the seats will be taken up as per the guidelines issued in G.O.Ms.No.61, Higher Education (EC.1) Department, dated 13.05.2008 read with letter No.APSCHE/Secy/CETs/July, dated 17.07.2008 of Secretary, A.P. State Council of Higher Education, Hyderabad.*

11. In the said G.O.Ms.No.272, Higher Education (EC-1) Department, dated 11.11.2008, at paragraph No.4, the State Government also said that the admission rules and test rules etc., regarding Pharma-D Course shall be issued separately in due course and also said that the fee in respect of Pharma-D course would be as fixed by AFRC.

12. The case of the 3rd respondent in the counter is that as Pharma-

D Course was not included as one of the subjects in EAMCET-2008 and as the counselling for admissions on the basis of EAMCET-2008 was already closed on 23.10.2008 and as permission was subsequently accorded for conducting Pharma-D course during the academic year 2008-2009 itself and as regular test and admission rules regarding Pharma-D Course were yet to be issued and proposed to be issued separately in due course, the Government Orders vide G.O.Ms.Nos.271 & 272, dated 11.11.2008 mentioned/indicated that during the academic year 2008-2009, the admission process would be as per G.O.Ms.No.61, Higher Education (EC.2) Department, dated 13.05.2008. While referring to the same, it is the emphatic submission of the learned Government Pleader that all the seats in Pharma-D Course for 2008-2009 were required to be considered as Management Seats as per G.O.Ms.Nos.271 and 272, dated 11.11.2008.

13. Vide G.O.Ms.No.61, Higher Education (EC.2) Department, dated 13.05.2008, the State Government, following the orders of this Court in W.P.No.16290 of 2007, while interpreting Rule 6(ii)(1) of the Admission Rules issued in G.O.Ms.Nos.53 and 54, dated 10.05.2006, stipulated the procedure to be adhered to by the colleges for filling up 'B' Category seats,.

14. The respondents seek to justify their action and attempt to take shelter under the said G.O.Ms.No.61, dated 13.05.2008. But a reading of the contents of the orders issued by the Government vide G.O.Ms.Nos.271 and 272, dated 11.11.2008, shows that the admission process for all seats should be taken up as per the guidelines issued in G.O.Ms.No.61, dated 13.05.2008. The said G.O.Ms.No.61, dated 13.05.2008, stipulated only the guidelines for filling up 'B' Category seats. It also cannot be lost sight of that Government made the said arrangement, as evident from the Counter affidavit, in the absence of Regular test and admission rules regarding the said Pharma-D Course and as

D-Pharmacy Course was not included in EAMCET-2008 and as

Counselling of EAMCET already came to an end on 23.10.2008.

15. As rightly pointed out by the petitioners, simply because the respondents followed the procedure stipulated under G.O.Ms.No.61, dated 13.05.2008, for filling up the Pharma-D Course in the respondent college, the same cannot be the criteria nor it is a basis for denying the benefit of fee reimbursement to the petitioners, who belong to SC & STs.

16. Simply because the respondents followed the procedure under G.O.Ms.No.61, dated 13.05.2008 and simply because AFRC fixed the fee by treating the seats belonging to one category as per order No.88/AFRC/FF/2008-2009, dated 03.12.2008, the legitimate claim of the petitioners, in the facts and circumstances of the case, cannot be denied. If the petitioners are denied the benefit, the very purpose of extending the said benefit to the STs and SCs would be frustrated in the considered opinion of this Court.

17. During the course of hearing, it is brought to the notice of this Court an order passed by this Court in W.P.No.26355 of 2009, dated 24.07.2013 and in the said judgment, this Court, while referring the provisions of Article 46 of the Constitution of India and various pronouncements rendered by the Hon'ble Apex Court, allowed the claim of the petitioners therein for extension of benefit of the fee reimbursement.

18. During the course of hearing, while referring to paragraph No.4(iii) of the G.O.Ms.No.66, dated 09.08.2010, it is submitted by the learned Government Pleader that in view of the said instructions, petitioners herein are not entitled for any relief from this Court under Article 226 of the Constitution of India. After giving thoughtful consideration of the issue involved in the writ petitions and this Court is of the considered opinion that in peculiar circumstances of the case, the said instructions issued by the State Government would not render any assistance to the case of the respondent and by any stretch of imagination, the same would not disentitle the petitioners from

claiming the reimbursement.

19. For the aforesaid reasons, Writ Petitions are allowed, directing the respondents herein to extend the benefit of scholarship and fee reimbursement scheme to the petitioners and pay the consequential benefits.

20. Miscellaneous petitions pending consideration, if any, in the Writ Petition shall stand closed in consequence. No order as to costs.

A.V.SESHA SAI, J

01.02.2016

SS