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

Date of decision: 9th January, 2019

+ W.P.(C) 4248/2017 and CM Nos. 18539, 18540, 25185/2017,
986, 8369, 12633, 15361, 26784, 33993/2018

DR. ARUNA MISHRA Petitioner

Through: Petitioner in person

versus

UNION OF INDIA & ORS Respondents

Through: Mr. Vijay Joshi, Sr.Panel
Counsel for R-1/UOI
Mr. Rajneesh Bhaskaran, Govt.
Panel Counsel and Mr. Uttam
Kumar, Adv. for R-2
Mr. S.D. Singh and Mr. Rahul
Kr. Singh, Adv. for R-3
Ms. Anuja Saxena, Adv. for
R-4

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

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J U D G M E N T (O R A L)

1. The Institute of Human Behaviour and Allied Sciences (Respondent No.3 herein and referred to, hereinafter, as “IHBAS”) issued an “Admission Notification”, inviting applications for admission to the M.Phil. Clinical Psychology Course, for the session 2016-2018, conducted under the aegis of the University of Delhi. The

number of seats advertised were mentioned, in the said notification, thus :

“Number of Seats; UR-10, SC-01, ST-01, OBC-03, Foreign Nationals-02 and In-service candidate-02 (working in Government institutes or Departments/Autonomous Body/Public Sector undertaking). Application for Foreign National category should be routed through' Ministry of External Affairs and In-service category should send their applications with the recommendation of their employers.”

2. On 22nd July, 2016, a corrigendum was issued, by the IHBAS, to the aforementioned notification, which read thus:

“NOTIFICATION RELATED TO M. PHIL. CLINICAL PSYCHOLOGY ADMISSION

It is notified that in compliance with recent decision of Rehabilitation Council of India (RCI), the number of seats for M. Phil. Clinical Psychology Course at IHBAS *is reduced to 10 from the total 15 seats advertised in admission notification dated 11th May 2016.* The changed arrangement of seats for different categories for total number of 10 seats will be as follows;

<i>Categories</i>	<i>No. of seats in the advertisement on 11th May 2016 with total number of 15 seats</i>	<i>With changed number of 10 seats as approved by RCI</i>
<i>General/UR</i>	<i>10</i>	<i>6</i>
<i>SC</i>	<i>1</i>	<i>1</i>
<i>ST</i>	<i>1</i>	<i>1</i>

<i>OBC</i>	3	2
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Institute is bound by the decision of the RCI about the number of seats approved. However, the efforts will still continue with RCI to retain the number of seats as 15 and if so happens the adjustment will be worked according to the previous advertisement and accordingly seats will be filled from the waiting lists, available.

It is also notified that 1 (one) seat is reserved for Physically Handicapped (Persons with Disability) category which was not operationally provided for in previous advertisement. Selection under the PH category will be made by adjusting the number of General/UR category as per the rule. Applications from eligible candidates under PH category can be submitted till 12th August 2016 with requisite certificates and (**application fee**) of Rs. 1000/- in the form of Demand Draft in the name of "Director, IHBAS" payable at Delhi on the same address as given in the previous advertisement.

The last date for application under the Foreign National category is also extended till 12th August 2016, eligible candidate can send their application through Ministry of External Affairs, Govt of India & University of Delhi.

Director”

3. Inasmuch as the entire controversy, in the present case, centers around these two documents, it is necessary to set out, at the outset, the effect thereof. A bare reading of the Admission Notification reveals that the number of seats advertised were 19, of which 10 belonged to the General/Unreserved Category, 1 belonged to the SC Category, 1 belonged to the ST Category, 3 belonged to the OBC Category and 2 each belonged to the foreign nationals and in-service

categories. The corrigendum notification dated 22nd July, 2016 clearly stated that, consequent to a decision of the RCI (which was never made known to the applying public), the number of seats stood reduced *from 15 to 10*. Again, a bare reading of the notification dated 22nd July, 2016 reveals that the reduction in the number of seats was with respect to the 15 seats covering the General, SC, ST and OBC categories, which stood reduced to 10, with the 10 general seats being reduced to 6 and the 3 OBC seats being reduced to 2. There was no reduction either in the number of seats assigned for foreign nationals or the number of seats assigned for in-service candidates.

4. As learned counsel appearing for the IHBAS has stressed on the paragraph, in the notification dated 22nd July, 2016, immediately below the table contained therein, it is necessary to examine the said paragraph as well. At the cost of repetition, the paragraph is reproduced thus :

“Institute is bound by the decision of the RCI about the number of seats approved. However the efforts will still continue with RCI to retain the number of seats as 15 and if so happens the adjustment will be worked according to the previous advertisement and accordingly seats will be filled from the waiting lists, available.”

