

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CIVIL WRIT PETITION NO.1544/2021

PETITIONER : Vanshika d/o Rajesh Harinkhede,
Aged about 19 years,
Occupation – Student,
R/o Plot No.171, Hanuman Nagar,
Trikonai Maidan, Medical Chowk,
Hanuman Nagar S.O., Nagpur, MH – 440009.

...VERSUS....

RESPONDENTS : 1. State of Maharashtra,
Through its Secretary,
Department of Medical, Education &
Drugs, Mantralaya, Mumbai – 22.

2. Directorate of Medical Education &
Research, Mumbai, State of Maharashtra,
Through its Director, Government Dental
College & Hospital Building, St. George's
Hospital, Compound, Near V.T.,
Mumbai – 400 001.
(Tel.- +91-22-22620361-65,
Fax.-+91-22-22620562/22652168)
(Email – dmercetcell@gmail.com)

3. State Common Entrance Test Cell,
Government of Maharashtra, Maharashtra
State, Mumbai, Through its Commissioner &
Competent Authority, 305, Government
Polytechnic Building, 49, Kherwadi,
Ali Yawar Jung Marg, Bandra (E),
Mumbai – 400 051.
(Tel.-+91-22-26476034,
Tax.-+91-22-26476034/37)
(Email maharashtra.cetcell@gmail.com)

4. Smt. Shalinitai Meghe Ayurvedic
Medical College, Hospital & Research
Centre, Bhilewada, Bhandara-441904,
Through its Principal.
5. Sanmarg Shikshan Sanstha,
Through its Secretary,
C/o Smt. Shalinitai Meghe Ayurvedic
Medical College, Hospital & Research
Centre, Bhilewada, Bhandara – 441904.

Mr. C.B. Dharmadhikari, Advocate for petitioner
Mr. A.A. Madiwale, AGP for respondent nos.1 and 2
Mr. N.S. Khubalkar, Advocate for respondent no.3
Dr. B.G. Kulkarni, Advocate for respondent nos.4 and 5

**CORAM : SUNIL B. SHUKRE AND
AVINASH G. GHAROTE, JJ.
DATE : 06/04/2021**

ORAL JUDGMENT : (PER : AVINASH G. GHAROTE, J.)

1. Heard. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned Counsel for the parties.

2. By the present petition, a direction is claimed against the respondent no.4 and other respondents, to admit the petitioner in the BAMS Course with the respondent no.4 – College. The basis

for such a plea as submitted by Mr. C.B. Dharmadhikari, learned Counsel for the petitioner, is as under :-

(A) The petitioner belongs to OBC category and caste validity certificate, has been issued to her by the Competent Authority.

(B) The petitioner was desirous of taking admission in BAMS Course after completing her HSSC.

(C) The eligibility criteria for Open category which according to the petitioner, was not applicable to her, is securing of at least 50% marks in the subjects of Physics + Chemistry + Biology ("PCB" for short hereinafter) in the HSSC examination, i.e. minimum of 150 marks out of 300.

(D) The eligibility criteria for OBC candidates, which the petitioner claims to be applicable to her, is securing at least 40% marks in the PCB subjects in the HSSC examination, i.e. minimum 120 marks out of 300.

(E) The petitioner scored 142 marks out of 300 in the subjects of PCB in her HSSC examination and therefore as per the eligibility criteria for OBC candidates, became eligible. She appeared in NEET UG -2020 examination, in which she secured 296 marks.

(F) The petitioner being desirous of taking admission in the respondent no.4 – College in the BAMS Course applied for the same.

(G) In the first institutional round of counseling scheduled on 17/1/2021 the petitioner was not selected, in view of her NEET score, in the reserved category.

(H) After the first institutional round, all seats from reserved category were filled, however, some seats from Open category were vacant.

(I) The petitioner was selected in the second institutional round from Open category on the basis of her NEET score and was asked to report for taking admission along with all documents and fees on 20/3/2021, on which date the petitioner was duly present, but was denied admission because of objection taken by the observers.

