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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision:- 24th December, 2021+ W.P.(C) 15104/2021 & CM APPL. 47609/2021

PINKI

..... Petitioner

Through: Mr. M.K. Gaur & Mr. Saurabh,
Advocates.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Ms. Ridhiman Gaur, Advocate
for UOI.**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 was a candidate for B.Sc. (Nursing) course in the Armed Forces Medical Services. She was found ineligible for admission by an undated communication (probably dated 20.10.2021), reiterated in a further communication dated 13.12.2021. She has, therefore, approached this Court under Article 226 of the Constitution for the following reliefs:-

“In the facts and circumstances mentioned in above paras, it is therefore most respectfully prayed that the Hon'ble High Court may be graciously pleased to pass



an order: -

(a) Directing the respondents to place the relevant records pertaining to present writ petition for the proper adjudication in the matter.

(b) To quash and setting aside the impugned orders whereby vide order dt. 13.12.21 (Annexure P/1) the petitioner have been declared ineligible for selection to B.Sc. (Nursing) Course 2021 in terms of the provisions of advertisement (Annexure P/2) after declaring such provisions is as irrational, illegal, unjust, arbitrary, mala fide, unconstitutional, illogical, violative of articles fundamental 14, 16 & 21 of the constitution of India with all other consequential benefits.

(d) Allow the instant writ petition of the petitioner with all other consequential benefits and cost.

(e) Any other fit & proper relief may also be granted.”

2. The admissions to the B.Sc. (Nursing) course in the Armed Forces Medical College were invited by way of an undated notice which contained various eligibility conditions including the following:-

*“(d) **Educational Qualification** – Candidate must have passed in the first attempt, Senior Secondary Examination (10+2) or equivalent (12 Years schooling) examination with **Physics**, Chemistry, Biology (Botany & Zoology) and English with not less than 50% aggregate marks a regular student from a Statutory / Recognized Board/University/ Examination Body. Candidates who will be appearing for final year of qualifying examination during the current academic session may also apply provisionally. The candidates finally selected for the course will have to submit proof of passing the qualifying examination with requisite subjects and marks before joining the Course.”¹*

¹ Emphasis supplied.



3. The petitioner took the Class XII examinations of the Central Board of Secondary Education [“CBSE”] in the year 2018. There is no controversy with regard to the marks she secured in English, Chemistry, Biology and Physical Education. However, in Physics, she secured a total of 32/100 marks, including 4/70 in the Theory component of the examination and 28/30 in the Practical component. She was consequently unsuccessful in clearing the Physics paper, and took the compartment examination in the year 2019 as a private candidate. She passed the examination in this attempt.

4. By the impugned communication, the petitioner was informed that she did not meet the eligibility condition as she had failed in Physics in Class XII in her first attempt. A legal notice dated 10.11.2021 was addressed on behalf of the petitioner, in response to which the second impugned communication dated 13.12.2021 was issued.

5. After referring to the aforesaid eligibility condition, the communication dated 13.12.2021 also notes that the petitioner had failed in Physics in her first attempt, and that her second attempt for the examination in the year 2019, was as a private candidate. The communication also takes note of paragraph 38(iv) and (v) of the Examination Bye-Laws of CBSE, which require a candidate to obtain 33% marks in theory and practical separately, in addition to 33% marks in aggregate.

6. Having heard learned counsel for the petitioner, I am of the view that the stand taken by the respondents does not invite the interference of the writ court under Article 226 of the Constitution. An



educational institution can set such eligibility conditions as seem appropriate to it. These are not a matter for interference of the Court, in the absence of a finding of manifest arbitrariness or unreasonableness. The judgments of the Supreme Court *inter alia* in *All India Council for Technical Education vs. Surinder Kumar Dhawan and Others*² and *Indian Institute of Technology Kharagpur and Others vs. Soutrik Sarangi and Others*³ make this position clear.

7. The only ground urged by Mr. M.K. Gaur, learned counsel for the petitioner, in support of the petitioner's challenge to the condition is that other institutions did not have similar restrictions with regard to the first attempt and regular candidate requirements. The contention is untenable - every institution is entitled to lay down the eligibility conditions which it considers appropriate for its purposes. There is no warrant for the suggestion that all institutions must accept the same standards in laying down their eligibility conditions.

8. In the present case, the petitioner has also participated in the selection process pursuant to the aforesaid notice and seeks to challenge the same only after the process has been completed. This is impermissible in view of the decision of the Supreme Court in *Ramesh Chandra Shah and Others vs. Anil Joshi and Others*⁴ and a Division Bench decision of this Court in *Dr. Ojasvini Agrawal vs. Union of India and Others*⁵.

² (2009) 11 SCC 726 [paragraph 16]

³ 2021 SCC OnLine SC 826 [paragraph 19]

⁴ (2013) 11 SCC 309

⁵ 2020 SCC OnLine Del 607 [LPA 147/2020; decision dated 27.05.2020] {Special Leave to Appeal (C) No. 7549/2020 dismissed by the Supreme Court vide order dated 22.06.2020}



9. It may be noted that the results of the entrance examination were declared on 18.10.2021 and the petitioner was first held to be ineligible on 20.10.2021. She addressed a legal notice to the respondents thereafter (on 10.11.2021) which has been answered on 13.12.2021. The petitioner did not approach this Court until after receipt of the response to the legal notice.

10. Further, in the writ petition, a case is made out that the petitioner was unable to secure sufficient marks in Physics in her first attempt due to typhoid fever. The only document in respect of this contention is a “Studying-Certificate” dated 17.08.2021 issued by her school [*Piramal Girls Sr. Sec. School (CBSE), Bagar*], which has been annexed to the writ petition as Annexure P-9. The certificate reads that she suffered typhoid fever “*after in 2019 she passed XII class*”. Firstly, this is not a medical certificate of any sort. Secondly, even if she suffered typhoid after she passed Class XII, that does not explain the result of Class XII examination. Thirdly, the marks obtained by her in other subjects - in her first attempt - range from 51 to 63 out of 100 marks, far better than her score in Physics. The argument regarding her medical condition does not appear to be a valid or a tenable argument.

11. Mr. Gaur also relies upon Clause 40.1 of the CBSE Bye-Laws which state that a candidate would be declared as having passed in examinations, if he/she obtains at least 33% marks in all the five subjects in the main or at the compartmental examination. I am of the view that this does not take the petitioner’s case much further. There is no dispute that she has passed the Class XII examinations. The



question is whether she passed it at the first attempt and as a regular candidate in terms of the eligibility conditions laid down in the notice.

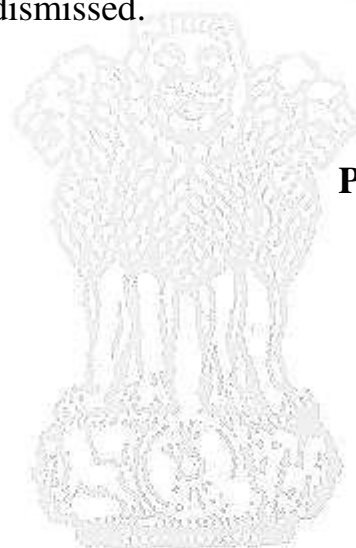
12. Mr. Gaur lastly submits that the petitioner secured high marks in the entrance examination. However, this is also of little relevance if she failed to meet the eligibility conditions. The question of her merit in the entrance examination would arise only if she meets the eligibility criteria for admission.

13. For the aforesaid reasons, the writ petition, alongwith the pending application, is dismissed.

DECEMBER 24, 2021

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PRATEEK JALAN, J.



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