

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2020

CORAM:

THE HONOURABLE **Mr. JUSTICE N. ANAND VENKATESH**W.P.No.9838 of 2020

Shifakhairun

Petitioner

vs.

1.The National Board of Examination (NBE)

Medical Enclave,
 Ansari Nagar,
 P.O.Box No.4931,
 New Delhi, Ring Road,
 New Delhi 110029.

2.Medical Counseling Committee (MCC),

Allotment Process – Counseling,
 Directorate General of Health Services,
 Ministry of Health & Family Welfare,
 Government of India,
 Nirman Bhawan, Maulana Azad Road,
 New Delhi – 110011.

3.The Medical Council of India,

Pocket – II, Sector – 8,
 Dwaraka Phase – I,
 New Delhi 110077.

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the 1st respondent to permit the petitioner to participate in the PG admission counseling on the respective counseling slots as applicable for her score as per the schedule of counseling.

For Petitioner : Mr.U.Chandramouli

For Respondents : Mr.V.P.Raman,
Standing Council for RR1 & RR3
Mr.Rajesh Vivekanandan,
Standing Council for RR2

ORDER

This writ petition has been filed for a direction to the 1st respondent to permit the petitioner to participate in the mop up round counselling to be held for filling up the Post Graduation seats by considering the petitioner as a OBC candidate.

2.The case of the petitioner is that the petitioner participated in the NEET examination and secured 334 marks. The further case of the petitioner is that at the time of submitting the online application, by inadvertence the petitioner has filled up the particulars against the column community as general instead of OBC. According to the petitioner, this was an inadvertent mistake and the same should not be put against the petitioner more particularly due to the fact that the petitioner falls under OBC category and he has the necessary Community Certificate to substantiate the said claim. According to the petitioner, the Community Certificate has also been uploaded at the time of applying for the NEET examination.

3.Mr.V.P.Raman, the learned counsel appearing on behalf of the respondents 1 and 3 submitted that all the candidates were given an opportunity to correct the errors in the applications submitted by them and an opportunity was available to the petitioner to make the necessary correction from 03.12.2019 to 07.12.2019. This opportunity was not availed by the petitioner and therefore, the petitioner cannot be allowed to take advantage of his own wrong and the petitioner will have to be considered falling under General category.

4.The learned counsel appearing on behalf of the Director General of Health Services submitted that the cut off marks for the mop up round has been reduced for general candidates from 366 marks to 275 marks and for OBC candidates from 319 marks to 230 marks. The learned counsel submitted that the petitioner cannot be permitted to take advantage of his own wrong and thereby deprive a candidate who has properly applied under the OBC category and who might have taken lesser marks than the petitioner.

5.Mr.Akhil Akbarali, learned Government Advocate appearing on behalf of the Directorate of Public Health and Preventive Medicine,

submitted that the petitioner has also applied under the State quota and he is being considered as a BC candidate. Mr. Vijaymehanath, who is also appearing for the Selection Committee of Directorate of Medical Education reiterated the said submission.

6.The learned counsel for the petitioner submitted that this Court has taken a consistent view that inadvertent mistake committed by the candidate should not be put against the candidate and the candidate must be given an opportunity to participate in the selection. In order to substantiate his submission, the learned counsel relied upon the earlier orders passed by this Court under similar circumstances.

7.This Court has carefully considered the submissions made on either side and the materials available on record.

8.At this juncture, it will be relevant to place reliance upon the judgment of this Court in W.P.No.23522 of 2017 dated 05.09.2017. The relevant portions in the judgment are extracted hereunder:

5. Upon hearing the learned counsels on either side, it is evident that the petitioner when applied for NEET examination, has wrongly mentioned the community category as UR, even though the community certificate issued by the competent Revenue Official indicates that he belongs to BC community. Apart from the said fact, the transfer certificate issued by the School, where the

petitioner studied, also indicates that he belongs to BC community. Moreover in the provisional merit list published for considering the candidates under Government Quota seats, the petitioner was shown as BC candidate with the Rank No.21844.