(J) The objection taken was that the petitioner had secured 142 marks in PCB , whereas, she ought to have secured a minimum of 150 marks in the said subjects, in her HSSC examination, and therefore, was not eligible.

3. Mr. C.B. Dharmadhikari, learned Counsel for the petitioner submits, that at the stage of grant of admission, eligibility was not relevant, as the petitioner was already eligible, on account of her belonging to the OBC category, having secured the requisite marks in the said category and it was only the NEET score, which was relevant at the time of granting the admission in the Open category. It is contended that since the NEET score of the petitioner was 296 marks, and the score of the last person, who had secured admission in Open category was 285, the petitioner was clearly entitled for grant of admission. It is contended that the percentage of marks, in the HSSC examination, was merely a qualifying/eligibility criteria which had no role to play at a later stage, when admission was to be granted and seats were to be allocated, which was to be done solely on the basis of merit as per the NEET score. Learned Counsel submits that the denial of the admission to the petitioner in the Open category was therefore illegal. Learned Counsel, places reliance upon the information brochure issued by the NEET UG-2020, detailing the procedure for admission to Health Science Courses at Government/Corporation Colleges for Maharashtra State quota and unaided private/minority

colleges: NEET UG-2020 (“Admission Procedure” for short hereinafter) and specifically on Clauses 1.1, 1.6 (e), 4.6.1 and 10.15. He also relies upon the judgment of the learned Division Bench of the High Court of Uttarakhand in Writ Petition (S/B) No.139/2019 [*Rajneesh Dwivedi Vs. State of Uttarakhand and others*] decided on 24/7/2020 to contend that migration of candidates from reserved category to occupy posts in the General category, is permissible. Learned Counsel also places reliance upon *Asha Vs. Pt. B.D. Sharma University of Health Sciences and others, (2012) 7 SCC 389* in support of his submissions.

4. Dr. Bhanudas Kulkarni, who appears for the respondent nos.4 and 5, the College where the admission was sought, submits, that the eligibility condition prescribed in Clause 4.6 of the Admission Procedure, cannot be given a go-bye, and has to be considered while granting admission. He contends that since the petitioner belongs to OBC category, the eligibility has to be considered vis-a-vis the criteria laid down for the said category and the consequent admission on the basis of the NEET score would continue to be governed category-wise, thereby meaning that the

petitioner once having opted to have the benefit of the reservation, and had applied on its basis and claims to have satisfied the eligibility criteria for the constitutional reservation, cannot now be permitted to contend that she was now entitled to admission in the Open category on the basis of her NEET score without satisfying the eligibility criteria for the Open category. Learned Counsel Dr. Bhanudas Kulkarni, places reliance upon ***Gaurav Pradhan and others Vs. State of Rajasthan and others, (2018) 11 SCC 352*** to contend that candidates who had taken the benefit of the constitutional reservation, cannot be permitted to migrate to the Open category.

5. Mr. Amit Madiwale, learned AGP for the respondent nos.1 and 2 and Mr. Nahush Khubalkar, learned Counsel for the respondent no.3 support the submission of Dr. Bhanudas Kulkarni, learned Counsel for the respondent nos.4 and 5.

6. The rival contentions have to be considered, in light of the language of the procedure for admission. The relevant Clauses of the Admission Procedure are reproduced as under :-

“Clause 1.1 There shall be a common counseling for admission to Health Science course in all Government/ Corporation/Government Aided/Government Unaided /Minority Institutions on the basis of merit list of the National Eligibility Entrance Test (NEET UG 2020).

1.2.....

1.3.....

1.6.....

1.6 (a).....

1.6 (b).....

1.6 (e) All admissions to Health Science courses **within the respective categories** shall be based solely on merit (AIR) in the National Eligibility-cum-Entrance Test.

Clause 4.6.1 Eligibility criteria of Qualifying Examination for various courses.

