

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21-06-2017

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

W.P.No.11183 of 2017
and W.M.P.No.12157 of 2017

V.S.Jayaa Vishrant

... Petitioner

-Vs-

1. National Institute of Fashion Technology,
Rep. By its Director General
NIFT Campus, Hauz Khas,
Near Gulmohar Park,
New Delhi 110016.

2.The Additional Director General,
National Institute of Fashion Technology'
NIFT Campus, Hauz Khas,
Near Gulmohar Park,
New Delhi 1100016.

... Respondents

Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for proceedings of the 2nd respondent issued through her email to the petitioner and quash the same consequently direct the respondents to participate in the Situation Test to be held on 04-05-2017 and General Counseling to be conducted by the respondents for 4 year Degree Course in B. Design (Fashion Communication) for the academic year 2017-2018.

For Petitioner

:Mr.V.Karunakaran

For Respondent

:Mr.K.Sridhar

ORDER

The petitioner has filed the above writ petition praying for issuance of Writ of Certiorarified Mandamus to call for the proceedings of the 2nd respondent issued through her e-mail to the petitioner and quash the same and consequently direct the respondents to participate in the Situation Test, which was to be held on 04-05-2017 and General Counseling to be conducted by the respondents for the 4-year Degree Course in B.Design (Fashion Communication) for the academic year 2017-2018.

2. The petitioner is an aspirant to join B.Design (Fashion Communication Course). The admission to National Institute of Fashion Technology is based on all India Merit List and the same is through counseling. It is stated that the petitioner belongs to backward class community as classified by the State of Tamil Nadu. The community is also listed as OBC by the Central Government. While applying for B.Design Course through online portal of NIFT, the petitioner, due to inadvertence, had chosen the category General instead of OBC. Only at the time of examination, it was noticed that the social category of the petitioner was filled as General instead of OBC. By the time, the petitioner had realised the mistake that had crept in, and the cut off date given for making any course in the online application was also over. It is stated

that the result of the online examination was published on 30.03.2017 and the name of the petitioner was not shortlisted, as he had scored 41.90 marks out of 80. The cut off marks for OBC is only 41.80. Therefore, the petitioner met the Chennai Centre to change the category. But the request was turned down stating that the examination was conducted by the Indian Management Association (IMA), which is a nodal agency for conducting the examination. In fact, the petitioner seems to have sent a representation through e-mail as well as by post seeking a correction in the category which was filled wrongly by inadvertence. It is stated that the respondents have issued call letter for the situation test, for which, 20 marks are earmarked. Only after the situation test is complete, the results will be published.

3. It is the case of the petitioner that unless his case is treated as OBC, he will not be called for counselling. The petitioner also had furnished the community certificate issued by the Tahsildar that he belongs to backward class. But, the respondents had rejected the same stating that the category once filled up, cannot be changed in the data at this juncture.

4. The respondent had filed counter affidavit stating that

the online registration started on 02.11.2016 and was opened till 10.01.2017. It is further stated that those mistakes committed by any of the applicant, there was a method to correct the mistake. In the portal for any clarification, e-mail ID and telephone numbers were mentioned. The said facility was also available from 10.00am to 4.00p.m. (Monday to Friday) for providing any help / assistance to candidates.

5. The learned counsel for the respondents pointed out that there were similar cases with several candidates who were allowed to change the category between 02.11.2017 and 10.01.2017. However, the petitioner did not try to approach the help desk or to the NIFT Admission Department for change of category before the closing date of the registration. Hence, the allegation that there is no system to correct the mistake, is untenable.

6. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents.

7. From the above facts, it is clear that in view of the declaration of the communal status in the application form, the petitioner was not declared as eligible for counselling. However, if

the communal status is treated as per his entitlement and also adding the marks for situation test, it would enable the petitioner to partake in the counselling and obtain a seat.

8. The question that stands out to be decided is whether the great opportunity of studying as per his dream be deprived, because of the mistake committed by him in not filling up the form correctly. No doubt, the respondents have given an opportunity for one time correction to the candidate, which was not made use of by the petitioner. The mistake committed by the petitioner is only with respect to incorrect communal status in the application form. If the same is permitted to be altered, certainly, it will not change the status of the merit of the student, as the marks would remain the same. In this case, the petitioner also seems to have secured the cut-off mark even without adding the situation test marks. However, admittedly, the petitioner has claimed for correction with delay. As demonstrated by the learned counsel for the respondents, there was an opportunity for correction of the incorrect data by sending an e-mail or registered post. But, due to the inadvertence, the petitioner/student has made a minor mistake, which is contrary to the community certificate issued to him. Having successfully reached the cut-off marks, whether the candidate should be deprived of the opportunity of taking part in

the counselling ? The petitioner / student has the responsibility to scrupulously and carefully go through the instructions at the time of applying, especially when the application is made online. The rejection on the ground that the communal status has been entered wrongly will certainly be devastating to the candidate. The communal status even though has been entered wrongly by the petitioner, as per his documents, the same cannot be changed. Any admission to the course would be only after the counselling and whether the student should be deprived of even taking part in the counselling for the silly but expensive mistake made by him ?

