

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :09.03.2018
CORAM

THE HON'BLE MR.JUSTICE R.MAHADEVAN
W.P.No.4795 of 2018
and W.M.P.Nos.5937 and 5938 of 2018

Dr.Karthik Sadasivam

..Petitioner

vs

1.Government of India,
rep.by its Secretary,
Ministry of Health and Family Welfare,
Nirman Bhavan,
New Delhi-110 001.

2.The Director,
National Board of Examination,
Medical Enclave, Ansari Nagar,
Ring Road, New Delhi-110 029.

3.The Director of Medical Education,
Director of Medical Education,
162, EVR Periyar Salai,
Kilpauk, Chennai-600 010.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to change the category of the petitioner from 'General Category' (UR) to OBC Category and declare him as a qualified candidate in the NEET-PG 2018 merit list and consequently permit him to participate in the online counseling.

For Petitioner : Mr.Om.Prakash, Sr.C. for
Mr.V.R.Mukundakumar

For R1 : Mr.K.S.Jayaganesh
For R2 : Mr.Anand Swamy Dhruva

O R D E R

This writ petition has been filed for a Mandamus, directing the respondents to change the category of the petitioner from 'General Category (UR) to OBC Category and declare him as a qualified candidate in the NEET-PG 2018 merit list and consequently permit him to participate in the online counseling.

2.It is the case of the petitioner that he belongs to OBC category. However, while applying for NEET PG 2018, in online, he mentioned his category as General Category (UR), by mistake. Subsequently, he appeared in the Test in question, held on 7.1.2018 and secured 296 marks. As the cut off marks for OBC category is 281 marks, he submitted a representation dated 06.02.2018 to the second respondent requesting to change his category from General Category UR to OBC. Finding no response on the said representation, he has come with the present writ petition for the above stated relief.

3.Mr.Om Prakash, learned Senior Counsel representing the learned counsel for the petitioner submitted that due to inadvertent mistake, the petitioner has selected his category as General Category UR instead of OBC, while applying NEET PG 2018. Learned Senior Counsel further submitted that if the petitioner is treated under OBC category, he is eligible to get admission for PG courses, as he scored more than the cut off marks prescribed for OBC category. Learned Senior Counsel also submitted that since the online counseling for PG courses is scheduled to be held from 12.03.2018, the respondents may be directed to consider the request of the petitioner with regard to change of his category at the earliest.

4.Heard Mr.K.S.Jayaganesh, learned counsel for the first respondent and Mr.Anand Samy Dhruva, learned counsel for the second respondent and perused the materials placed before this Court.

5.Concededly, while filling-up the online application for NEET PG 2018, the petitioner has selected his category as General Category UR, whereas, he belongs to Hindu-Kaikolar Community, which comes under the OBC category. According to the petitioner, such mistake committed by him is due to inadvertence. He also enclosed a copy of the community certificate issued by the competent authority in the typed set of papers, to the effect that he belongs to OBC category.

6.This Court is of the opinion that to err is human and such wrong selection of the category by the petitioner is due to inadvertent mistake, due to which, he cannot be penalised, as he secured more than the cut off marks prescribed for OBC category.

7.At this juncture, the necessary inspiration flows from the decision of the three-Judge Bench of the Apex Court in the case of Dolly Chhanda v. Chairman, Jee and others [(2005) 9 SCC 779], wherein, in para 7, it has been held as follows:

"7.The general rule is that while applying for any course of study or a post, a person must possess the eligibility qualification on the last date fixed

for such purpose either in the admission brochure or in application form, as the case may be, unless there is an express provision to the contrary. There can be no relaxation in this regard i.e., in the matter of holding the requisite eligibility qualification by the date fixed. This has to be established by producing the necessary certificates, degrees or mark sheets. Similarly, in order to avail of the benefit of reservation or weightage, etc. necessary certificates have to be produced. These are documents in the nature of proof of holding of particular qualification or percentage of marks secured or entitlement to benefit of reservation. Depending upon the facts of a case, there can be some relaxation in the matter of submission of proof and it will not be proper to apply any rigid principle as it pertains in the domain of procedure. Every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidatures."

8. Further, the identical subject matter has been dealt with in detail, by this Court in various decisions and one such case being WP.No.17400 of 2017 (C.Gayathri v. the CBSC, rep. by its Secretary, New Delhi and two others), where-under, after discussing the issue involved in detail, this Court had disposed of the said writ petition, by directing the respondents therein to consider the claim of the petitioner therein and treat him as Backward Class Community, while considering him for admission to MBBS Course. Pursuant to the said decision, many writ petitions on the same subject matter, came to be allowed by this Court.

9. In such view of the matter, this Court directs the respondents to consider the claim of the petitioner with regard to change of his category from General Category UR to OBC, on submission of the relevant documents before them, especially the second respondent, and pass appropriate orders, on merits, before the expiry of the counseling period.

10. Accordingly, this writ petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

sk/ab

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary,
Ministry of Health and Family Welfare,
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2.The Director,
National Board of Examination,
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3.The Director of Medical Education,
Director of Medical Education,
162, EVR Periyar Salai,
Kilpauk, Chennai-600 010.

+lcc to Mr.K.S.JeyaGaneshan, Advocate Sr.No.18023

+lcc to Mr.V.R.Mukundakumar, Advocate Sr.no.17906

GMR(CO)

sm:12.3.2018

W.P.No.4795 of 2018



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