Clause 4.6.1.1 For MBBS/BDS/BAMS/BUMS/BHMS : A candidate belonging to OPEN Category and EWS Category must have obtained not less than 50% (i.e. 150 out of 300) marks in Physics, Chemistry and Biology taken together at the HSC (or equivalent) Examination. A candidate belonging to constitutional reservation (Annexure-B except EWS Category) and constitutional reservation with Person With Disability claim must have obtained not less than 40% (i.e. 120 out of 300) marks in Physics, Chemistry and Biology taken together at the HSC (or equivalent) Examination. Person with disability candidate in General

category must secure not less than 45% marks (i.e. 135 out of 300) in Physics, Chemistry & Biology (PCB) taken together at the HSC (or equivalent) Examination or decided by respective Central Council.

4.6.1.2.

4.6.1.3.

Clause 4.9. NEET UG 2020 Eligibility for Admission to MBBS/BDS/BAMS/BUMS and MHMS Courses : A candidate belonging to OPEN Category & EWS Category must secure not less than 50 percentile marks in Physics, Chemistry & Biology (PCB) taken together at NEET UG-2020. A candidate belonging to constitutional reservation (Annexure B except EWS Category) and constitutional reservation with Person with disability claim must secure not less than 40 percentile marks in Physics, Chemistry & Biology (PCB) taken together in the NEET UG-2020. Person with disability candidate in General category must secure not less than 45 percentile marks in Physics, Chemistry & Biology (PCB) taken together in the NEET UG-2020 or decided by respective central council time to time.

4.10.

4.11.

“Clause 9.4.1. CONSTITUTIONAL RESERVATIONS:

The candidate should have claimed the constitutional reservation in the original Online application form for the State of Maharashtra. For claiming of category, Request for category claim after submission application form will not be granted. During document verification process, if

constitutional category claim is found to be incorrect, same will be rectified as per document(s) available with the candidate. However no fresh claim for constitutional reservation i.e. from open category to reservation category will not be considered.

The Caste Certificate and the Caste/Tribe Validity Certificate:- If a candidate claiming reservation in online application form does not submit online/produce document, then he/she will be automatically considered in open category if otherwise eligible for Open Category.

Candidates belonging to constitutional reserved category EWS must have claimed so in his online registration form of Maharashtra State quota seats, failing which such a claim will not be entertained subsequently. Candidate belonging to above Categories (except EWS) should produce Caste Certificate, Caste Validity Certificate and Non-Creamy Layer Certificate (wherever applicable) at the time of physical document verification process. However EWS candidates must produce eligibility certificate issued by the competent Authority. Candidate who fails to produce above said certificates will be considered as Open Category Candidate provided he/she fulfills the eligibility criteria of NEET-UG 2020.

The applicant request for change in category from Open to reserve once last date of online application form is over, will be straight way rejected. The candidates belonging to the backward class categories will be required to submit the Caste Certificate/validity at the time of document verification failing, which the category claimed, will not be

granted and the candidate will be treated as a general candidate. While applying online all the category candidates must mention their category as SC, ST, VJ/DT(A), NT-B, NT-C, NT-D, OBC, and EWS.

EWS reservation – 10 % seats of the available seats will be reserved for EWS candidates. For MBBS/BDS/BAMS/BHMS and BUMS courses, this reservation will be applicable only if central Government/respective council has increased/increases existing seats. For courses, other than MBBS/BDS/BAMS/BHMS and BUMS courses 10 % EWS reservation will be applicable on available seats (refer Annexure-T).

The Caste Validity Certificate:

The candidates belonging to the following Backward Class categories i.e. SC, ST, VJ/DT(A), NT-B, NT-C, NT-D, OBC and will be required to submit the Caste Validity Certificate at the time of physical Document Verification, failing which the category claimed, will not be granted and the candidates will be treated as a general candidate.

Candidates belonging to Backward Classes/EWS must have claimed so in his online registration form of Maharashtra State quota seats, failing which such a claim will not be entertained subsequently. Candidate belonging to above Categories should produce Caste Certificate, Caste Validity Certificate and Non-Creamy Layer Certificate (wherever applicable) at the time of physical document verification process. Candidate who fails to produce above said certificates will be considered as Open Category Candidate

provided he/she fulfills the eligibility criteria of NEET-UG 2020.