5. Learned counsel appearing for the IHBAS would seek to submit that this paragraph indicated that *the total number of seats*, for which admission was available, was 10. I am unable to agree. The paragraph very clearly makes reference to 15 seats, and the reference,

to the “number of seats approved”, in the said paragraph has necessarily to refer to the said 15 seats, and not to the 4 other seats available to foreign nationals and in-service candidates. A juxtaposed and conjoint reading of the Admission Notification and the notification dated 22nd July, 2016, leave no manner of doubt that what was presented and portrayed to the applying students, was that there were 15 seats available for General, SC, ST and OBC candidates, which stood reduced to 10, *apart from which* there were 2 seats available for foreign nationals and 2 seats available for in-service candidates. This Court is convinced that the said two documents – which alone were the documents made known to the public at the time of applying for the post – did not, in any manner, indicate any reduction in the number of seats available for in-service candidates.

6. It is also clear that the said two documents do not indicate that the admissions, against the seats reserved for in-service candidates, would be subject to approval by the Rehabilitation Council of India (RCI).

7. With the above prefatory observations, one may turn to the facts of the present case.

8. The petitioner, who was working as Assistant Director in the Forensic Science Laboratory (FSL), applied, pursuant to the aforementioned Admission Notification, for admission to the M.Phil Course conducted by the IHBAS, for the years 2016-2018, on 11th

July, 2016 and deposited the requisite application fee therefor. She appeared in the selection process and cleared the same. She also applied to the FSL, for grant of study leave to pursue her M.Phil Course with the IHBAS, which was also granted. It may be noted, at this stage, that, while the course was being conducted by the IHBAS, the degree of M.Phil. Clinical Psychology, which would be granted consequent thereto, is awarded by the University of Delhi (Respondent No.5), and approval, in order to enable the holder of such degree to professionally practice, has to be granted by the RCI (Respondent No.4).

9. *Vide* circular dated 23rd August, 2016, the result of the above selection was published by the IHBAS. The petitioner was shown as successful in the said selection. However, a caveat was entered against the name of the petitioner, to the effect that her selection was “subject to satisfactory arrangements on record between the two concerned departments”. It is difficult to understand how such a caveat could have been entered, when no such “satisfaction” found any mention in the notification inviting admissions, or even, for that matter, the corrigendum notification dated 22nd July, 2016.

10. Without entering, in detail, into the various communications which transpired between IHBAS and the RCI thereafter, it may be mentioned that, consequent to the petitioner being declared successful in the above selection, a stand was taken, by the IHBAS and the RCI, between themselves, that the selection of the “in-service candidates”

was “supernumeric” in nature, inasmuch as it was in excess of the 10 seats sanctioned by the RCI. At this juncture, learned counsel appearing for the RCI submits that the RCI never treated these seats as “supernumeric”, but was clear about its stand that it had sanctioned only 10 seats.

11. On the ground that only 10 seats had been sanctioned and that therefore, the admission against the aforementioned two seats available for in-service candidates were “supernumeric” in nature, the respondents appeared to have proceeded on the ground that sanction had necessarily to be granted by the RCI, before admissions could be allowed against the said seats. The RCI, for its part, on being contacted in this regard, refused to grant such sanction, on the ground that there was no provision permitting recruitment of in-service candidates against “supernumeric” posts.

12. It is in these circumstances that the petitioner is before this Court. Her contention is that, as she had applied and had been selected against the two in-service posts which were advertised, and that the advertisement made no reference to any sanction being required to be granted to RCI or that the said two posts were “supernumeric” in nature, she could not be denied admission to the Course.

13. Having heard learned counsel appearing for the rival parties at length, I am convinced that the decision to deny admission to the petitioner is *ex facie* arbitrary and cannot be allowed to sustain in facts or in law.

14. It is a trite position in law, that where, applications are invited by a public advertisement, the terms of the public advertisement would bind the authority inviting applications, as well as the applying candidates. The Admission Notification clearly indicated that the number of posts advertised were 19, of which 15 belonged to the OBC and unreserved categories, whereas 4 seats were available for foreign nationals and for in-service candidates, of which 2 were available for foreign nationals and 2 for in-service candidates. The corrigendum notification dated 22nd July, 2016, too, clearly indicated that reduction had taken place only in the 15 seats which were assigned for General, SC, ST and OBC candidates and that there was no reduction in the seats assigned for foreign nationals or for in-service candidates. As such, in the absence of any material to indicate that there was a reduction in the number of seats available for in-service candidates, it would be completely fallacious, on the part of the IHBAS, to contend that the said 2 seats were super numeric in nature, or for that reason, that admission, thereagainst, could be granted only subject to approval by the RCI.