9. It is relevant to place the reliance on the decision of the Supreme Court reported in 2016 (4) SCC Page 754 (Ram Kumar Guroya Vs. Delhi Subordinate Services Selection Board), wherein, in paragraphs 16 to 18, the Apex Court held as follows:-

16. In Pushpa (supra), relevant paragraphs from the case of Tej Pal Singh (supra) have also been extracted, which read thus :-

"11.....15. The matter can be looked into from another angle also. As per the advertisement dated 11th June, 1999 issued by the Board, vacancies are reserved for various categories including 'SC' category. Thus in order to be considered for the post reserved for 'SC' category, the requirement is that a person should belong to 'SC' category. If a person is SC his is so by

birth and not by acquisition of this category because of any other event happening at a later stage. A certificate issued by competent authority to this effect is only an affirmation of fact which is already in existence. The purpose of such certificate is to enable the authorities to believe in the assertion of the candidate that he belongs to 'SC' category and act thereon by giving the benefit to such candidate for his belonging to 'SC' category. It is not that petitioners did not belong to 'SC' category prior to 30th June, 1998 or that acquired the status of being 'SC' only on the date of issuance of the certificate. In view of this position, necessitating upon a certificate dated prior to 30th June, 1998 would be clearly arbitrary and it has no rationale objective sought to be achieved.

16. While taking a particular view in such matters one has to keep in mind the objectives behind the post of SC and ST categories as per constitutional mandate prescribed in Articles 15(4) and 16(4) which are enabling provisions authorising the Government to make special provisions for the persons of SC and ST categories. Articles 14(4) and 16(4), therefore, intend to remove social and economic inequality to make equal opportunities available in reality. Social and economic justice is a right enshrined for protection of society. The right in social and economic justice envisaged in the Preamble and elongated in the Fundamental Rights and Directive Principles of the Constitution, in particular Arts. 14, 15, 16, 21, 38, 39 and 46 are to make the quality of the life of the poor, disadvantaged and disabled citizens of the society meaningful."

17. Further, in the case of Pushpa (supra), relevant portion from the judgment of Valsamma Paul's case (supra) has also been extracted, which reads as under:-

"11.....'17.....""21. The Constitution through its Preamble, Fundamental Rights and Directive Principles created a secular State based on the principle of equality and non-discrimination, striking a balance between the rights of the individuals and the duty and commitment of the State to establish an egalitarian social order."

18. In our considered view, the decision rendered in the case of Pushpa (supra) is in conformity with the position of law laid down by this Court, which have been referred to supra. The Division Bench of the High Court erred in reversing the judgment and order passed by the learned single Judge, without noticing the binding precedent on the question laid down by the Constitution Benches of this Court in the cases of Indra Sawhney and Valsamma Paul (supra) wherein this Court after interpretation of Articles 14,15,16 and 39A of the Directive Principles of State Policy held that the object of providing reservation to the SC/ST and educationally and socially backward classes of the society is to remove inequality in public employment, as candidates belonging to these categories are unable to compete with the candidates belonging to the general category as a result of facing centuries of oppression and deprivation of opportunity. The constitutional concept of reservation envisaged in the Preamble of the Constitution as well as Articles 14, 15, 16 and 39A of the Directive Principles of State Policy is to achieve the concept of giving equal opportunity to all sections of the society. The Division Bench, thus, erred in reversing the judgment and order passed by the learned

single Judge. Hence, the impugned judgment and order passed by the Division Bench in the Letters Patent Appeal No. 562 of 2011 is not only erroneous but also suffers from error in law as it has failed to follow the binding precedent of the judgments of this Court in the cases of Indra Sawhney and Valsamma Paul (supra). Therefore, the impugned judgment and order passed by the Division Bench of the High Court is liable to be set aside and accordingly set aside. The judgment and order dated 24.11.2010 passed by the learned single Judge in W.P. (C) No. 382 of 2009 is hereby restored.

10. Going by the ratio of the Supreme Court mentioned above, the reservation is one of the measures adopted by the student to remedy the discriminatory practices against various classes of people which have resulted in their social, educational and economic backward class. While so, despite the fact that the petitioner is very much eligible to be considered for the admission, if he is categorised as O.B.C, the minor mistake committed should not be allowed to deter the same.

11. In such view of the matter, a direction is given to the respondents to treat the petitioner as per the communal status de-hors the mistake committed by him while filling up the online application form appearing in the NIFT examination and pass appropriate orders thereof. It is also made clear that this direction is issued only considering the facts and circumstances involved in this case. Accordingly, the Writ Petition is disposed of with the

above direction. No costs. Consequently, connected miscellaneous petition is closed.

21.06.2017

srn

Note: Issue order copy on 21.06.2017

To

1. The Director General
National Institute of Fashion Technology,
NIFT Campus, Hauz Khas,
Near Gulmohar Park,
New Delhi 110016.

2. The Additional Director General,
National Institute of Fashion Technology'
NIFT Campus, Hauz Khas,
Near Gulmohar Park,
New Delhi 1100016.

PUSHPA SATHYANARAYANA.J

SRN

W.P.No.11183 of 2017
and
W.M.P.No.12157 of 2017

21.06.2017

<http://www.judis.nic.in>