Suresh vs Vasant And Ors. on 1 May, 1972

Equivalent citations: AIR1972SC1680, (1973)2SCC124, 1973(5)UJ52(SC), AIR 1972 SUPREME COURT 1680, 1973 2 SCC 124

Bench: A.N. Grover, K.S. Hegde

JUDGMENT

Grover, J.

1. This is an appeal by special leave from a judgment of the Nagpur Bench of the Bombay High Court.

2. The necessary facts as given in the return filed in the High Court and which have not been disputed may be set out. The Vidyapeeth (University) has three Agricultural Colleges attached to it One is at Akola, the other at Nagpur and the third at Parbhani. For the M.Sc. (Agri.) course 12% seats were reserved for the scheduled castes and Nawabudhas and 8% were reserved for the Scheduled Tribes Six percent seats were reserved for members of classes and communities which were socially and educationally backward. Two percent seats were reserved for agriculturists and children of agriculturists who possessed minimum qualifications or experience in agriculture prescribed by the statute. Fifteen percent seats were reserved for persons who and whose parents had not resided in the State of 10 years or more and 2% for the children of what were called "Freedom Fighters". Initially admission were made on the basis of the above percentages. The qualifications required for admission were the degree of B.Sc. (Agri.) or an equivalent examination with at least 50% marks in the aggregate and in the subject offered for the Post-Graduate studies. The Vidyapeeth found that after the admissions had been made on the basis of the above qualifications certain relaxation of marks was necessary for students belonging to the classes for whom reservation had been made. Two steps were taken; one was that additional seats should be created and twelve such seats were created. The qualifications were also lowered in that instead of 50% marks in the aggregate 45% were laid down as sufficient. The lowering of the qualifications was done mainly in respect of the sons of "Freedom Fighters" as also of persons belonging to Scheduled Castes and Scheduled Tribes. This was done by the Executive Council by means of a resolution dated July 25, 1970. Without going into further details the net result was that in the Nagpur College itself two seats were increased to accommodate the children of the Freedom Fighters. To one of the seats respondent No. 1 was admitted. He started attending the classes from July 28, 1970. By the time return came to be filed in October 1970, he had appeared in all the monthly examination and had passed in them. The final examination of the First Trimester of the course leading to decree of the M.Sc. (Agri.) examination had already been held and respondent No. 1 had passed that examination.

3. A petition under Article 226 of the Constitution was filed in the High Court originally by 7 petitioners out of whom two were struck off leaving petitioners 1 to 5 before the High Court. According to petitioners 1 and 2 they had secured more than 50% marks in the aggregate as well as in the subjects in which they had applied for admission and that they were thus entitled to be admitted instead of respondent No. 1 who was not duly qualified. The High Court went into the matter at length. It proceeded on the basis that the reservations could be made for the children of Freedom Fighters under Section 5 of the Punjabrao Krishi Vidyapeeth (Agricultural University) Act 1968, hereinafter called the 'Act'. The reservation of the seats to the extent of 2%, therefore, was valid as the previous sanction of the State Government had been obtained.

4. The High Court was of the view that the lowering of the minimum qualification for admission was unauthorised although the seats could have been increased by the Executive Council. After coming to that conclusion this is what the High Court said:-

> We hold that the petitioners are entitled to be considered for admission to the unreserved seats out of the 11 seats created and the petitioners have, therefore, right to approach this Court under Article 226 of the Constitution for their redress.
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> The order of admission of respondent No. 1 in the Nagpur College was quashed and it was directed that if possible the eligible candidate should be admitted in his place. Respondent No. 1 was also entitled to be considered for admission, if otherwise qualified.

5. According to Mr. C.K. Daphtary who appeared for the appellant the writ petition should have been dismissed by the High Court on the short ground that the same was not maintainable at the instance of the present respondents. These respondents, according to him, do not belong to any of the categories of classes for which the 12 extra seats in the entire Vidyapeeth were created. They had, therefore, no interest in the suit and they had no locus standi to challenge the resolution by which the qualification were lowered in respect of the candidates belonging to classes already mentioned. Our attention has been invited to the return filed by the appellant before the High Court. It was stated therein that he had been admitted to the College in the month of July 1970 and had been attending the classes regularly and even weekly and monthly examinations were being conducted. By deciding the writ petition it would only mean that not only the career of the present appellant would be affected but also of the other 11 students who were admitted along with him and who had not been made parties would be affected, the total number of seats which had been increased being 12. In the return filed on behalf of the Vidyapeeth etc. in the High Court it had been pointed out that the minimum qualifications of marks for the categories of certain person had been relaxed even by the Indian Agricultural Research Institute and on that basis the Executive Council had taken a decision to reduce only one part of the qualifications, namely, that in the aggregate instead of 50%, obtaining of 45% marks was sufficient. Without going into the question of the validity of the resolution of the Executive Council by which the qualifications were lowered or the number of seats was increased by 12 for sons of Freedom Fighters and others we have no hesitation in acceding to the contention of Mr. Dephtary that the writ petition was bound to fail on the short ground that none of the respondents who were petitioners before the High Court could show that he was entitled

to be admitted to any one of the seats out of the 12 seats which had been newly created for specified categories pursuant to the resolution of the Executive Council. Admittedly none of these candidates was either a son of a Freedom Fighter or belonged to the Scheduled Caste or Scheduled Tribe. There is another serious hurdle in the way of sustaining the relief which has been granted by the High Court. The Post-Graduate course for which the admission was to be made is about to conclude and the appellant has been attending that course and has appeared in all the examinations and may be declared successful after he has completed the course and passed all the remaining examinations. None of the respondents who was eligible for admission on the basis of the qualifications for students not belonging to the reserved categories has been attending the course in question or appearing in the examinations. If the order of the High Court is to be carried out it will only mean that the appellant will be deprived of the entire work which he has put in during this period from the date he was admitted in 1970 whereas any eligible candidate out of the present respondents who may be held entitled to admission in accordance with the judgments of the High Court cannot qualify for any Post-Graduate Degree unless he starts attending the course which will mean that another period of two years will have to lapse before he can get the Post-Graduate degree if he passes all the examinations etc. The High Court, while granting the relief, ought to have kept in view the injustice that would result in a matter like this and which would make the grant of the writ almost futile. It is true that a good deal of time has lapsed owing to the pendency of the appeal in this Court but even the judgment of the High Court was delivered on November 6, 1970 by which time the same difficulties would have been apparent.

6. The appeal is accordingly allowed and the order of the High Court is hereby set aside. The writ petition shall stand dismissed. There will be no order as to costs.