

Pallem Vennela vs Union Of India And Ors on 22 September, 2022

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 13210/2022

PALLEM VENNELA

..... Petiti

Through: Mr. Rakesh Kr. Singh, Mr. Asho
Anand & Mr. Somnath Padhan, Ad

versus

UNION OF INDIA AND ORS

..... Respon

Through: Ms. Nidhi Banga, Sr. Panel Cou
for R1
Mr. Kirtiman Singh with Mr. Wa
Ali Noor, Adv.

+ W.P.(C) 13220/2022

VAMSEE KRISHNA TAMMA

..... Petiti

Through: Mr. Rakesh Kr. Singh, Mr. Asho
Anand & Mr. Somnath Padhan, Ad

versus

UNION OF INDIA AND ORS

..... Respon

Through: Mr. Kirtiman Singh with Mr. Wa
Ali Noor, Adv.

+ W.P.(C) 13222/2022

LOHIT VARMA JAMPANA

..... Petiti

Through: Mr. Rakesh Kr. Singh, Mr. Asho
Anand & Mr. Somnath Padhan, Ad

versus

UNION OF INDIA AND ORS

..... Respon

Through: Mr. Saroj Bidawat, Senior Pane
Counsel with Ms. Priti, Adv. f

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By:HARMINDER KAUR
Signing Date:22.09.2022
22:44:28

Mr. Kirtiman Singh
Ali Noor, Adv.

+ W.P.(C) 13242/2022

UPPALAPATI VENKATA NAGA KOWSHIK

..

Through: Mr. Rakesh Kr. Singh
Anand & Mr. Somnath

versus

UNION OF INDIA AND ORS

Through:

Mr. Kirtiman Singh w
Ali Noor, Advs.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% 22.09.2022 CM APPL. 41738/2022 in W.P.(C) 13210/2022 CM APPL. 41667/2022 in W.P.(C) 13220/2022 CM APPL. 41675/2022 in W.P.(C) 13222/2022 CM APPL. 41680/2022 in W.P.(C) 13242/2022

1. The writ petition filed by the petitioners was dismissed by this Court vide judgment dated 14.09.2022. The petitioners who had appeared in NEET PG-2022 Examination ("NEET-PG") held on 21.05.2022 as General category candidates had filed the writ petition contending that they had inadvertently filled their category as General whereas they, in fact, belong to "Other Backward Classes" (OBC). This Court after considering the submissions made by the parties dismissed the petition and observed as under:

"5. The Court has considered the aforementioned submissions and finds no ground to grant the relief sought. At the first instance, it is noted that all Petitioners have obtained OBC certificates in August, 2022, which is much after the declaration of results. Even if one were to assume a delay on the part of competent authorities in issuing OBC certificates, there appears to be no justification as to why Petitioners opted for general category while filling the forms which were first made available in January-February, 2022. Regardless of the documentation, a candidate is expected to know the category to which they belong and fill the form accordingly. Moreover, under the scheme of NEET PG, candidates are not required to upload their caste certificates along with application forms and same is to be furnished post declaration of results. If indeed the contention of Petitioners was true, they could have easily entered correct category without any adverse consequences since proof needed to be submitted at a later stage. It can also not be ignored that Petitioners have approached this Court at the eleventh hour when counselling process is set to commence from tomorrow i.e., 15th September, 2022. Having regard to the aforesaid as well as the fact that an edit window was also provided to all candidates, the Court is unable to conclude that there has been a bonafide error on the part of Petitioners. It appears that decision to obtain OBC caste certificate was an afterthought once Petitioners realised that they have a better chance of securing admissions under the OBC category.

6. Petitioners' reliance on Minor S. Thirumangai (Supra) is of no avail. In that order, the Court has not provided any reasoning that can be followed by the Court while deciding present case; it was perhaps passed in the facts of the said case and no parity can be sought on basis thereof. Respondents have also relied on various case laws in support of their stand. Judgement in Sharanya Kaja (Supra) was passed in somewhat

similar circumstances. Petitioner therein also sought change in category from general to OBC on the strength of a certificate issued after declaration of results, which was not accepted by the Court. Counsel for Petitioners attempted to distinguish this decision on the ground that Petitioner therein had approached the Court when counselling was on-going and whereas in present petition, counselling is yet to begin. The Court, however, does not find merit in this contention. Reasoning given by the Court for disallowing Petitioner's request was not premised solely on the fact that counselling had commenced, as evident from paragraph 11 of the said judgment, which is applicable to present case as well. The Court is in agreement with the observations made therein that permitting change from unreserved to OBC category at this belated stage is likely to disrupt the entire admission process and Respondents would be flooded with requests from other similarly placed candidates. Further, Respondents will be compelled to re-draw the merit list for OBC category if petitions are allowed. Not only would this inconvenience Respondents, but would also affect other OBC candidates who have qualified NEET PG on basis of their performance."

