

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

+ **W.P.(C) 5536/2010 & CM No.10886/2010 (u/S 151 CPC for interim relief)**

% **Date of decision : 16th August, 2010.**

MS. JYOTI YADAV & ANR. Petitioners
Through: Mr. Deepali Gupta, Advocate.

Versus

GOVT. OF NCT OF DELHI & ORS. Respondents
Through: Ms. Avinsh Ahlawat & Ms. Simran, Advocates.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

RAJIV SAHAI ENDLAW, J.

1. The question which falls for consideration in this petition is, whether the petitioners, being entitled under the Prospectus published (for admission to Diploma Course in Elementary Teacher Training) to apply for admission in OBC Category (to which they claim to belong) as well as in General Category and having applied only in the OBC Category, can upon being unsuccessful in securing admission in OBC Category, are entitled to claim admission in General (unreserved) Category, for the reason of the last candidate selected in General Category having secured marks (in Class-XII Board Examination) less than the petitioners.

2. The relevant clauses in the prospectus for admission are as under:-

“Candidate is required to select only one category, best suitable to him/her in one application form and fill up separate application form for each category.”

“An eligible candidate of a particular category will be considered for admission in that category only, in order of merit and subject to availability of vacant seat.”

3. The counsel for petitioners contends that even if they erred in not applying for admission under the General Category, if they qualify in the merit list drawn of the General Category, for the reason of being more meritorious alone, they are entitled to admission in General Category in preference to those less meritorious than them in the General Category. Reliance in this regard is placed on *Renu Vashist Vs. National Capital Territory of Delhi* 138 (2007) DLT 32 relating to admission to the same course.

4. I have perused the said judgment. The counsel for the petitioners admits that there is a change in admission procedure since the time of the said judgment. While then, a composite merit list was drawn up of all categories, reserved or unreserved (with option being required to be exercised at the time of counselling), now as aforesaid, the admission seekers are required to apply under a particular category and permitted to apply in more than one category and the merit list drawn categorywise. In the context of such common merit list drawn up under the old prospectus, this Court held that a candidate who qualifies “both under the reserved category as well as the general category would for the purpose of

admission be treated as a general category candidate without exhausting a seat from the reserved quota”. But in the facts of the present case, the petitioners, inspite of being required to apply separately for admission in the General Category, if desirous of being considered in that category also, chose to apply under the OBC category only. Thus, the premise on which *Renu Vashist* (supra) was based, i.e. of the petitioner in that case being entitled to be considered in both categories, is missing in the present case. It thus cannot be said that the present case is covered by *Renu Vashist*. Rather, the question which arises in the present case is, whether such change of category can be allowed.

5. On that question, I find that the Supreme Court recently in *Union of India Vs. Dalbir Singh* AIR 2009 SC 2438 held “In our opinion, having opted to consider his case only under OBC Category, he cannot thereafter claim that his case requires to be considered in the general merit, only because, he has scored better percentage of marks than the last selected candidate in the general list”. The direction for considering the claim under the General Category was set aside.

6. The Division Bench of this Court also in *Anand Lal Yadav Vs. N.C.T. of Delhi* MANU/DE/1758/2002 held that candidates cannot be permitted to change the category under which they originally applied, after the last date fixed for receipt of applications.

7. Faced with the aforesaid, the counsel for petitioners contends that the provision aforesaid in the prospectus of consideration only in the

category applied for is bad and contrary to the judgments namely (i) ***Indra Sawhney Vs. Union of India*** 1992 Supp. (3) SCC 217 (ii) ***Ritesh R. Sah Vs. Dr. Y.L. Yamul*** 1996 (3) SCC 253 and (iii) ***Union of India Vs. Satya Prakash III*** (2006) SLT 334 referred to in the judgment in ***Renu Vashist*** (supra). The contention is that the candidate applying in reserved category has an inherent right to be considered in the unreserved category notwithstanding a provision to the contrary.

8. At the outset, I am not inclined to entertain the said contention in the present case. The petitioners did not challenge the said provision in the prospectus when it was published and took their chance by applying in OBC Category only. The said ground has been taken now, when the list of candidates selected in the General (unreserved) Category has been drawn up. The relief of quashing of the said list is claimed. However the said candidates whose selection is sought to be quashed have not been impleaded as parties. Without them, the petitioners cannot be granted any relief. This was so recently reiterated in ***Public Service Commission, Uttranchal Vs. Mamta Bisht*** MANU/SC/041/2010 as also in ***Kumari Rashmi Mishra Vs. M.P. Public Service Commission*** MANU/SC/8586/2006.

9. Recently the Division Bench of Bombay High Court in ***Gorakh Nath Balu Shinde Vs. State of Maharashtra*** MANU/MH/0393/2009 held that where the terms and conditions of brochure are unambiguous and certain, they are binding on all persons in the conduct of examination and

all are expected to adhere thereto strictly in order to avoid prejudice to any person. The Apex Court in *Amlan Jyoti Barooah Vs. State of Assam* MANU/SC/0077/2009 also held that candidates who take part in the selection process knowing fully well the procedure laid down therein, cannot be permitted to turn back and assail the same after having been declared unsuccessful.

10. Be that as it may, for complete adjudication, the contention of petitioners is considered on merits also.

11. I find that the controversy as here, did not arise for consideration in *Indra Sawhney* or in *Ritesh R. Sah* or in *Satya Prakash*. The question there was, whether the candidates selected in General (unreserved) Category on their own merit, if found to be belonging to reserved category, could be counted in reserved category for reducing the number of seats prescribed in reserved category. This was held to be impermissible. To the same effect is judgment of another Constitution Bench in *R.K. Sabharwal Vs. State of Punjab* AIR 1999 SC 1371. However in the present case, the question is, whether the petitioners are entitled to be selected in the General Category inspite of being required to separately apply if desirous of being considered in that category. It is thus not as if the petitioners were shut out or prevented from consideration or competing in the general category; they failed to exercise the option for consideration in general category.

12. No merit is thus found in the petition. The same is dismissed. No order as to costs.

CM No.10887/2010 (for exemption).

Allowed, subject to just exceptions.

**RAJIV SAHAI ENDLAW
(JUDGE)**

16th August, 2010
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