

\$~36 (2021 Cause List)

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

Date of Decision: December 09, 2021

+ W.P.(C) 13790/2021 & CM APPL. 43514/2021

TEJASWINI KHAJURIA Petitioner

Through: Mr. Anand Varma with Ms.
Apoorva Pandey, Advocates.

versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Ruchir Mishra with Mr.
Ramneek Mishra, Advocates
for R1/UOI and R-2.

Major Partho Katyanan, Officer
In-charge, Legal Cell, Indian
Army, High Court of Delhi.

Mr. T. Singhdev. Ms. Michelle
B Das, Advocates for R-3/DCI.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

JUDGMENT

PRATEEK JALAN, J. (Oral)

The proceedings in the matter have been conducted through hybrid mode [physical and virtual hearing].

1. The petitioner applied for the Combined Defense Services Examination in the Short Service Commission Women (Non-

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Signing Date: 10.12.2021

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Technical) course [“the course”] pursuant to an advertisement dated 05.08.2020 issued by the Union Public Service Commission [“UPSC”]. She assails a decision of the respondent Nos. 1 and 2, i.e. the Union of India and the Director General of Recruiting [collectively referred to as “the Union”], dated 26.11.2021 by which her candidature for the said examination has been cancelled.

2. The notice issued by the UPSC covers selection to several different courses. It is not disputed that the course in question is covered under the category of admission to the Officers Training Academy, Chennai [“OTA”]. The notice prescribed educational qualifications for such courses, which included a degree from a recognized university or equivalent. The candidates were required to submit proof of passing the degree examination at the time of commencement of the course, to reach the concerned authorities by 01.10.2021. The petitioner is currently pursuing the Bachelors of Dental Surgery [“BDS”] course from the respondent No. 4-Himachal Pradesh University [“the University”], which is the qualifying degree certificate she is required to submit.

3. The petitioner participated in the selection examination which was held on 24.08.2020, and secured the first rank for the course. In order to satisfy the eligibility conditions, she submitted a communication from the University dated 12.07.2021, which stated that she had passed her BDS fourth year examinations in January, 2021, and is currently undergoing 12 months of compulsory rotating paid internship. The internship commenced on 10.03.2021, and is

likely to be completed on 09.03.2022. The petitioner recently came to know that joining letters dated 24.11.2021 have been issued to other candidates, and thereafter received a communication dated 26.11.2021 from the Union cancelling her candidature on the ground that she would not have completed her BDS degree until March, 2022. In this connection, the impugned communication draws reference to the BDS Course Regulations, 2007 issued by the respondent No. 3-Dental Council of India ["DCI"] and amendments thereto. The present writ petition has been filed challenging this decision.

4. Mr. Anand Varma, learned counsel for the petitioner, submits that the award of the petitioner's degree has been delayed due to circumstances arising out of the COVID-19 pandemic. He refers to notifications of the University whereby the examinations scheduled for August, 2020 were postponed until February-March, 2021, which led to a delay in the commencement of her internship.

5. When the petition was first taken up for hearing on 06.12.2021, Mr. Varma drew my attention to the DCI's guidelines dated 16.04.2020, which contemplate a relaxation in the tenure of internship in order to permit passing out candidates to pursue career opportunities without loss of time. The said guidelines were reiterated by a further notification dated 28.04.2021. In view of this submission, Mr. T. Singhdev, learned counsel for the DCI, and Mr. Ruchir Mishra, learned counsel for the Union, were requested to take instructions.

6. Mr. Singhdev today submits on instructions that the guidelines issued by the DCI do contemplate the grant of a relaxation in the

internship conditions. The decision, however, has to be taken by the concerned university and not by the DCI. If a university considers it appropriate on the basis of the facts and circumstances prevailing in a particular case, a candidate can be issued a degree certificate without completing the one year internship. He submits that this is a matter for the concerned dental college and the university to decide.

7. At the request of learned counsel for the Union, Major Partho Katyanan, Officer In-charge, Legal Cell, Indian Army, High Court of Delhi, was permitted to make submissions on behalf of the Union. He submits that the impugned decision was taken on the basis that the petitioner has not yet been awarded the BDS degree, and on the basis of the University's communication dated 12.07.2021 to the effect that the degree would be awarded only in March, 2022. He further states that there were 17 vacancies for the course, for which 17 other candidates have since been called and are scheduled to join on 12.12.2021.

8. Having heard learned counsel for the parties, I am of the view that the decision of the Union to cancel the petitioner's candidature cannot be termed as arbitrary or unreasonable, so as to invite the interference of the writ court. The notice inviting applications states that the completion of the Bachelors degree is an eligibility condition to join the course. The certificate of the University submitted by the petitioner admittedly stipulates that her course – which in the ordinary course includes the compulsory one year rotating paid internship – would be completed only on 05.03.2022.

9. As of today, the petitioner has completed only nine months of the internship. Whether or not the University decides to waive the remaining three months of her internship and award her the degree is a matter for the University to consider. From the documents on record, the petitioner does not appear to have approached the University yet for this purpose. The relevant guidelines of the DCI were originally issued on 16.04.2020 and reiterated on 28.04.2021. The petitioner has made a representation to the DCI on 26.11.2021, but that too was made after the impugned decision of the Union dated 26.11.2021. The degree has not yet been issued by the University and the question of whether she will have the requisite qualifications by exercise of the discretion conferred by the DCI's guidelines is still undecided. In these circumstances, no fault can be found with the decision of the Union.