Candidates belonging to EWS category will be required to produce Eligibility certificate for Economically Weaker Section in prescribed format of state government only (Annexure - "T") and issued by Competent Authority, Government of Maharashtra, at the time of physical document verification process. Candidate who fails to produce above said certificates will be considered as Open Category Candidate provided he/she fulfills the eligibility criteria of NEET-UG 2020.

Non-Creamy Layer Certificate : *A candidate belonging to VJ, NT1, NT2, NT3, OBC (including SBC) and will be required to produce non-creamy layer certificate valid up to 31/3/2021, at the time of physical document verification and at the time of admission also, failing which claim will not be granted. It is mandatory to produce Non-Creamy Layer Certificate (NCL) at the time physical document verification, candidates producing NCL after the physical document verification will be treated as open candidates.*

A Candidate belonging to 'Creamy Layer' amongst the categories (VJ) DT-A, NT-B, NT-C, NT-D, OBC, SBC and must note that the provision of reservation is NOT applicable to him/her. A candidate claiming benefit of reservation under these categories will be required to produce Non-Creamy Layer Certificate as specified in the Govt. Resolutions from time to time. The certificate in prescribed Proforma stating that it is valid up to 31/3/2021 should be submitted at the time of physical document verification process. EWS

candidates should produce eligibility certificate issued by Competent Authority.

In all the Government, Municipal Corporation and Government aided medical Institutions constitutional reservation will be as per NEET UG 2020 information Brochure Annexure B.

A candidate belonging to backward class from Maharashtra State only, is eligible for claiming seat under reserved category. All applications for change in category from open to reserve after the declaration of provisional merit list will be straight way rejected.

Clause 10.15. Reserved Category Candidates - “Ear-Marking” : *Reserve category candidate entitled to admission on the basis of merit in an open category seat will have the option of taking admission either against his/her respective category seat or on an open category seat. If he/she opts for the reserved category he/she will be deemed to have been admitted as an open category candidate and not as reserve category candidate. One seat in the college where he/she was eligible for admission against open seat shall be earmarked for a candidate belonging to the respective reserved category. Such earmarked seat will be made available immediately to the successive reserve category candidate from the same category merit during the counseling.”*

(emphasis supplied)

7. Before the rival contentions are considered, it is necessary to consider the legal position in that regard.

7.1. In *Post Graduate Institute of Medical Education & Research, Chandigarh and others Vs. K.L. Narasimhan and another (1997) 6 SCC 283*, while dilating on the issue of admissions or appointments in the Open category on the basis of merits, by a person belonging to the constitutional reservation category, it was held as under :-

“5. It was decided that no relaxation in respect of qualifications or experience would be recommended by Scrutiny Committee for any of the applicants including candidates belonging to Dalits and Tribes. In furtherance thereof, the faculty posts would be reserved without mentioning the speciality; if the Dalit and Tribe candidates were available and found suitable, they would be treated as reserved candidates. If no Dalit and Tribe candidate was found available, the post would be filled from general candidates; otherwise the reserved post would be carried forward to the next year/advertisement. It is settled law that if a Dalit or Tribe candidate gets selected for admission to a course or appointment to a post on the basis of merit as general candidate, he should not be treated as reserved candidate. Only one who does get admission or

appointment by virtue of relaxation of eligibility criteria should be treated as reserved candidate.”

indicating thereby that if a candidate belonging to the constitutional reservation category, chooses not to avail the benefit as afforded by virtue of the constitutional reservation and participates at par with the candidates in the Open category, he would be treated at par with candidates in Open category and would be entitled to appointment /admission, if his claim was found to be eligible on merit.

7.2. In *Deepa E. V Vs. Union of India and others, (2017) 12 SCC 680*, while considering the availability of unreserved vacancies for candidates from constitutional reservations, it was held as under :-

“4. The appellant, who has applied under OBC category by availing age relaxation and also attending the interview under the “OBC category” cannot claim right to be appointed under the General category.

