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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 23.09.2016
+ W.P.(C) 7455/2016 & CM Nos.33649/2016, 30650/2016 (for interim directions)

NOOR DHALIWAL

..... Petitioner

versus

UNION OF INDIA AND ORS

..... Respondents

Advocates who appeared in the case:

For the Petitioner:

Mr. K.K. Sharma, Sr. Advocate with Mr. Rajiv Bakshi, Ms. Bhanita Patowary and Mr. Ayush Chourasia, Advocates.

For the Respondents:

Mr. Manish Mohan, CGSC with Ms. Manisha Saroha, Mr. Shivam Chanana, Mr Priyanka Sinha and Ms. Shivangi Sinha, Advocates for respondent Nos.1, 5 and 6.

Mr. Sanjoy Ghose, ASC with Ms. Pratishtha Vij, Advocates for respondent No.2.

Ms. Anita Sahani, Advocate for respondent No.3.

Mr. T.Singhdev with Ms. Puja Sarkar,

Ms. Biakthansangi and Mr. Tarun Verma, Advocates for respondent No.4.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

23.09.2016

SANJEEV SACHDEVA, J (ORAL)

1. Counter affidavit has been filed by the respondent No.5 vide Diary No.252040 dated 23.09.2016. The Registry is directed to place the same on record. A copy of the same has been produced in Court for perusal.

2. The petitioner has challenged the action of the respondents in not making the reservation policy for defence category, as applicable to undergraduate medical programmes (MBBS/BDS). It is contended that there is a uniform reservation policy of the Ministry of Home Affairs, as has been referred to in the Communication dated 11.07.2016 of the Ministry of Home Affairs.

3. It is contended that by Clause 6.1.2 of the Brochure, issued by respondent No.3, reservation has been provided for B.Tech./M.Tech/B.Arch./Professional Programmes as also for B.Sc., Nursing. It is contended that similar reservation has not been provided for MBBS/BDS courses for defence personnel.

4. Learned counsel appearing for Guru Gobind Singh Indraprastha University submits that out of the four colleges, which are subject matter of the present petition, i.e. (i) Delhi Municipal Corporation Medical College (Hindu Rao Hospital), (ii) Dr. Baba Saheb Ambedkar Medical College, (iii) Army College of Medical Sciences and (iv) Vardhman Mahavir Medical College (VMMC) & Safdarjung Hospital, the first three are under the Delhi Government and the fourth is under the Central Government, though all are affiliated to the said University. It is contended that for the three colleges under the Delhi Government, the recommendation of the Ministry of Home Affairs, by communication dated 11.07.2016 has been accepted and reservation has been granted for defence category in terms of the said letter. Insofar as VMMC & Safdarjung Hospital is concerned, since

the same is under the Central Government, it is for the Ministry of Health and Family Welfare to consider the request of the Ministry of Home Affairs and grant reservation.

5. On 15.09.2016, counsel for the Respondent Union of India had contended that the Ministry of Health and Family Welfare was still to take a decision about the grant of reservation or otherwise. By order dated 15.09.2016, this Court had directed that the counseling for the seats covered under the 5% reservation quota for the defence personnel wards be deferred till the next date.

6. Subsequently, an affidavit has been filed by the respondent No.3 University contending that by the time the order was passed by this Court on 15.09.2016, certain admissions had already taken place. A table indicating the number of seats that had been filled up has been incorporated in paragraph 5 of the said affidavit.

7. The counter affidavit filed by the respondent No.5 Ministry of Health and Family Welfare indicates that the Principal of VMMC & Safdarjung Hospital, by letter dated 06.09.2016, had requested that 5% reservation be carved out for the defence personnel. In view of the letter of the Principal, the matter was referred to Medical Education Policy Division of Ministry of Health and Family Welfare for taking a decision on the said issue.

8. It is further contended that as per the Ministry of Health and Family Welfare, introduction of 5% horizontal reservation for

defence personnel in MBBS course in 85% State Quota seats in VMMC & Safdarjung Hospital requires consultation with Ministry of Human Resource & Development and Ministry of Law and since this consultative work would take time and the admission process is required to be closed by 30.09.2016 for the academic session 2016-17, it was found not feasible to introduce the reservation for the current academic year.

9. Further, the admission brochure for the academic session 2016-17 was issued by the respondent No.3 sometime in January 2016. The said admission brochure clearly spells out as to the courses in which there is reservation and the courses for which there is no reservation for the defence category.

10. The petitioner has filed the present petition on 20.08.2016. As per the directions of the Supreme Court, the last date for admission in medical courses is 30.09.2016. The petitioner is not able to show that the reservation policy has to be applied for all colleges. Merely because the Ministry of Home Affairs has recommended that there should be reservation, would not, *ipso facto*, imply that it is mandatory for the colleges to have reservation, though they would have to abide by the directives of their parent Ministry.

11. The Ministry of Health and Family Welfare, on receipt of the recommendation of the Ministry of Home, has stated that the consultative process would have to be commenced prior to carving out the 5% reservation for the defence personnel. There can be no

automatic reservation created for the defence category till the Ministry of Health and Family Welfare takes a decision. As per the Ministry of Health and Family Welfare, a consultative process is required with the Ministry of Human Resource Development and Ministry of Law which is likely to take time entire process may take some time which may delay the admission process. Since the letter of the Ministry of Home Affairs is dated 11.07.2016, the fact that the Ministry of Health & Family Welfare requires some reasonable time to take a decision prior to carving out a reservation is not unreasonable. The said respondent cannot be faulted with for not having reservation for the academic session 2016-17 for the VMMC & Safdarjung Hospital.

12. In my view, there is no merit in the petition. The writ petition is, accordingly, dismissed. Interim order dated 15.09.2016 stands vacated and the respondents are at liberty to proceed with the counselling. The respondent – Ministry of Health & Family Welfare shall consider the recommendations of the Ministry of Home and take a decision thereon expeditiously so that if they decide to have reservation for the defence personnel, the same can be implemented at least for the next academic session.

13. *Dasti* under the signatures of the Court Master.

SANJEEV SACHDEVA

SEPTEMBER 23, 2016
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