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FAIZA CHOUDHARY

v.

STATE OF JAMMU AND KASHMIR AND ANR.
(Civil Appeal No. 6346 of 2012)

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SEPTEMBER 6, 2012

[K.S. RADHAKRISHNAN AND DIPAK MISRA, JJ.]

Education - Admission - MBBS course - Government Medical colleges in the State of Jammu & Kashmir - Seats under the Scheduled Tribe Gujjar Bakerwal (STGB) category - Carry forward of unfilled seat - If permissible - Whether the MBBS seat which fell vacant in the year 2010 could be carried forward to the year 2012 so as to accommodate the appellant who was in the merit list published in the year 2010 - Held: On law as well as on facts, the appellant had no right to make any claim for the vacant MBBS seat of the year 2010 in the year 2011 or subsequent years - A medical seat has life only in the year it falls that too only till the cut-off date fixed by Supreme Court i.e. 30th September in the respective year - Carry forward principle is unknown to professional courses like medical, engineering, dental etc. - If the authorized Board or the Court indulges in such an exercise, in the absence of any rule or regulation, that will be at the expense of other meritorious candidates waiting for admission in the succeeding years - A seat which fell vacant in a particular year cannot be carried forward or created in a succeeding year, in the absence of any rule or regulation to that effect - Medical Council of India Act - ss.10A and 11(2) - J & K Board of Professional Entrance Examination Act, 2002 - Jammu & Kashmir Reservation Act, 2004 - s.9.

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& Kashmir Board of Professional Entrance Examination [constituted under the J & K Board of Professional Entrance Examination Act, 2002] initiated steps for selection of meritorious candidates against the above mentioned seats. In terms of Section 9 of the Jammu & Kashmir Reservation Act, 2004, 50% of the total number of seats had to be filled up from amongst female candidates in both open merit and reserved category. The Scheduled Tribe Gujjar Bakerwal ('STGB') category was allotted 15 seats. Out of 15 seats allotted to STGB category, 7 seats each were allotted to male and female candidates respectively. The Board had taken a decision that the 15th odd seat in the year 2010 was to be allotted to a female candidate by way of rotation as prior to that, that seat was allotted to a male candidate. Appellant, a female candidate, was also in the merit under STGB category, but she had secured lesser marks than four other female candidates. 'NR', the first of the said four female candidates, had secured 121 marks. However, one 'AN', a male candidate, who had secured 146 marks, much more than the female candidates, filed a writ petition before the High Court raising a claim over the 15th odd seat stating that there could be no discrimination between male and female candidates. In that writ petition, 'NR' and one other candidate were also impleaded as parties. The High Court vide an interim order initially restrained the Board from taking any decision regarding selection against the said seat under the STGB category till 18-8-2010 , however, it ultimately dismissed the writ petition on 8-7-2011 since by that time 'AN', the petitioner therein had got admission in the subsequent selection process. Therefore, the said 15th odd seat which arose in the year 2010 remained unfilled.

The appellant thereafter submitted representation in the year 2011 before the Board seeking admission in that seat which fell vacant in the year 2010 under the STGB

A category. Since no decision was taken on that representation, appellant filed writ petition on 25-7-2011 seeking a direction to the Board to offer that seat to her. A single Judge of the High Court allowed the petition holding that the appellant was entitled to get admission to that unfilled MBBS of the year 2010. The single Judge also gave direction to the Board to seek extension of the time schedule, laid down in Mridul Dhar case* and further directed that in the event the time schedule was not extended, the appellant should be granted admission for the MBBS course in the year 2012. Aggrieved, the Board filed LPA before the Division Bench which held that since merit was the guiding criterion for making for selection to the professional courses, more particularly for MBBS course, a duty was cast on the Board to allot that seat to 'NR' on the basis of superior merit and that the appellant had no right in law to stake any claim over that unfilled MBBS seat, which arose in the year 2010. The Division Bench further held that an unfilled seat of one academic year could not be filled up after the cut-off date or directed to be filled up in the next academic year and, accordingly, set aside the order of the Single Judge.

In the instant appeal, the question which arose for consideration was whether the MBBS seat which fell vacant in the year 2010 could be carried forward to the year 2012 so as to accommodate the appellant who was in the merit list published in the year 2010.

Dismissing the appeal, the Court

HELD: 1.1. On law as well as on facts, the appellant has no right to make any claim for the vacant MBBS seat of the year 2010 in the year 2011 or subsequent years. The Board should have allotted that seat to another female candidate that is 'NR' who had secured 121 marks. Since litigation was on she could not have waited

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indefinitely for that seat and hence she had accepted the BDS seat. Next two candidates in line of merit, who had secured 118 marks each, however got admission to the MBBS course. Another candidate ranked above the appellant had to satisfy herself with a BDS seat because of the then ongoing litigation, lest, she might lose that seat as well. Appellant, never got herself impleaded in the writ petition filed by 'AN'. Only when the writ petition filed by 'AN' was dismissed on 08.07.2011, for the first time, she had filed a representation in the year 2011 raising a claim over that 2010 unfilled seat, by that time the cut-off date fixed by this Court i.e. 30th September for 2010 for admission was over. Further, few female candidates who had secured more marks than appellant had to contend with BDS seats. If that 2010 unfilled MBBS seat is offered to the appellant in the year 2012, that will be a great injustice to candidates who were ranked above the appellant. The appellant did not claim that seat in the year 2010 but only in the year 2011, by filing OWP No. 1010 of 2011 on 25.7.2011 claiming an unfilled seat of the year 2010. [Para 11] [538-D-H; 539-A]

1.2. A medical seat has life only in the year it falls that too only till the cut-off date fixed by this Court i.e. 30th September in the respective year. Carry forward principle is unknown to the professional courses like medical, engineering, dental etc. No rule or regulation has been brought to the knowledge of this Court conferring power on the Board to carry forward a vacant seat to a succeeding year. If the Board or the Court indulges in such an exercise, in the absence of any rule or regulation, that will be at the expense of other meritorious candidates waiting for admission in the succeeding years. [Para 12] [539-B-D]

1.3. The Medical Council of India Act provides that admission can be made by the medical colleges only

A within the sanctioned capacity for which permission under Section 10A/recognition under Section 11(2) has been granted. The High Court or the Supreme Court cannot be generous or liberal in issuing such directions which in substance amount to directing authorities
 B concerned to violate their own statutory rules and regulations, in respect of admissions of students. The number of students admitted cannot be over and above that fixed by the Medical Council as per the Regulations. There cannot be telescoping of unfilled seats of one year
 C with permitted seats of the subsequent year. It would not be possible to increase seats at the expense of candidates waiting for admission in the succeeding years. [Para 13] [539-D-H; 540-A]

D 1.4. Though the counsel for the appellant referred to few judgments of this Court stating that this Court had previously given certain directions to accommodate candidates in the succeeding years, but that was done only in extraordinary circumstances and issued in view of the mandate contained in Article 141 of the
 E Constitution which cannot be treated as a precedent for this Court or the High Courts to follow. It is, therefore, held that a seat which fell vacant in a particular year cannot be carried forward or created in a succeeding
 F year, in the absence of any rule or regulation to that effect. The Division Bench of the High Court rightly dismissed the claim made by the appellant. [Paras 14, 15] [540-B-D]

G *State of Punjab and Others v. Renuka Single and Others* (1994) 1 SCC 175; 1993 (3) Suppl. SCR 866; *Medical Council of India v. State of Karnataka* (1988) 6 SCC 131; *Medical Council of India v. Madhu Singh and Others* (2002) 7 SCC 255 and *Satyaprata Sahoo and Others v. State of Orissa and Others* JT 2012 (7) 500 - relied on.

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* *Mridul Dhar (Minor) and Another v. Union of India and Others* (2005) 2 SCC 65: 2005 (1) SCR 380 - referred to. A

Neelima Shangla v. State of Haryana and Others (1986) 4 SCC 268: 1986 (3) SCR 785; *Haryana Urban Development Authority v. Sunita Rekhi* (1989) Suppl. 2 SCC 169; *Anil Kumar Gupta and Others v. State of Uttar Pradesh and Others* (1995) 5 SCC 173: 1995 (2) Suppl. SCR 396; *Dolly Chhanda v. Chairman, JEE and Others* (2005) 9 SCC 779: 2004 (5) Suppl. SCR 79; *Vijay Jamini v. Medical Council of India and Others* (2005) 13 SCC 461; *Mridul Dhar (Minor) and Another v. Union of India and Others* (2008) 17 SCC 435 and *Medical Council of India v. Manas Ranjan Behera and Others* (2010) 1 SCC 173: 2009 (15) SCR 450 - cited. B C

Case Law Reference:

2005 (1) SCR 380	referred to	Para 5	D
1986 (3) SCR 785	cited	Para 8	
(1989) Suppl. 2 SCC 169	cited	Para 8	
1995 (2) Suppl. SCR 396	cited	Para 8	E
2004 (5) Suppl. SCR 79	cited	Para 8	
(2005) 13 SCC 461	cited	Para 8	
(2008) 17 SCC 435	cited	Para 8	F
2009 (15) SCR 450	cited	Para 8	
1993 (3) Suppl. SCR 866	relied on	Para 13	
(1988) 6 SCC 131	relied on	Para 13	
(2002) 7 SCC 255	relied on	Para 13	G
JT 2012 (7) 500	relied on	Para 13	

A From the Judgment and Order dated 04.07.2012 of the High Court of Jammu and Kashmir at Jammu in LPAOW No. 29 of 2012.

B Prof. Bhim Singh, Dinesh Kumar Garg, B.S. Billowrig, Meha Aggarwal, Abhishek Garg for the Appellant.

Sunil Fernadez, Vernika Tomar, Astha Sharma, Shashank K. Lal, Amit Kumar, Atul Kumar, Ashish Kumar for the Respondents.

C The Judgment of the Court was delivered by

K.S. RADHAKRISHNAN, J. 1. Leave granted.

D 2. We are, in this case, concerned with the question whether an MBBS seat which fell vacant in the year 2010 could be carried forward to the year 2012 so as to accommodate a candidate who was in the merit list published in the year 2010.

E 3. We may, for answering the above question, refer to few relevant facts. Admissions to various professional courses like medical, engineering, dental etc. are being made by the Jammu & Kashmir Board of Professional Entrance Examination (for short 'Board'), which was constituted under the J & K Board of Professional Entrance Examination Act 2002. The Board is vested with the statutory duty of conducting common entrance test for selecting meritorious candidates for admission to the various professional courses in the State of Jammu & Kashmir. In the academic year 2010, 249 seats for MBBS courses in various Government Medical Colleges of Jammu & Kashmir State had to be filled up. The Board initiated steps for making selection for the meritorious candidates against the above mentioned seats. In terms of Section 9 of the Jammu & Kashmir Reservation Act, 2004, 50% of the total number of seats had to be filled up from amongst female candidates in both open merit and reserved category. The Scheduled Tribe Gujjar Bakerwal (for short 'STGB') category was allotted 15 seats. Out of 15 seats allotted to STGB category, 7 seats each were

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allotted to male and female candidates respectively. The Board had taken a decision that the 15th odd seat in the year 2010 was to be allotted to a female candidate by way of rotation as prior to that, that seat was allotted to a male candidate. Appellant was also subjected to that selection process initiated by the Board. She was also in the merit under STGB category, but lower in merit. Details of candidates who had secured more marks than the appellant are given below:

S. No.	Roll No.	Name of the Candidate	Sex	Category	Mark	Rank
1	312173	Nusrat Rashid	F	STGB	121	1817
2	301491	Mehrul-Nisa	F	STGB	118	2081
3	302510	Farah Chowan	F	STGB	118	2200
4	302178	Abida Parveen	F	STGB	117	2208

All the above mentioned candidates were female candidates and, as per merit, the first female candidate Nusrat Rashid should have got that 15th odd seat. One Azhar Navid, a male candidate, who had secured 146 marks, much more than the female candidates, filed a writ petition No. OWP No. 806 of 2010 before the Jammu & Kashmir High Court raising a claim over that seat stating that there could be no discrimination between male and female candidates. In that writ petition, beside one Rehana Bashir, Nusrat Rashid who had secured 121 marks, was also impleaded as a party. All of them had claimed that seat in MBBS course under the STGB category in the year 2010.

4. The Court vide its order dated 4.8.2010 restrained the Board from taking any decision regarding the selection against that seat under the STGB category till 18th August, 2010. Writ petition was however dismissed by the Court on 8.7.2011 since Azhar Navid, the petitioner therein by the time got admission in the subsequent selection process. Therefore, that 15th odd

A seat which arose in the year 2010 remained unfilled.

5. Appellant though lower in marks than the candidates mentioned in the above chart submitted a representation in the year 2011 before the Board seeking admission in that seat which fell vacant in the year 2010 under the STGB category. Since no decision was taken on that representation, appellant filed OWP No. 1010 of 2011 on 25.7.2011 seeking a direction to the Board to offer that seat to her. Writ petition came up for hearing before a learned single Judge of the High Court on 19.3.2012, and the Court allowed the same holding that the appellant was entitled to get admission to that unfilled MBBS of the year 2010. Learned single Judge also gave a direction to the Board to seek extension of the time schedule, laid down in *Mridul Dhar (Minor) and Another v. Union of India and Others* (2005) 2 SCC 65. Learned single Judge further directed that in the event time schedule was not extended, the appellant should be granted admission for the MBBS course in the year 2012.

6. The Board, aggrieved by the judgment of the learned single Judge, filed an appeal LPAOW No. 29 of 2012, before the Division Bench of the High Court. Appeal was allowed by the Division Bench taking the view that since the merit was the guiding criterion for making for selection to the professional courses, more particularly for MBBS course, a duty was cast on the Board to allot that seat to Nusrat Rashid on the basis of superior merit. It was held that the appellant had no right in law to stake any claim over that unfilled MBBS seat, which arose in the year 2010 in the year 2011. The Court also took the view that an unfilled seat of one academic year could not be filled up after the cut-off date or directed to be filled up in the next academic year. The Division Bench, accordingly, allowed the appeal, against which this appeal has been preferred.

7. Shri Bhim Singh, learned senior counsel appearing for the appellant, submitted that it was the appellant and appellant alone who had submitted a representation before the Board

raising claim over that unfilled seat of the year 2010, after the dismissal of writ petition No. OWP No. 806 of 2010 filed by Azhar Navid. Other candidates who had acquired more marks than the appellant, by that time, had got admission either for MBBS or BDS courses and were not interested in that seat which fell vacant in the year 2010. Learned senior counsel referred to the Judgments of this Court in *Neelima Shangla v. State of Haryana and Others* (1986) 4 SCC 268, *Haryana Urban Development Authority v. Sunita Rekhi* (1989) Suppl. 2 SCC 169 and submitted that persons who had agitated the rights at the appropriate time are entitled to get reliefs from this Court and not those who had slept over their rights.

8. