

Court No. - 7

Case :- WRIT - C No. - 7708 of 2024

Petitioner :- Avani Pandey

Respondent :- Directorate General Of Medical Education And Training Thru. Director General Lucknow And Another

Counsel for Petitioner :- Rajesh Kumar Singh

Counsel for Respondent :- Syed Mohammad Haider Rizvi,C.S.C.

Hon'ble Alok Mathur,J.

1. Heard Sri Ram Anugrah Singh, learned counsel for the petitioner, learned Standing counsel for respondent No.2 and Sri S. M. Haider Rizvi for respondent No.1.

2. It has been submitted by learned counsel for the petitioner that the petitioner is a domicile of Uttar Pradesh and has passed 10th and 12th Standard from District Bareilly while her great grandfather and great grandmother were the domiciles of District Motihari, East Champaran of State of Bihar and both were declared to be freedom fighters by the competent authority of State of Bihar.

3. The petitioner has appeared in NEET-(UG)-2024 examination for admission to MBBS course and is seeking grant of reservation of dependent of freedom fighters as she has been denied permission to participate in the counselling subject to declaration of NEET result. She has secured 388 marks out of 720 and her all India rank is 3,99,276. It has been submitted that all the other candidates who are eligible have been issued a time schedule for counselling but the petitioner has not been given any such time schedule as the respondents are not giving her the benefit of reservation under dependent of freedom fighter category and in this regard has also made several representations to respondent No.1 but she has not received any response and accordingly present writ petition has been filed seeking a direction to respondent No.1 to admit the petitioner in MBBS course pursuant to her qualification in NEET - (UG)-Examination, 2024 as dependent of freedom fighters and also to declare guidelines issued by respondent No.1 to the extent it excludes the dependent of freedom fighter from other States as

illegal so as to avail the benefit of reservation under freedom fighter category as being discriminatory and violative of Articles 14, 15 and 16 of the Constitution of India for grant of reservation under freedom fighters category.

4. In support of his submissions learned counsel for the petitioner has relied upon a Division Bench judgment rendered in the case of **Anmol Deep Vs. State of U.P. and others**, passed in Writ C No.23936 of 2018 where the issue before this Court was with regard to the candidates who are the domiciles in State of U.P. while their grand parents were the domiciles of outside the State of U.P. and the certificate of dependent of freedom fights have been issued outside the State of U..P. and in this regard this Court had held as under:-

"Consequently, we are of the opinion that the law cannot exclude freedom fighter domiciled outside U.P. from their status of a freedom fighter and, therefore, the condition of domicile contained in Section 2 (d) of U.P. Act of 1993 has to be ignored to bring it within the fundamental framework of the principle of equality contained in Articles 14 and 15 of the Constitution of India."

5. Learned counsel for the respondents, on the other hand, have also placed before this Court a recent judgment passed by a Division Bench of this Court in the case of **Navdeep Singh and another Vs. State of U.P. and others** passed in Writ C No.7068 of 2024 where this Court has also relied upon the judgment in the case of **Anmol Deep (supra)** where it was found that the candidates who are domicile of State of U.P. while grand parents are domicile of outside the State of U.P. who are living in State of Haryana were allowed to participate in the counselling in NEET-UP 2024. The said order of this Court dated 20.8.2024 is an interim order subject to final outcome of the writ petition.

6. Learned counsel for the respondents have fairly submitted that as to whether any dependent of freedom fighter as described under Section 2 (b) of U.P. Public Services (Reservation for Physically Handicapped, Dependents of Freedom Fighters and Ex-Servicemen) Act, 1993, would be eligible to participate and be given benefit of being dependent of freedom fighters is no longer *Res-integra* in as much as the said issue has been decided by a Division, Bench of this Court in the case of **Anmol Deep (supra)**.

7. The second issue in the present case is that the petitioner is great granddaughter of the freedom fighters who were the domicile of State of Bihar. It has been submitted that according

to the Act of 1993, dependent of freedom fighters are defined in Section 2 (b) which is quoted as under:-

"(b) "dependent" with reference to a freedom fighter means,-

(i) son and daughter (married or unmarried).

(ii) grand son (son of a son or daughter) and grand daughter (daughter of a son or daughter) (married or unmarried)."

8. A perusal of the aforesaid definition indicates that son and daughter, married or unmarried, grandson and granddaughter, married or unmarried are included in the definition of 'dependents of freedom fighters' while great grand son or great grand daughter is not included in the said definition. The definition is exhaustive in as much as it states "dependent" with reference to a freedom fighter "means". Accordingly, apart from the category of individuals included in the said definition, no other category would be included while interpreting the provisions of Section 2 (b) of the Act of 1993.

9. Accordingly, the question raised in the present writ petition is whether the great grand daughter of freedom fighters is also to be granted benefit as being dependent of freedom fighter as per Section 2 (b) of the Act of 1993 ? There is no dispute with regard to the fact that great grand daughter is not included in the definition of "dependent" as given in Section 2 (b) of the Act of 1993. This aspect of the matter was also duly considered by the Division Bench of this Court in the case of **Krishna Nand Rai Vs. State of U.P. and 2 others** passed in Writ C No.13427 of 2020. In the said case great grandson of freedom fighter had approached this Court seeking benefit of being dependent of freedom fighter as defined under Section 2 (b) and this Court had rejected the contentions of the petitioner. The relevant portion of the judgment reads as under :-

"In the instant case as well, no purpose will be served in remitting the matter back to the authority for decision afresh after providing opportunity of hearing to the petitioner, in as much as the defect is incurable; no amount of explanation can change the ultimate result, being a fait accompli. For the petitioner can by no means negate the admitted fact that being great grand son of a 'freedom fighter', he is beyond the purview of the definition of 'dependent of freedom fighter.'

10. Accordingly, as per the aforesaid judgment of the Division Bench great grand son would not be included within the purview of definition of 'dependent of freedom fighters'. In the case, at hand, the petitioner claims to be great grand daughter of

dependent of freedom fighter and is similarly circumstanced to the petitioners of the judgment of *Krishna Nand Rai (supra)* and the ratio of the said judgment would squarely apply to the facts of the present case. Therefore, the petitioner also would not be included in the definition of dependent of freedom fighters and on this ground the prayer made by the petitioner cannot be granted.

11. In light of the above, this Court is of the considered view that the petitioner cannot be included in the definition of dependent of freedom fighter as provided for in the Act of 1993. Accordingly, the petition being bereft of merits is **dismissed**.

(Alok Mathur, J.)

Order Date :- 9.9.2024

RKM./A. Verma