Therefore, this Court is of the view that the petitioner can be shown some indulgence by placing him at the bottom of the list of the candidates belonging to BC community only for considering the admission to BDS course, as admittedly the counselling to MBBS course is already over and therefore, the petitioner cannot seek for any remedy in respect of such course. This Court, has in fact entertained similar prayers and granted the relief in respect of the persons who approached this Court, before publication of the merit list and commencing of the counselling. But this petitioner has approached this Court, only after publication of the merit list and after commencement of the counselling and therefore, his name has to be placed only at the bottom of the list of the candidates belonging to BC category. Accordingly, this writ petition is disposed of, by passing the following order:

(a) The respondents are directed to place the petitioner at the bottom of the merit list meant for BC community candidates, called for counselling to BDS course.

(b) The candidates who are already shown in BC category of such merit list shall not be disturbed in any manner.

(c) After filling up the seats based on such merit list already prepared in respect of BC category students for BDS course, if any vacancies arise, the petitioner's case can be considered by treating him under BC category, provided the petitioner satisfies that the marks obtained by him in the NEET examination would fall under the zone of consideration for the BC category.

9. In the above judgment, the facts are very similar to the present case and it is seen that the petitioner therein belonged to Other Backward Class community. But by inadvertence, he had wrongly mentioned the category as 'General' in the application. While considering the said case, this Court has condoned the mistake committed by the petitioner therein subject to certain conditions. This Court is in agreement with the reasoning given in the above judgment and this Court is of the considered view that the petitioner can also be considered in the same lines as dealt with in the above judgment.

10. It will also be relevant to take note of another judgment passed by this Court in W.P.No.3547 of 2019 dated 13.03.2019. The relevant portions in the judgment are extracted hereunder:

5. Heard the learned counsel for the petitioner and the learned Standing Counsel for the first respondent and the learned Special Government Pleader (Higher Education) on behalf of the second and third respondents and perused the materials placed before this Court.

7. Earlier, this Court also had an occasion to pass a similar order in a similar case, wherein, a similar mistake had crept in at the time of applying, i.e., there was a mistake in respect of <http://www.judis.nic.in> community while applying online, which, could not be changed subsequently. By virtue of the order dated

21.04.2017 passed in that writ petition in W.P.No.4838 of 2017, the petitioner therein was directed to approach the respondents 2 and 3 to consider the status of the petitioner therein based on her marks and community.

8. Further, this Court passed an order on 08.03.2019, in W.P.No.6886 of 2019, wherein, another learned Standing Counsel for the first respondent produced a communication dated 08.03.2019, which was given by the first respondent, giving discretionary power to the counselling authority to consider the admission of the similarly placed candidate under the OBC Category.

9. In such backdrop, the respondents 2 and 3 are directed to draw the merit rank of the petitioner, based on the community, after verification, and the marks obtained by him, without reference to the fact that he applied under the General Category.

11. It is clear from the above judgments that this Court has taken a consistent view in matters of this nature where it is found that a inadvertent mistake has been committed by a candidate while filling the application. This Court does not want to take a different view and rather, will fall in line with the earlier views expressed by this Court.

12. In view of the above discussion, this writ petition is disposed of

(a) The 2nd respondent is directed to place the petitioner at the bottom of the merit list meant for Other Backward Class community candidates who have been called for the counseling for the Post Graduation course.

(b) After filling up the seats based on the merit list already prepared in respect of Other Backward Class candidates, if any vacancies arise, the case of the petitioner shall be considered by treating him as an Other Backward Class candidate, provided that the petitioner satisfies all the requirements, and

(c) The candidates who are already shown in the Other Backward Class category in the merit list shall not be disturbed in any manner by the intervention of the petitioner, who is directed to be considered as an Other Backward Class candidate.

No costs.

27.07.2020

Internet: Yes/No
Index: Yes/No
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To

1.The National Board of Examination (NBE)