10. This is an unfortunate case where, despite a meritorious showing in the competitive examination, the petitioner has not been able to complete her qualifying degree within the stipulated cut off period. This is not for any default of the petitioner but due to the postponement of her examinations in the wake of the COVID-19 pandemic. However, the writ court cannot overlook the eligibility conditions or the cut off dates to come to her aid in these circumstances. The position that courts may not ordinarily interfere with eligibility conditions is well settled, and has been reiterated by the Supreme Court in *University Grants Commission v. Neha Anil*

*Bobde*¹, as well as in the recent judgment in *Indian Institute of Technology Kharagpur and Others vs Soutrik Sarangi and Others*². In *Indian Institute of Technology Kharagpur*³, the Court held as follows:

*“19. The reasoning of the High Court of Criterion 5 not permitting IIT students to participate in IIT (Advanced) for the second time being arbitrary, in the opinion of this Court is not supportable. **This Court has repeatedly emphasized that in matters such as devising admissions criteria or other issues engaging academic institutions, the courts’ scrutiny in judicial review has to be careful and circumspect. Unless shown to be plainly arbitrary or discriminatory, the court would defer to the wisdom of administrators in academic institutions who might devise policies in regard to curricular admission process, career progression of their employees, matters of discipline or other general administrative issues concerning the institution or university** Basavaiah (Dr.) v. Dr. H.L. Ramesh (2010) 8 SCC 372. It was held by this court in All India Council for Technical Education v. Surinder Kumar Dhawan (2009) 11 SCC 726*

*“16. The courts are neither equipped nor have the academic or technical background to substitute themselves in place of statutory professional technical bodies and take decisions in academic matters involving standards and quality of technical education. **If the courts start entertaining petitions from individual institutions or students to permit courses of their choice, either for their convenience or to alleviate hardship or to provide better opportunities, or because they think that one course is equal to another, without realizing***

¹ (2013) 10 SCC 519 [paragraph 31]

² 2021 SCC OnLine SC 826

³ Supra (note 2)

*the repercussions on the field of technical education in general, it will lead to chaos in education and deterioration in standards of education.*⁴

The said position has also been reiterated by the Division Bench of this Court in *Dr. Rajat Duhan and Others vs. AIIMS and Others*⁵, which reads as follows:

*“8. There can be no two views that the respondents No. 1 & 2/AIIMS is running an institution of excellence and maintaining a high academic standard. Therefore, it would be justified in laying down stringent conditions for admission into the institute. Providing for such high standards for admission cannot, by any stretch, be described as a discriminatory practice. Any eligibility criteria is bound to cause hardship to some set of students, particularly, if they are closer to the cut-off criteria. Therefore, such considerations cannot weigh with the court to dilute the standards of academic excellence prescribed by the academicians, who are experts in their field. It is most unwarranted for the court to interfere with such standards, particularly, if it would result in their dilution.....”*⁶

11. The position that courts should ordinarily refrain from altering cut off dates is equally well settled. Reference in this regard may be made to *State of Rajasthan v. Hitendra Kumar Bhatt*⁷, wherein the Court held as follows:

“6. Looking to the clear terms of the advertisement which we have referred to above, the respondent was not

⁴ Emphasis supplied.

⁵ 2019 SCC OnLine Del 11437 [LPA 655/2019; decided on 22.11.2019] [paragraphs 8 and 9]

⁶ Emphasis supplied.

⁷ (1997) 6 SCC 574

*eligible for consideration. It is submitted by the respondent before us that since he has been continued and has now been confirmed we should not disturb his appointment. He has requested that his case should be considered sympathetically. The fact, however, remains that the appellants have taken the correct stand right from the beginning. The respondent's application was not considered and he was not called for an interview. It was on account of interim orders which were obtained by the respondent that he was given appointment and continued. He was aware that his appointment was subject to the outcome of his petition. One cannot, therefore, take too sympathetic a view of the situation in which the respondent finds himself. **A cut-off date by which all the requirements relating to qualifications have to be met, cannot be ignored in an individual case.** There may be other persons who would have applied had they known that the date of acquiring qualifications was flexible. They may not have applied because they did not possess the requisite qualification on the prescribed date. **Relaxing the prescribed requirements in the case of one individual may, therefore, cause injustice to others.**"⁸*

11. Mr. Varma submits that, in the light of the clarification given by Mr. Singhdev today, the petitioner will approach the University immediately for waiver of the remaining period of her internship. However, the contention on behalf of the Union is that it has already sent joining letters to 17 other candidates who have fulfilled the eligibility conditions as on the date stipulated. Major Katyanan states that some candidates in the reserve list have also been asked to report to the OTA. In these circumstances, the best that can be done for the petitioner is to permit her to approach the University in terms of the

⁸ Emphasis supplied.

DCI's guidelines, and in the event the University accepts her request, then the Union may consider her candidature in the event any of the selected candidates do not join. The rights of selected candidates, whose selection has already been confirmed, cannot be disturbed on this account.

12. Although the University has not yet entered appearance despite advance service, it is expected that the University will take an expeditious decision if the petitioner approaches it for this relief.

13. Major Katyanan submits that the candidature of several candidates has been cancelled on similar grounds. However, this Court is mindful of the fact that the petitioner has secured the very first rank in the competitive examination. As such, there can be no impediment to consider her candidature if there is a vacancy, and she otherwise meets the eligibility conditions. Such consideration would not trump the superior right of any other candidate whose candidature has been rejected on the same basis.

14. The writ petition, alongwith the pending application, is disposed of with these directions.

15. The office is directed to transmit a copy of this judgment to learned counsel on record for the parties through email.

PRATEEK JALAN, J.

DECEMBER 09, 2021

'vp'