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28.07.2021.
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**W.P.A 3939 of 2021
(Via Video Conference)**

**Koyel Dey
-versus
The State of West Bengal & Ors.**

**Mr. Jagabandhu Roy,
Mr. Tarapada Das,
Mr. Mahadeb Khan.
...For the Petitioner.**

**Mr. Sirsanya Bandopadhyay.
...For the State.**

**Mr. U.S. Menon,
Mr. Abhirup Chakraborty.
...For the Respondent No.6.**

**Mr. Pranab Halder.
...For the Respondent
Nos. 8 and 9.**

The petitioner and the private respondents all participated in the All India Ayush Post Graduate Entrance Test for admission in B.A.M.S. Ayurvedic Course.

The petitioner filled the application form by mentioning that she belonged to the Economically Weaker Section (EWS) category. The private respondents disclosed that they belonged to the unreserved category.

Merit list was published by the National Testing Agency wherefrom it appears that the petitioner scored 176 marks and got the All India rank 5937 in the EWS category. The private respondent, Arpita Nandi scored

241 marks and her rank was 2824 in the unreserved category. Sri Subhas Bera scored 225 marks and his rank was 3464 in the unreserved category.

All the three candidates thereafter participated in the counseling undertaken by the State in terms of the Memo dated 5th January, 2021 issued by the Directorate of Medical Education, Department of Health and Family Welfare.

In the merit list published by the State, all the three candidates have been shown as members of the EWS category. As there were only two vacancies, the private respondents who scored more marks than the petitioner were admitted.

According to the petitioner, the information bulletin which was published for the All India Ayush Post Graduate Entrance Test mentioned certain points. It categorically mentioned that request for change in any particular in the application form shall not be entertained under any circumstances. However, a chance may be given to the candidates to correct/modify/add some of the particular(s) of the application form online only during 6th June, 2020 to 10th June, 2020. It has been submitted that the window for making correction or alteration in the application form was thereafter extended till 15th July, 2020.

According to the petitioner the State respondents ought not to have permitted the private respondents to change the entries as mentioned in the application form after the aforesaid cut-off date.

The petitioner also relies upon the answers to the frequently asked questions published by the State

Government for (Quota Seats) online counseling for Ayush Post Graduate Medical Courses 2020 wherein in answer to question No. 8 it has been mentioned that since the entire process was conducted online (online counseling) no documents will be required for participating in online allotment process. However, a candidate is required to carry original certificates/documents at the time of reporting for admission.

Reliance has also been placed on the answer to question No.5 which mentions that, only information is required for the purpose of filling up the application form online.

The petitioner is aggrieved as the private respondents have been allotted the two vacancies reserved for EWS category candidates whereas she has been left out. The petitioner contends that as the private respondents have been permitted to make changes in the application form after the cut-off date, accordingly their admission should be set aside and the petitioner is liable to be admitted in the vacancy created.

The learned advocate appearing for the National Testing Agency submits that their role is limited only to the extent of conducting the examination and publication of the result. The examination was duly conducted and the merit list of the candidates was published.

The learned advocate appearing for the West Bengal University of Health Sciences submits that there is a provision for fresh registration for Round-1 and Round-2 counseling and there shall be fresh choice

filling in all the three Rounds as indicated in the notice for All India Counseling 2020 as published in the Memo dated 5th January, 2021.

All the three candidates belonged to the EWS category but as the private respondents scored more marks in the entrance examination, accordingly, the vacancies have been filled up by the two meritorious candidates.

It has been submitted that there has not been any pick and choose method amongst the candidates and the same principle was allowed and adopted for all candidates.

The learned advocate appearing for the private respondents submits that in the fresh list published by the State their names appeared at the top because they scored more marks than the petitioner in the entrance examination. It has been submitted that the private respondents belonged to the EWS category and the vacancy has been rightfully allotted to them.

It appears from the submissions made on behalf of the parties that all the three candidates participated in the examination. The petitioner disclosed herself to be a member of the EWS category. The other two candidates initially claimed themselves to be the members of the unreserved category. They appeared in the entrance examination and their marks were published in the merit list declaring them as candidates in the unreserved category.

All the three candidates thereafter participated in the State counseling. In the next stage, the State respondents permitted the candidates to fill in their

registration form afresh wherein the private respondents disclosed themselves as the members of the EWS category.

The State relied upon the note of the memo dated 5th January, 2021, which mentions that there shall be fresh registration for Round-1 and Round-2 and there shall be fresh choice filling in all the three rounds.

The opening line of the notification dated 5th January, 2021 relied upon by the State mentions that the All India Ayush Post Graduate Entrance Test, 2020 is a single entrance examination for admission to Post Graduate Ayush Courses for the Academic Session 2020-2021.

All the aspirants were informed that counseling for four State Ayush Institutions will be conducted as per the memo dated 3rd March, 2020 of the department of Health and Family Welfare, Government of West Bengal.

The counseling process to be adopted was mentioned in the said notification. The notification further mentions that the caste and the PWD status of the candidates shall be called by the software afresh. It also mentioned that there shall be provision for EWS category and the said candidate has to provide proper certificate issued by the SDO or above officer of the Government of West Bengal and the EWS certificate shall have to be issued in West Bengal to avail EWS quota. The certificate was to be issued on the basis of the family income for the year 2019.

It does not appear that the said memo provides for changing or altering the category as filled by the candidate in the All India Entrance Test.

In the instant case, though the petitioner disclosed herself to be a member of the EWS category but the other two candidates disclosed themselves to be the members of the unreserved category.

The State authority appears to have interpreted the Memo dated 5th January, 2021 in such a manner so as to provide a second opportunity to the candidates to disclose their category all over again.

According to the Court, as the candidates had already filled in their application form online in the year 2020 disclosing their categories and the date for making the alteration or changes being expired long ago, the candidates ought not to have been given any further opportunity for changing their category. Any change made after the extended time period given by the authority for making the necessary correction or changes could not have been permitted to be done.

It has been submitted that the counseling process and the admission concluded on 31st March, 2021 and the course started in April 2021. We are in the end of July 2021.

As it appears that the State authority applied the principle in a uniform manner in respect of all the candidates and provided equal opportunity to all, it does not appear that any pick and choose method was adopted by the State.

Ideally, the State ought not to have permitted the candidates to make changes in the application form in the garb of making fresh registration at the time of online counseling by the State, but as it appears that no undue advantage has been obtained by any of the candidates and the two meritorious candidates who scored more marks than the petitioner have been allotted the available vacancy, the Court exercises judicial restraint to pass any order in favour of the petitioner. It will not be proper to disturb the successfully admitted candidates who have started their course in the midst of the academic session. The same will amount to unsettling a settled position.

In view of the above discussion, no relief can be granted to the petitioner in the instant case.

The writ petition is dismissed.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Amrita Sinha, J.)