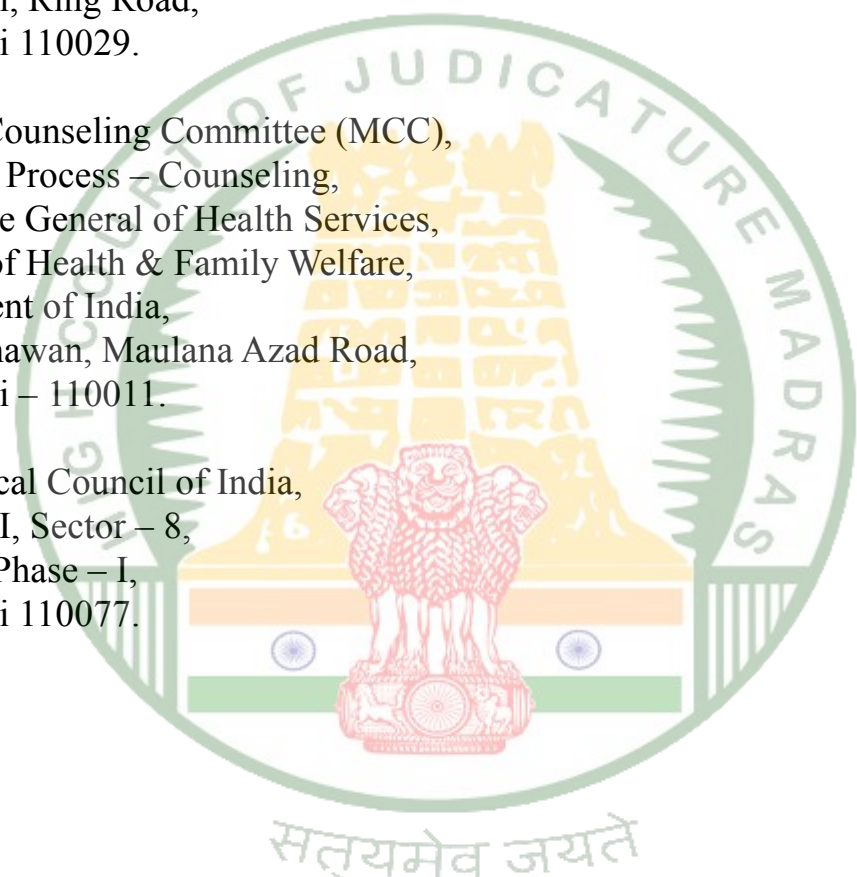
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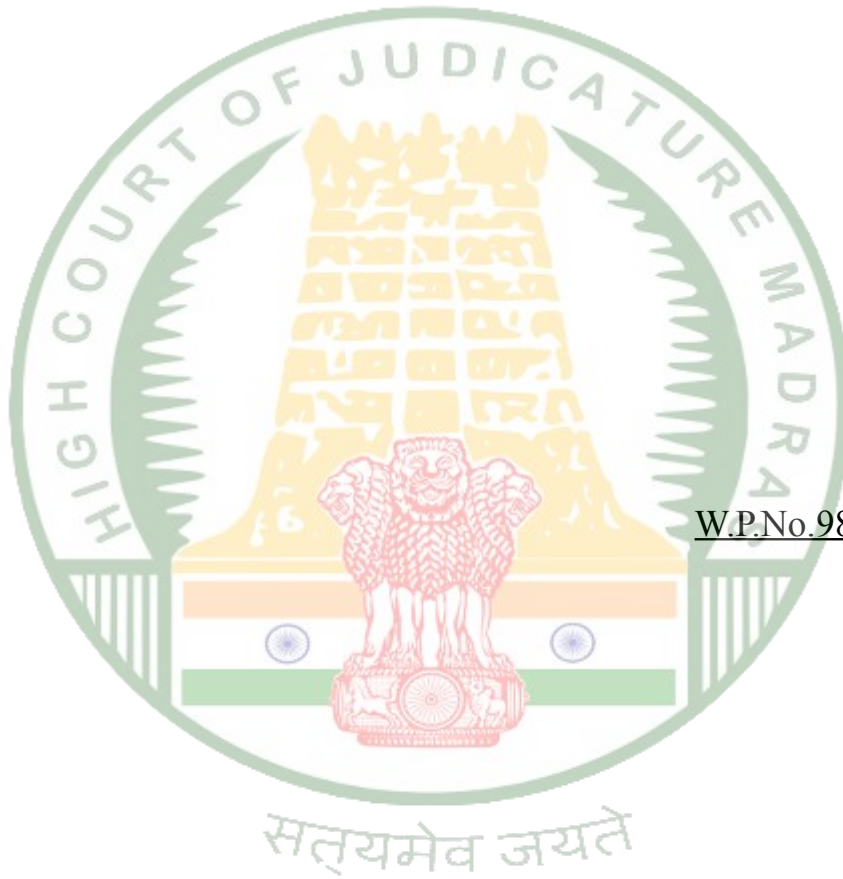
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N. ANAND VENKATESH.,J

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