

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 5413 of 2020

Premlata Patel W/o Shri Girish Patel Aged About 34 Years Working As Assistant Veterinary Field Officer, Veterinary Hospital Akaltara, District Janjgir Champa Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Principal Secretary, Department Of Livestock And Development Department, Mahanadi Bhawan, Mantralaya, Atal Nagar, Nawa Raipur , District Raipur Chhattisgarh
2. The Director Directorate Of Veterinary Services, Ground Floor, Block III, Indrawati Bhawan, Atal Nagar, Nawa Raipur, Raipur Chhattisgarh
3. Deputy Director, Veterinary Services, District Janjgir Champa Chhattisgarh
4. Chhattisgarh Kamdhenu University, Through Its Registrar, Anjora, Durg, Chhattisgarh
5. The Registrar, Chhattisgarh Kamdhenu University, Anjora, Durg Chhattisgarh

---- Respondents

WPS No. 5522 of 2020

Mamta Joshi D/o Shri Punoo Ram Aged About 34 Years Working As Assistant Veterinary Field Officer, Artificial Insemination Centre, Gokulnagar, District Raipur, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh, Through The Principal Secretary, Department Of Livestock And Development Department, Mahanadi Bhawan, Mantralaya, Atal Nagar, Nawa Raipur, District Raipur, Chhattisgarh
2. The Director, Directorate of Veterinary Services, Ground Floor, Block- III, Indrawati Bhawan, Atal Nagar, Nawa Raipur, Raipur, Chhattisgarh
3. Joint Director, Veterinary Services, Raipur, District Raipur, Chhattisgarh

4. Chhattisgarh Kamdhenu University Through Its Registrar, Anjora, Durg, Chhattisgarh
5. The Registrar Chhattisgarh Kamdhenu University, Anjora, Durg, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Manish Nigam, Advocate.
For State/Res.1,2 & 3	:	Mr. Jitendra Pali, Dy. AG
For Res. No.4 & 5	:	Mr. A. S. Kachhawaha, Advocate

Hon'ble Shri Justice P. Sam Koshy
Order on Board

27/07/2021

1. Aggrieved by the impugned order Annexure P-1 & P-2 dated 12.10.2020 and 03.12.2020 the present two writ petitions have been filed.
2. Vide the two impugned orders the respondents have decided not to grant permission to any departmental candidates for pursuing the B.V.Sc and AH Course. Since the pleadings made in the two writ petitions and the relief sought for in the two writ petitions and grounds of challenge and contentions on the part of the respondents all being identical the two writ petitions are being decided by this common judgment.
3. The facts relevant for adjudication of the present writ petition is that the two petitioners herein are working under the respondents as Assistant Veterinary Field Officer. Both the petitioners have completed five years of service. The two petitioners herein aspiring for admission to the B.V.Sc and AH degree Course sought permission of the department to appear in the NEET, 2020 Examination. The documents reveal that petitioners had moved an application as early as in March, 2020. The NEET Examinations, 2020 was conducted on 13.09.2020. Though, the petitioners had applied as early as in March, 2020 for permission for NEET

Examination, the respondents did not either accept or reject the claim of the petitioner. In the absence of any permission from the department treating it to be a deemed permission, the petitioners participated in the said NEET. 2020 examination. Subsequently, when the results were published the petitioners were found meritorious for admission to the B.V.Sc and AH Course.

4. The rules governing the service conditions of the petitioners, i.e. Chhattisgarh Veterinary (Gazetted) Recruitment Service Rules, 2011. The next promotion from the post of Assistant Veterinary Field Officer to the post of Veterinary Assistant Surgeon. The post of Veterinary Assistant Surgeon is to be filled up 92% by way of direct recruitment and 8% posts stands reserved to be filled up by way of promotion from the substantive member of service.
5. The feeder post for promotion to the post of Veterinary Assistant Surgeon is Assistant Veterinary Field Officer as would be evident from Schedule 4 of the aforementioned Rules of 2011. Apart from the experience of five years, the rules also prescribe that 8% posts reserved would be only from among those candidates who have passed the graduation in Veterinary Science as a departmental candidate. This in other words means a person who does not obtain the degree or graduation in Veterinary Science as a departmental candidate would not be entitled for promotion. Even if, he has graduation degree obtained on his own expense or even if it is obtained before coming into service under the respondents. He will not be entitled for promotion from among the 8% quota Since the time the Rules were framed, the department has been sending candidates working on the post of Assistant Veterinary Field Officer each year for pursuing the degree course of B.V.Sc & AH. However, only for the academic session 2020-21 the respondents have vide the impugned order Annexure P-1 & P-2

refused to grant permission to the petitioners for pursuing their B.V.Sc and AH degree Course.