6. The Department of Personnel and Training had issued proceedings OM No. 36012/13/88-Estt. (SCT), dated 22-5-1989 and OM No. 36011/1/98-Estt. (Res.), dated 1-7-1998 laying down stipulation to be followed by

the various Ministries/Department for recruitment to various posts under the Central Government and the reservation for SC/ST/OBC candidates. The proceedings read as under:

“G.I. Dept. of Per. & Trg., OM No. 36012/13/88-Estt. (SCT), dated 22-5-1989 and OM No. 36011/1/98-Estt. (Res.), dated 1-7-1998

Subject.—Reserved vacancies to be filled up by candidates lower in merit or even by released standards—candidates selected on their own merits not to be adjusted against reserved quota.

As part of measure to increase the representation of SC/ST in the services under the Central Government, the Government have reviewed the procedure for implementation of the policy of reservation while filling up reserved share of vacancies for Scheduled Castes and Scheduled Tribes by direct recruitment. The practice presently being followed is to adjust SC/ST candidates selected for direct recruitment without relaxation of standards against the reserved share of vacancies. The position of such SC and ST candidates in the final select list, however, was determined by their relative merit as assigned to them in the selection process. When sufficient number of suitable Scheduled Caste and Scheduled Tribe candidates were not available to fill up all the reserved share of vacancies, SC/ST candidates were selected by relaxed standards.

2. It has now been decided that in cases of direct recruitment to vacancies in posts under the Central Government, the SC and ST candidates who are selected on their own merit, without relaxed standards along with candidates belonging to the other communities, will not be adjusted against the reserved share of vacancies. The reserved vacancies will be filled up separately from amongst the eligible SC and ST candidates which will thus comprise SC and ST candidates who are lower in merit than the last candidate on the merit list but otherwise found suitable for appointment even by relaxed standards, if necessary.

3. All Ministries/Departments will immediately review the various Recruitment Rules/Examination Rules to ensure that if any provision is contrary to the decision contained in previous paragraph exist in such rules, they are immediately suitably modified or deleted.

4. These instructions shall take immediate effect in respect of direct recruitment made hereafter. These will also apply to selections where though the recruitment process has started, the results have not yet been announced unless in the Examination/Recruitment Rules or in the advertisement notified earlier there is a specific provision to the contrary and the manner in which the SC/ST vacancies could be filled has been indicated.

Clarification.—The instructions contained in the above OM apply in all types of direct recruitment whether by written test alone or written test followed by the interview alone.

2. The above OM and OM No. 36012/2/96-Estt. (Res.), dated 2-7-1997 provide that in cases of direct recruitment, the SC/ST/OBC candidates who are selected on their own merit will not be adjusted against reserved vacancies.

3. In this connection, it is clarified that only such SC/ST/OBC candidates who are selected on the same standards as applied to general candidates shall not be adjusted against reserved vacancies. In other words, when a relaxed standard is applied in selecting SC/ST/OBC candidates, for example in the age-limit, experience, qualification, permitted number of chances in written examination, extended zone of consideration larger than what is provided for general category candidates, etc., the SC/ST/OBC candidates are to be counted against reserved vacancies. Such candidates would be deemed as unavailable for consideration against unreserved vacancies.”

(emphasis supplied)

7. On a combined reading of Rule 9 of the Export Inspection Agency (Recruitment) Rules, 1980 and also the

proceedings dated 1-7-1998, we find that there is an express bar for the candidates belonging to SC/ST/OBC who have availed relaxation for being considered for general category candidates.”

(emphasis supplied)

7.3. In **Gaurav Pradhan** (supra) while considering the question as to whether the reserved category candidates who had taken the benefit of age relaxation in selection in question and had obtained marks equal to or more to last General category candidate should be treated in General/Open category candidates or ought to be treated as reserved category candidates, it was held as under :-

“23. The reservation being the enabling provision, the manner and extent to which reservation is provided has to be spelled from the orders issued by the Government from time to time. In the present case, there is no issue pertaining to the extent of reservation provided by the State Government to the SC, ST and OBC candidates. The issue involved in the present case is as to whether the reserved category candidates can be allowed to be migrated into general category candidates. The reservation is wide enough to include exemption, concession, etc. The exemption, concession, etc. are allowable to the reserved category candidates to effectuate and to give effect to the object behind Article