15. On a conjoint reading of the Admission Notification read with the “corrigendum notification” dated 22nd July, 2016 there were 10

seats for the General, SC, ST and OBC Candidates, 2 for foreign nationals and 2 for in-service candidates. Candidates admitted within this number could never be treated as “supernumeric”. Inasmuch as the whole exercise of seeking approval from the RCI, for the said admission, was on the basis that these candidates were “supernumeric”, that exercise also stood vitiated from the very beginning. The admission of the petitioner being having been made against the two in-service vacancies advertised, and there being no indication that the said two vacancies had been reduced, her admission could not be treated as “supernumeric” and consequently, there was no requirement for taking the concurrence of the RCI before allowing the petitioner to join the M.Phil. Course.

16. That apart, as has already been noted hereinabove, there was nothing, either in the Admission Notification or in the corrigendum notification, to indicate that the said two in-service seats were “supernumeric” in nature, or that candidates admitted thereagainst would be permitted to join the course only if the RCI granted clearance therefor.

17. The petitioner is, therefore, entitled to be treated as having been legally and validly admitted to the M.Phil. Course in Clinical Psychology conducted by the IHBAS and would, if she successfully clears the Course, be entitled to the M.Phil. Clinical Psychology degree issued by the University of Delhi.

18. Learned counsel appearing for the IHBAS points out at this stage, that admission to the Course would have to be made by the University of Delhi, (which is also represented) by issuing a requisite admission number and compliance of necessary formalities. Needless to say, the University of Delhi is also directed to comply with all the requisite formalities in order to enable the petitioner to join the M.Phil. Clinical Psychology Course to which she was successful in getting admission.

19. Learned counsel appearing for the RCI had sought to contend that the RCI had no axe to grind against the petitioner but was clear about the fact that it had only sanctioned 10 seats, for the M.Phil. Clinical Psychology Course for the year 2016-2018. As such, she sought to submit that, even if the petitioner were to be allowed to undertake the course, the RCI would not grant registration to her.

20. To say the least, such a stand is completely unreasonable. The petitioner cannot be allowed to be ground between the grinding wheels of the RCI and the IHBAS. Once the petitioner is found to have been validly admitted to the M.Phil. course, subject to her completing the course successfully and being awarded the M.Phil. degree by the University of Delhi, I find no reasonable basis for the RCI to refuse to register the petitioner. As such, the contention, of the RCI, that it would be entitled not to grant registration to the petitioner, as her admission had taken place beyond the supposedly sanctioned 10 seats, is summarily rejected. In case the petitioner completes her M.Phil.

course successfully and is awarded the M.Phil. Clinical Psychology degree, a mandamus would issue to the RCI to grant appropriate registration to her, irrespective of the contention that only 10 seats were sanctioned by it.

21. Before parting with this judgment, it is necessary to reproduce the following interim order, which was passed by this Court on 4th September, 2018, in CM No. 26784/2018 :

“CM No. 26784/2018 (interim directions)”

The present application under Section 151 of the Code of Civil Procedure, 1908, has been instituted on behalf of the applicant/petitioner, seeking a direction to respondent No. 3, to permit her to appear in the main examination of Part I/First Year with current session examination scheduled from 5th September, 2018, as well as, to permit her to appear in the main examination of Part II/Second Year with current session examination scheduled from 18th September, 2018.

Learned counsel appearing on behalf of the applicant/petitioner invites my attention to the directions issued by this Court, vide orders dated 3rd July, 2017 and 20th April, 2018, to urge that not only had the petitioner been permitted thereby to attend the classes and use library facilities but, she had further been permitted to appear in the internal assessment examination of the First Year held from 23rd April, 2018. In view of the foregoing and having heard learned counsel appearing on behalf of the parties, I am of the considered opinion that, it would be the interest of justice that without placing any special equities in her favour, she should be permitted to appear

in the aforesaid examination commencing on 5th September, 2018 and 18th September, 2018 respectively.

It is, however, made clear that this order has been passed by way of an interim arrangement and is without prejudice to the rights and contentions of the parties.

The application is disposed of accordingly.”

22. The petitioner, who appears in person, submits that she has appeared in the first semester, second semester and fourth semester examination of the M.Phil. course but could not appear in the third semester examination due to pendency of the matter. If that be so, the petitioner would be permitted to undertake the third semester examination of the M.Phil. course whenever it is held next. Needless to say, the award of degree, to her, would be dependent on her performance in the said two years of the course.

23. The writ petition, accordingly stands allowed. In case, the results of the examination, in which, the petitioner has already appeared, have not been declared, they would also be declared forthwith. In case the petitioner is required to submit any dissertation, for the said purpose, she shall be also permitted to do so. In other words, the petitioner would be entitled to be treated at par with others who had appeared with her pursuant to the Admission Notification, issued by the IHBAS, and had joined the M.Phil. Course consequent thereto.

24. The writ petition stands allowed in the above terms with no orders as to costs.

C. HARI SHANKAR, J

JANUARY 09, 2019/kr

