

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8130 OF 2016

Shri Kunal s/o Bhagwat Fegade

Petitioner

Versus

The State of Maharashtra
& another

Respondents

Mr. V.D. Sapkal, advocate for petitioner.

Mr. P.N. Kutti, A.G.P. for respondents.

CORAM : R.M.BORDE &

K.K. SONAWANE, JJ.

DATE : 14th MARCH, 2018

PER COURT:

1. Petitioner is praying for issuance of directions to State to provide for reserved seats to the educational institutions imparting MBBS/BDS degree courses in favour of wards/nominees of the freedom fighters. It is contended that not providing for such reservation in favour of the wards/nominees of the freedom fighters is illegal, arbitrary and discriminatory.

2. The admission rules framed by the DMER do not provide for such reservation. It cannot be disputed that admission rules framed by the DMER are in the nature of statutory rules. Petitioner does not have any legal right to claim reservation in favour of wards/nominees of the freedom fighters. The reservation claimed by petitioner is not in the nature of statutory or constitutional reservation. Article 15(4) of the Constitution of India enables the State for making special provision for advancement of any socially or educationally backward class of citizens or for

Scheduled Castes and Scheduled Tribes. Article 15(5) provides that nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for advancement of any socially or educationally backward class of citizens or for Scheduled Castes and Scheduled Tribes in so far as such special provisions relate to admission to educational institution including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30. Petitioner does not fall in the category of socially and educationally backward class of citizens or from amongst Scheduled Castes and Scheduled Tribes. Petitioner as such cannot claim reservation of the seats in the educational institutions.

4. The Hon'ble Supreme Court in the matter of Gulshan Prakash and others vs State of Haryana and others reported in **2010(3) Bom.C.R. 669** has observed that no directions can be sought either to provide for reservation or for relaxation. In paragraph no. 12 of the judgment, it is observed thus :

12. In Union of India v. R. Rajeshwaran and Another, (2003) 9 SCC 294, direction was sought for to apply the rule of reservation to the Scheduled Castes and Scheduled Tribes in respect of those seats which are set apart for All-India pool in MBBS/BDS list. In the present context, the following conclusion is relevant :-

9. In Ajit Singh (II) v. State of Punjab this Court held that Article 16(4) of the Constitution confers a discretion and does not create any constitutional duty and obligation. Language of Article 15(4) is identical and the view in Comptroller and

Auditor General of India, Gian Prakash v. K.S. Jagannathan and Superintending Engineer, Public Health v. Kuldeep Singh that a mandamus can be issued either to provide for reservation or for relaxation is not correct and runs counter to judgments of earlier Constitution Benches and, therefore, these two judgments cannot be held to be laying down the correct law. In these circumstances, neither the respondent in the present case could have sought for a direction nor the High court could have granted the same.

10. Hence, we allow the writ appeal transferred to this Court and set aside order made in the writ petition. The appeal also shall stand disposed of accordingly.

5. Since the petitioner does not have any legal or constitutional right to claim relief, nor it is permissible to issue direction to the State to provide for reservation in favour of the class represented by petitioner i.e. a class beyond the purview of Articles 15(4) and 15(5) of the Constitution of India, the relief claimed by petitioner in the instant petition does not deserve to be granted.

6. Writ petition is devoid of substance hence stands rejected.

7. Pending civil application, if any, does not survive and stands disposed of.

K. K. SONAWANE
JUDGE

R.M.BORDE
JUDGE