16 clause (4) of the Constitution. The State is fully empowered to lay down the criteria for grant of exemption, concession and reservation and the manner and methodology to effectuate such reservation. The migration of reserved candidates into general category candidates is also part and parcel of larger concept of reservation and the Government Orders issued on 17-6-1996, 4-3-2002 and 24-6-2008 were the Government Orders providing for methodology for migration of reserved category candidates into general category candidates which was well within the power of State. Neither before us nor even before the High Court, the aforesaid government orders, last being 24-6-2008, were under challenge. As noted above, the High Court itself has returned a finding that earlier methodology of providing for migration of reserved category candidates into general category candidates was reversed by order dated 11-5-2011 by which despite taking any special concession, reserved category candidates could be migrated into general category candidates.

49. In view of the foregoing discussion, we are of the considered opinion that the candidates belonging to SC/ST/BC, who had taken relaxation of age, were not entitled to be migrated to the unreserved vacancies; the State of Rajasthan has migrated such candidates who have taken concession of age against the unreserved vacancies which resulted displacement of a large number of candidates who were entitled to be selected against the

unreserved category vacancies. The candidates belonging to unreserved category who could not be appointed due to migration of candidates belonging to SC/ST/BC were clearly entitled for appointment which was denied to them on the basis of the above illegal interpretation put by the State. We, however, also take notice of the fact that the reserved category candidates who had taken benefit of age relaxation and were migrated on the unreserved category candidates, are working for more than last five years. The reserved category candidates who were appointed on migration against unreserved vacancies are not at fault in any manner. Hence, we are of the opinion that SC/ST/BC candidates who have been so migrated in reserved vacancies and appointed, should not be displaced and allowed to continue in respective posts. On the other hand, the unreserved candidates who could not be appointed due to the above illegal migration are also entitled for appointment as per their merit. The equities have to be adjusted by this Court.”

7.4. In ***Rajneesh Dwivedi*** (supra) relied upon by Mr. C. B. Dharmadhikari, learned Counsel for the petitioner, though the Court on the facts before it held that the General and reserved category candidates were to be considered at par, in view of the situation that

the reserved category candidates had secured more marks in the interview, the Court also noted the position as under :-

“62. The State is empowered to lay down the criteria for grant of exemption, concession and reservation, and prescribe the method and manner in which such reservation should be effected. Reservation, being an enabling provision, the manner and extent to which reservation is to be provided may be spelt out in the orders issued by the Government. Migration of reserved category candidates, into the general category, is also part of the larger concept of reservation. While providing reservation, the Government can, in its discretion, place restrictions on the migration, of those who are extended the benefit of reservation, to the general category (Gaurav Pradhan). It can also, while extending concessions and providing relaxation in favour of the backward classes, bar those, who receive the benefit of such relaxations and concessions, from migrating to the general category.”

(emphasis supplied)

Thus even **Rajneesh Dwivedi** (supra) takes note of the position, that the issue of migration, is capable of being regulated, and in case the rules and regulations in this regard do not permit migration, or permit migration subject to the satisfaction of some criteria, then the same shall have to be scrupulously adhered to.

7.5. ***Asha*** (supra) relied upon by Mr. C. B. Dharmadhikari, learned Counsel for the petitioner, does not address the issue of migration altogether and this is of no assistance to him.

8. The matter therefore has to be viewed in light of the language used in the Admission Procedure. Though Clause 1.1 of the Admission Procedure states that there shall be a common counseling for admission on the basis of merit list in the NEET UG-2020 and Clause 10.15 contemplates the ear-marking of reserved category candidates entitled to admission on the basis of merit in an Open category seat, the catch phrase is “entitled to admission” as used in Clause 10.15. The entitlement to admission, would naturally flow from Clause 4.6.1, which determines the eligibility criteria of the qualifying examination. Clause 4.6.1 as quoted above, indicates that a candidate belonging to Open category must have obtained not less than 50 % marks (i.e. 150 out of 300) in PCB for being eligible for admission to the BAMS Course, whereas a candidate claiming the constitutional reservation has to secure a minimum of 40% marks (i.e. 120 out of 300) in PCB. The petitioner, claiming to belong to the OBC category, and having scored 142 marks out of

300, was eligible according to the eligibility criteria for the reserved category and not for the Open category, for which the minimum marks required, were higher than what were scored by the petitioner in her HSSC examination.