6. It is this refusal to grant permission for the said degree course which is under challenge in the present writ petition and the core question to be considered by this Court is whether the decision of the respondents in passing the two impugned orders refusing to send in candidate for pursuing B.V.Sc and AH degree course is proper, legal and justified or not?
7. Contention of the petitioner in assailing the two orders is that the action on the part of the respondents amounts to discrimination with petitioners are concerned, for the simple reason that respondents have in the past permitted various candidates each year for pursuing the said course and there is no reason whatsoever for refusing to grant permission to the petitioners this year. It is only this year that respondents have refused to grant permission. According to the petitioners, unless they are granted the permission they would not become eligible for the next promotional post of Veterinary Assistant Surgeon. It is also the contention of the petitioner that the Rules also require that promotion shall be given only to those candidates who have undertaken the graduation course as a departmental candidate. This in other words means that Rules itself was framed for the purpose of career advancement of a candidate who was not a graduate in the field of Veterinary Science.
8. According to the petitioners in case if they are not permitted to be admitted in the said course now, they would not be in future able to participate in the NEET Examinations conducted, as The Council which conducts the NEET Examination has now brought in an upper age limit for participating in the said course. Thereby, the petitioners apart from not getting chance from

being admitted to the degree course but still also be deprived of their promotional prospects for promotion to the post of Veterinary Assistant Surgeon. According to the petitioners, no plausible and justifiable explanation has been provided by the respondents in the course of passing Annexure P-1 and P-2. According to the petitioners, the impugned orders for want of justifiable reasons deserves to be quashed and they be permitted to pursue the degree course. According to the petitioners, there is no policy decision or an executive instructions in existence or issued by the State Government which empowers them for refusal to grant permission.

9. According to the petitioner, under the respondents no.4 & 5 University four seats for B.V.Sc and AH Degree Course are reserved every year for a departmental candidate from the State of Chhattisgarh and these Four seats for the present academic year are still lying vacant and petitioners can be accommodated against the same. According to the petitioners, in case if they do not get the permission now, it will be a permanent disqualification for the petitioner for being considered for promotion to the post of Veterinary Assistant Surgeon as in the coming years they would not be entitled for firstly appearing in the NEET Examinations. In the process, they would not be able to obtain the degree in B.V.Sc & AH Course. Thereby for want of graduation as a departmental candidate the petitioners would lose their chance of being considered for promotion for all times to come which will have cascading effect on the career of the petitioners.
10. Per contra, State counsel opposing the petition submits that the request of the petitioners for promotion to join the B.V.Sc. & AH Course was on account of the fact that a large number of employees in the department have already undertaken the said qualification of the B.V.Sc & AH Course

and given the limited number of post available for further promotion from the post the petitioner is holding, there are sufficient qualified and eligible candidates available. Most of whom are still senior to the petitioners and therefore at this juncture it was not necessary for having sent the petitioner for undertaking the said degree course. Further contention of the respondent State is the fact that a large number of qualified senior candidates are available who would be considered for promotion to the post of Veterinary Assistant Surgeon ahead of the petitioner by virtue of their seniority. Thus, the promotional prospects of the petitioner also would not be as of now hampered in any manner. Given the facts and circumstances as a policy decision the department has rejected the request of the petitioners.

11. Contention of the State counsel is also that petitioners were not even granted permission to appear in the NEET Examination, the clearing of which with good marks was necessary for getting admission in the B.V.Sc and AH Course and for this reason the petitioners at this juncture cannot be permitted to pursue the B.V.Sc course.

12. Having heard the contentions put forth on either side and on perusal of records admittedly the petitioners are working on the post of Assistant Veterinary Field Officers. Therefore the admitted factual matrix is that the next promotional post from the post of Assistant Veterinary Field Officer to the post of Veterinary Assistant Surgeon. The rules governing the filed undisputedly is Chhattisgarh Veterinary (Gazetted) Recruitment Rules, 2011. Under the rules it shows 8 per cent post of Veterinary Assistant Surgeon is to be filled up by 8 Assistant Veterinary Field Officers who have obtained the degree of the B.V.Sc. and AH Course as a departmental candidate.

