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STATE OF PUNJAB AND ORS.

v.

RENUKA SINGLA AND ORS.

NOVEMBER 26, 1993

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[S.C. AGRAWAL AND N.P. SINGH, JJ.]

Education—Admission to Professional Course—Dentists Act, 1948—Sections 10A and 10B (3)—Admission—B.D.S. Course—Direction of High Court to admit a candidate against reserved seat on compassionate ground—

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Admission of another candidate directed after creating additional seat—Violative of Sections 10A and 10B (3)—Directions set aside.

For admission to B.D.S. Course, respondents appeared at the Pre-Medical Test. In the merit list of Students belonging to backward areas, the position of respondent no. 1 was at serial no. 9 whereas that of

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respondent no. 2 was at serial no. 10. In the admission form respondent No. 1 had made no claim for admission against a seat reserved for backward areas. On the basis of the merit list, respondent No. 1 was granted admission to B.A.M.S. Course against general category seats. In the meantime because of withdrawal of a candidate, one seat fell vacant in the B.D.S. Course, Respondent No. 1 filed a writ application claiming that

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seat, saying that she belonged to a backward area.

The High Court took note of the fact that respondent no. 1 had not submitted any certificate alongwith the admission form but claimed to have forwarded the same later, which did not reach the competent

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authority before the prescribed date. However, it directed that respondent No. 1 be admitted against the said seat, which had become vacant, on "compassionate ground", treating her to be belonging to the backward area. In respect of respondent no. 2, the High Court directed that a seat be created for her admission.

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In these appeals filed by the State, it is submitted that the application for admission of respondent no. 1 cannot be considered against a seat reserved for candidates coming from backward area, in view of the fact that no such claim was made and it was only at a latter stage, that a certificate was forwarded. It was also stated that the number of seats are

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fixed taking into consideration the staff position and infrastructure of a

college and the High Court ought not have directed to creation of an additional seat for the admission of respondent no. 2. It was pointed out that the Dental Council of India has to function under the Dentists Act and to act according to the regulations framed thereunder.

Allowing the appeals, this Court

Held : 1.1. For technical education, including medical education, taking into consideration the infra-structure, equipment, staff, the limit of the number of admissions is fixed either by the Medical Council of India or Dental Council of India. The High Court cannot disturb that balance between the capacity of the institution and the number of admissions, on "compassionate ground". The High Court should be conscious of the fact that in this process they are affecting the education of the students who have already been admitted, against the fixed seats after very tough competitive examination. There does not appear to be any justification on the part of the High Court, in the present case, to direct admission of respondent no. 1 on "compassionate ground" and to issue a fiat to create an addition seat which amounts to a direction to violate Section 10 A and Section 10 B (3) of the Dentists Act. [870-E-G]

1.2 In the instant case, the direction given to admit respondent no. 1 against the one vacant seat, is set aside, since against that seat respondent no. 2 has a better claim, because her application was in proper form alongwith proper certificate that she belonged to a backward area. She should be admitted against the seat which had fallen vacant due to withdrawal of the admission. If any seat in B.A.M.S. Course is available, respondent no. 1 should be considered for admission against that.

[870-H, 871-A-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 3363-3364 of 1993.

From the Judgment and Order dated 18.12.92 of the Punjab & Haryana in C.W.P. Nos. 15863 & 16329 of 1992.

Ranbir Singh Yadav and G.K. Bansal for the Appellants.

Rajni Atma Ram and K. Mahajan for the Respondent No. 2.

R.L. Kohli, Ms. S. Bagga, Aman, Vivek and Prem Malohtra for the Respondents Nos. 1. & 3.

A The Judgment of the Court was delivered by

N.P. SINGH, J. These appeals have been filed on behalf of the State of Punjab for setting aside an order dated 18.12.1992 passed by the High Court on writ applications, filed on behalf of respondent No. 1, Renuka Singla, and respondent No. 2, Savita Gera, directing to admit respondent No. 1 against the seat reserved for candidates belonging to backward areas which had fallen vacant as a result of withdrawal of one Sanjiv Goyal from the B.D.S. Course and to admit respondent No. 2, after creating an additional seat on compassionate ground.

C The respondents aforesaid appeared at the Pre-Medical Test conducted in May 1992. In the merit list of candidates belonging to backward areas, the position of respondent No. 1 was at serial No. 9 whereas that of respondent No. 2 was at serial No. 10. There is no dispute that in the application form which had been filed on behalf of respondent No.1 for the aforesaid Test, no claim was made on her behalf for admission against a seat reserved for backward area. So far respondent No. 2 is concerned, in her application form she claimed admission against a seat reserved for backward areas and in support of her said claim she also enclosed a certificate as required by the prospectus issued for the year 1992-93. On basis of the merit list, respondent No. 1 was granted admission to B.A.M.S. Course against general category seats. In the meantime, the aforesaid Sanjiv Goyal, who had been admitted in the B.D.S. Course, withdrew his admission and because of that a seat became available. Respondent no. 1 filed the writ application aforesaid claiming that seat, saying that she belonged to a backward area and as such she was entitled to be admitted against that seat in B.D.S. Course. As already mentioned, in her application for admission, neither she had claimed admission, as a candidate belonging to backward area, nor she had produced any certificate in support thereof. Later she forwarded a certificate that she belonged to a backward area and made the claim even on that basis, apart from her original claim against the general category seat.