9. That the admission to the BAMS Course, cannot be solely on the basis of the NEET score, is clearly indicated from Clause 1.6 (b), which states that in order to be eligible for admission to Health Science Courses, it shall be necessary for a candidate to obtain minimum marks in NEET held for the said academic year, besides obtaining minimum prescribed marks at the qualifying examination, as prescribed by the respective Central Council. It would thus be apparent that for being eligible for admission, not only the NEET score, but also the requirement of a candidate having satisfied the minimum eligibility criteria laid down for various categories, as stipulated in Clause 4.6.1, is necessary. This is further fortified from Clause 1.6 (e) which states that all admissions to Health Science Courses “within the respective categories” shall be based solely on merit (AIR) in the NEET. This would clearly indicate,

that the merit is category-wise meaning thereby, that the categories as created by Clause 4.6.1, have to be maintained.

10. This is further substantiated by Clause 4.9 of the Admission Procedure, which makes it mandatory for a candidate belonging to Open category to secure not less than 50 percentile marks in PCB at NEET UG-2020, whereas a candidate belonging to the constitutional reservation must secure not less than 40 percentile marks in the NEET UG-2020, which indicates, that the eligibility criteria as laid down in Clause 4.6.1 for Open category, and for constitutional reservation category has been carried forward and is required to be adhered in NEET score too.

11. It is thus apparent that the NEET score is not the sole criteria for grant of admission to Health Science Courses and a candidate, has also to satisfy the eligibility criteria as laid down in Clause 4.6.1 of securing the required percentage of marks, in PCB at the HSSC Examination, depending upon the category from which admission is claimed.

12. The plea of migration, therefore always has to be tested on the basis of the Regulations applicable. In the instant matter, at the outset itself, i.e. in the original online application form, it is necessary for the candidate to claim constitutional reservation as per Clause 9.4.1, which also states, that in case such claim is so made originally, but is unable to be substantiated at a later stage, then the candidature of such candidate shall be automatically considered in Open category, if otherwise eligible for Open category. The expression “if otherwise eligible for Open category”, would logically mean the scoring of a minimum 50% marks, i.e. 150 out of 300 in PCB at the HSSC examination as per Clause 4.6.1. It therefore naturally follows that in case a candidate claims reservation, but is unable to substantiate her claim, her candidature in the Open category can only be considered, if such candidate would have satisfied the minimum eligibility criteria of Open category which was 50% marks in PCB at the HSSC Examination.

13. In fact, Clause 10.15 of the Admission Procedure thus contemplates a situation where migration from reserved category to Open category would be permissible only if the eligibility criteria, as

given in Clause 4.6.1, for Open category is satisfied, coupled with the NEET score of the candidate and not otherwise. The plea therefore, advanced by the learned Counsel Mr. C.B. Dharmadhikari for the petitioner, that it is only the NEET score which is to be taken into consideration for the purpose of admission, cannot be accepted.

14. Thus, in light of the above discussion, in view of the admitted position that the petitioner belongs to the constitutionally reserved category and has a PCB score of 142 out of 300 as against the requirement of 150 out of 300, for Open category as per Clause 4.6.1 of the Admission Procedure, she is not entitled to claim migration and thereby an admission in the Open category. The petition therefore is without any merits and is accordingly dismissed. Rule stands discharged. No order as to costs.

(AVINASH G. GHAROTE, J.)

(SUNIL B. SHUKRE, J.)

Wadkar

Shailendra
Wadkar

Digitally signed by
Shailendra Wadkar
Date: 2021.04.09
16:27:44 +0530