13. The aforesaid rules clearly makes it clear that unless a candidate has obtained the degree of B.V.Sc and AH Course as a departmental candidate, he would never be considered for promotion. Thus, obtaining of the degree either as a departmental candidate becomes a necessity for any employee to expect promotion and it is for this reason that the department every year sponsors candidate for the aforesaid degree course. The colleges in the State of Chhattisgarh also have a specific quota of seats under the said course. If the respondents do not permit the petitioners, so seats would be left unfilled and would go in waste.
14. Another fact which needs to be considered at this juncture is that the rules of 2011 has not been amended. There also does not seem to be any policy decision of the State Government of stopping facility of granting permission to the employees in the Veterinary Department for pursuing the degree course of B.V.Sc and AH. The impugned order Annexure P-1 and P-2 does not disclose any specific reason why the said decision was taken by the authorities.
15. From the reply that respondents have submitted, it is evidently clear that respondents themselves have admitted the fact that they have in the past permitted a large number of candidates for pursuing the B.V.Sc and AH Course. Those candidates were also permitted under the same set of rules. The question is if those candidates have been permitted to undergo the course what are the circumstances and reason for not allowing the petitioners for undertaking the said course this year. Another fact which needs consideration is that under the rules governing the field for participating in NEET Examination which is necessary for getting the admission to the B.V.Sc course is being amended where the upper age limit is being put for participating in the NEET Examination. The moment the said rules with upper age limited for participating in the NEET

Examination is introduced the petitioners would lose their chance for getting an admission in the B.V.Sc Course for all times to come. This would have a cascading effect on the promotional front and petitioners would lose their chance for a promotional post at a later stage for want of qualification.

16. Another citing feature which is revealed from the pleadings particularly Annexure P-1 dated 20.02.2020 is that at present about 22 Assistant Veterinary Field Officers are pursuing the course who were granted permission by the respondents in the previous years, when it came to the claim of the petitioners, the respondents have declined granting of permission with no justifiable reasons available for non granting of permission. Only because in the near future there is no possibility of the petitioners getting promoted even if he obtains the qualification of B.V.Sc and AH Course, the same cannot be a ground for restraining them for pursuing the said course at the first instance by refusing grant of permission for the petitioner as a departmental candidate. That secondly in the reply the respondents have only talked of 13 posts which are lying vacant and for which they have about 26 candidates already qualified. The reason the respondents were compelled in issuance of Annexure P-1 & P-2 again cannot be a ground for not granting permission to the petitioners for the reason that 13 posts referred to by the respondents are only the existing vacant posts, there would also be future vacancies that would be arising. There could also be further enhancement of post that may arise. All of which could change the requirement and at that point of time the petitioners and other similarly placed persons may not get an admission for the said B.V.Sc course under the then prevailing rules and thereby they would be losing their prospect of being considered for promotion for all times to come which again would be violative of Article 14 & Article 19(g).

17. At this juncture the learned counsel appearing for the University submits that the academic session for which the admission has been obtained by the petitioners have already commenced and one or two semester of the course has already being completed and substantial progress has already been made in the said course, therefore, it may not be practical to grant admission to the petitioners at this juncture in this academic session.
18. At this juncture learned counsel for the petitioners makes a request that let petitioners admission be considered for the next academic session i.e. of 2021-22 and have prayed before this Court for an appropriate molding of reliefs to that extent.
19. Taking into consideration the submissions made by the counsels appearing on either side, particularly the contention of the counsel for the University stating that the substantial progress in the academic session has already been made where a couple of semesters have already completed, what needs to be considered is as to what relief can now be granted to the petitioners for which what directions needs to be issued? Undoubtedly, the petitioners had tried to obtain the permission for participating in the degree course of B.V.Sc and AH Course for the academic session 2020-2021, because of the high handedness and arbitrary action on the part of the respondents, they could not join the course in spite of being meritorious and having obtained admission. It may not be necessary that the petitioners on attempting for admission in the next academic session may perform equally good for being selected and if for any reason the petitioners are not able to perform well in the next academic session, they would be losing the chance for all time to come which may thereby be detrimental to the interest of the petitioners.

20. It is for these reasons that this Court considers for issuance of an appropriate direction to the respondents for accommodating the petitioners for B.V.Sc and AH Course in the next academic session i.e. the Academic Session 2021-22.

21. It may be relevant at this juncture to refer to recent decision of the Delhi High Court reported in 2021 SCC Online Del 2562 in the case of Adil Sajeer Ansari Vs. University of Delhi & another. In the said case also a similar situation arose and while considering the relief which could be extended to the petitioners therein the Delhi High Court in paragraphs 40 to 44 has held as under :-

“40. The Court thereafter concluded that, in exceptional cases, admission may be granted to a meritorious candidate even one month after the cut-off date for medical admissions (30th September) has passed. Relevant for the purposes of the present case are the conclusions recorded in paragraph 33 (iii) and (iv) which are as follows:

“33. xxxxxxxxxxxx

(iii) In case the Court is of the opinion that no relief of admission can be granted to such a candidate in the very academic year and wherever it finds that the action of the authorities has been arbitrary and in breach of the rules and regulations or the prospectus affecting the rights of the students and that a candidate is found to be meritorious and such candidate/student has approached the court at the earliest and without any delay, the court can mould the relief and direct the admission to be granted to such a candidate in the next academic year by issuing appropriate directions by directing to increase in the number of seats as may be considered appropriate in the case and in case of such an eventuality and if it is found that the management was at fault and wrongly denied the admission to the meritorious candidate, in that case, the Court may direct to reduce the number of seats in the management quota of that year, meaning thereby the student/students who was/were denied admission illegally to be accommodated in the next academic year out of the seats allotted in the management quota.