2. The present application is now filed seeking recall of the judgment dated 14.09.2022 on the ground that the basis of passing of the judgment is taken away due to issuance of notice dated 16.09.2022 by the respondents.

3. The notice dated 16.09.2022 has been issued giving a window to the candidates for conversion of their category from SC/ST/OBC/EWS to Unreserved category. The notice states as under:

"Hence, keeping in view the said circumstances MCC of DGHS, MoHFW is allowing 'Change of Category' option on front page of Registration form which may be availed by only those Candidates who wish to change their category from SC/ST/OBC/EWS to UR category for Round 1 of NEET PG Counselling, 2022 and subsequent rounds. Similarly, candidates can change their nationality from 'NRI' to 'INDIAN'. Rest of the Candidates who do not wish to carry out the said changes may not avail the said facility."

4. Learned Counsel for the petitioner states that this Court had passed the judgment dated 14.09.2022 for the reason that permitting a change in the category from Unreserved to OBC at this belated stage is likely to disrupt the entire admission process and since the respondent itself by way of the aforementioned notice is permitting change of category, the very basis of the judgment is taken away and, hence, prays for recall of the judgment dated 14.09.2022.

5. Although, ordinarily, the Bench that has passed the order under recall/review is to hear the application seeking such recall/review but since Sanjeev Narula, J., who passed the order dated 14.09.2022 is on leave and the learned Counsel expressed extreme urgency and argued that the petition would become infructuous if not heard immediately, I have proceeded to hear the present application.

6. Mr. Kirtiman Singh, Learned Counsel appearing for the respondent states that no ground has been made out to recall/review the judgment passed by this Court on 14.09.2022. It is submitted that the notice dated 16.09.2022 had been issued for the reason that the candidates who have mistakenly filled their application as SC/ST/OBC/EWS category candidate should not be prejudiced at later stage after the counselling if they are not able to produce appropriate certificate. The notice is thus an opportunity for such candidates to change their categories to "Unreserved" so that in future they should not be deprived of the seat despite having made a cut off but for the reason that they are not able to produce the certificate.

7. As explained by learned Counsel for the parties, the cut off score and percentile for various categories is as under:

Category Minimum Qualifying/ Cut-off Score (out of 800) Eligibility Criteria
(Including PWD of SC/ST/OBC)

8. A candidate who has scored the cut off of 50th percentile is eligible to be allotted a seat as a General category candidate.

9. A SC/ST/OBC candidate if has made a cut off of 50th percentile but claims allotment of seat as a reserved category candidate, is not entitled to be allotted any seat in future either in the General category or in the reserved category if he is unable to produce the appropriate certificate. It is contended by learned Counsel for the respondent that the notice dated 16.09.2022 has been issued in order to give an opportunity to candidates who realise that they have inadvertently filled their category as SC/ST/OBC/EWS in the registration form, however, actually belong to Unreserved category. It is stated that in such scenario, where a candidate has filled their category as SC/ST/OBC/EWS and is not able to produce the certificate, the seat goes vacant and is, in fact, wasted.

10. The grounds available for review/recall of a judgment are limited. It is settled law that judgment can only be reviewed/ recalled if the same has been passed on account of error apparent on the face of the record. No doubt, an order can be recalled if the basis of passing of the said order is also taken away or if the reason for which that order has been passed no longer survives. The arguments raised by learned Counsel for the petitioner that the reason for passing of the order no longer survives because of the notice dated 16.09.2022 is fallacious.

11. As noticed above, this Court had dismissed the writ petition on various grounds. It was specifically noted that all petitioners had obtained OBC certificate in August, 2022, much after declaration of the results and there was no justification as to why the petitioners opted for General category while filling the forms, since, regardless of the availability of documentation, a candidate was expected to know the category to which they belong. The Court also did not find the error on the part of the petitioners to be bona fide and observed that the decision to obtain OBC caste certificate was an afterthought. Thus, the writ petition was dismissed on various grounds and the observations made in the order to the effect that the change in category from Unreserved to OBC at this belated stage is likely to disrupt the entire admission process was only in addition to the various grounds on

which the writ petition was not accepted.

12. In view of the above, the present applications are dismissed being devoid of merits.

AMIT MAHAJAN, J SEPTEMBER 22, 2022 SS