G The High Court by the impugned order, having taken note of the fact that respondent No. 1 had not submitted any certificate along with the admission form and claimed to have forwarded the same later, which did not reach the competent authority before the prescribed date, still directed that respondent No. 1 be admitted against the said seat, which had become

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vacant, on "compassionate ground", treating her to be belonging to the backward area. In respect of respondent No. 2 as already mentioned above, the High court directed that a seat be created for her admission. Having issued the direction aforesaid, the learned Judges observed that the admission of the respondents should not be treated as precedent, because direction had been issued for the admission, in view of the peculiar facts of the case. A B

The stand of the appellant-State is that the application for admission of respondent No. 1 cannot be considered, against a seat reserved for candidates coming from backward area, in view of the fact that no such claim was made on behalf of respondent No. 1 and it was only at a later stage, after the prescribed date, a certificate was forwarded on behalf of the said respondent, claiming admission even as a candidate belonging to the backward area. C

The Dental Council of India has appeared and filed an affidavit, saying that the number of seats are fixed and the High Court should not have directed to create an additional seat for the admission of respondent No. 2. On behalf of Dental Council of India, it was pointed out that it has to function under the Dentists Act, 1948 and to act according to the regulations framed thereunder, which prescribe the requirement regarding medical staff. Other staff, equipment and the infra-structure of a Dental College. The number of seats are fixed taking into consideration the staff position and infra-structure of a particular college. For the Government Dental College Amritsar, in B.D.S. Course, the number of admissions have been fixed at 40. D E

Section 10 A of the Dentists Act provided that except with previous permission of the Central Government obtained in accordance with the provisions of the said section, no authority or institution shall increase its admission capacity in any course of study or training (including a post-graduate course of study or training). The relevant part of Section 10 B says : F G

"Sec. 10 B (3). Where any authority or institution granting recognised dental qualification increases its admission capacity in any course of study or training (including a post-graduate course of study or training) except with the previous permission of the Central Government in accordance with the provisions of Section H

A 10 A, no dental qualification granted to any student of such authority or institution on the basis of the increase in its admission capacity shall be a recognised dental qualification for the purpose of this Act."

B On behalf of the State, a firm stand was taken that there is no other seat vacant than the one due to withdrawal of the admission of aforesaid Sanjiv Goyal.

C The admission in Medical Course throughout India is governed by different statutory provisions, including regulations framed under different Acts. During last several years efforts have been made to regulate the admissions to the different medical institutions, in order to achieve academic excellence. But, at the same time, a counter attempt is also apparent and discernible, by which the candidates, who are not able to get admissions against the seats fixed by different statutory authorities, file writ applications and interim or final directions are given to admit such petitioners. We fail to appreciate as to how the High Court can be generous or liberal in issuing such directions which in substance amount to directing the authorities concerned to violate their own statutory rules and regulations, in respect of admissions of students. It cannot be disputed that technical education, including medical education, requires infra-structure to cope with the requirement of giving proper education to the students, who are admitted. Taking into consideration the infra-structure, equipment, staff, the limit of the number of admissions is fixed either by the Medical Council of India or Dental Council of India. The High Court cannot disturb that balance between the capacity of the institution and number of admissions, on "compassionate ground". The High Court should be conscious of the fact that in this process they are affecting the education of the student who have already been admitted, against the fixed seat, after a very tough competitive examination. According to us, there does not appear to be any justification on the part of the High Court, in the present case, to direct admission of Respondent No. 1 on "compassionate ground" and to issue a fiat to create an additional seat which amounts to a direction to violate section 10 A and section 10B (3) of the Dentists Act referred to above.

H Accordingly, the direction given to admit respondent No. 1 Renuka Singla, against the one vacant seat, is set aside, since we are of the opinion

that against that seat respondent No. 2, Savita Gera, has a better claim, because her application was in proper form along with proper certificate that she belonged to a backward area. No such claim had been made on behalf of respondent No. 1, Renuka Singla, and no certificate in support of said claim had been filed on her behalf. Respondent No. 2 Savita Gera, should be admitted against the seat which had fallen vacant due to withdrawal of the admission by Sanjiv Goyal.

On behalf of Renuka Singla, it was pointed out that pursuant to the order passed by the High Court, she has been admitted and because of her admission in the B.D.S. Course she has left B.A.M.S. Course. It is not possible to issue a direction that she be again admitted to B.A.M.S. Course. But, if any seat in B.A.M.S. Course is available, then she should be considered for admission against that seat.

The appeals are accordingly allowed to the extent indicated above. In the circumstances of the case, there shall be no order as to costs.

A.G.

Appeals allowed.