(iv) Grant of the compensation could be an additional remedy but not a substitute for restitutional remedies. Therefore, in an appropriate case the Court may award the compensation to such a meritorious candidate who for no fault of his/her has to lose one full academic year and who could not be granted any relief of admission in the same academic year.”

“41. In so holding, the Court affirmed the decision of a smaller bench in *Asha vs. Pt. B.D. Sharma University of Health Sciences & Ors.* (2012) 7 SCC 389 and overruled a contrary decision in *Chandigarh Administration & Anr. vs. Jasmine Kaur & Ors.* (2014) 10 SCC 521. Although the judgment in *S. Krishna Sradha (supra)*

is expressly confined to MBBS courses, the principles laid down by the Court provide valuable guidance.

“42. The additional affidavit filed by the University dated 23.02.2021 in the present case clearly indicates that grant of admission to the petitioner at this stage would not be consonant with the requirement of a professional course like the MBA. Mr. BhalaiK during the course of arguments has conceded that the petitioner would be agreeable to admission for the course in question in the next academic year i.e. 2021-22. Mr. Rupal has also stated upon instructions that the admissions process for the year 2021-22 is in progress but students have not yet been granted admission. This is one of the alternatives contemplated by the Court in S. Krishna Sradha also.

“43. Two other authorities also follow the same course:

(a) Following the judgment in S. Krishna Sradha, the Supreme Court in National Medical Commission vs. Mothukuru Sriyah Koumudi & Ors. 2020 SCC OnLine SC 992 [Civil Appeal No. 3940/2020, decided on 07.12.2020] applied the same guidelines for admission to post-graduate medical courses. The Court [in paragraph 9 of the said judgment] disagreed with the directions of the High Court to create an additional seat for the petitioner in the year under consideration, but granted her admission in the management quota of the concerned college for the next academic year. The petitioner was also granted compensation of Rs. 10 lakhs for the loss of one academic year.

(b) In Sneha Vats vs. University of Delhi & Ors. 2019 SCC OnLine Del 11199 [W.P. (C) 7854/2019, decided on 18.11.2019], the petitioner sought admission to the MBBS Course in University of Delhi in the CW category [Children/Widows of Officer and Men of the Armed Forces including Para-Military Personnel]. A Coordinate Bench of this Court relied upon the judgment in Asha and directed the respondents to consider the petitioner in the next academic session however, leaving the question of compensation open.

44. Having regard to the aforesaid precedents and the facts and circumstances of the present case, I am of the view that the appropriate course would be to direct the University to admit the petitioner in the MBA (International Business) Programme in the year 2021-22. As held hereinabove, the mistake made by the petitioner was condonable by the University, particularly in view of the fact that he had followed up the matter with due diligence and rectified the mistake before the University had commenced processing the admissions and before any third-party rights had intervened. He also approached this Court with alacrity. However, the passage of time makes it difficult to require the University to grant him admission for the year 2020-21. Having regard to the fact that he did admittedly commit a typographical error, which led to the impugned decision of the University, I do not also consider it a fit case for grant of compensation to the petitioner for the year lost.”

22. It is worthwhile to mention that the judgment of the Delhi High Court also was passed upon a similar view taken by the Hon'ble Supreme Court in the case of National medical Commission v. Mothukuru Sriyah Koumudi, 2020

SCC OnLine SC 992 and an earlier decision of the Delhi High Court reported in 2019 SCC OnLine Del 11199 in the case of Sneha Vats v. University of Delhi.

23. Given the judicial pronouncements referred to in the preceding paragraphs and relief which has been granted under the similar circumstances both by the Hon'ble Supreme Court as also by the Hon'ble High court of Delhi in a couple of matters, this court is of the view that petitioners herein also who have been wrongly deprived admission in the B.V.Sc and AH Course in the academic session of 2020-21 be granted admitted for the B.V.Sc and AH Course in the next academic session of 2021-22. The respondents are accordingly directed as an exceptional case without treating it as a precedent to ensure that the petitioners are granted permission to partake the B.V.Sc Course in the next academic session treating them to be cleared for the said Course by virtue of the petitioners having successfully cleared the NEET Examination in the year 2020. Further the respondent no.4 & 5 University also is directed to take all necessary steps in accommodating the petitioners in the B.V.Sc and AH Course in the next academic session 2021-22.

24. The writ petition therefore stands allowed. No order as to costs.

Sd/-
(P. Sam Koshy)
Judge

Rohit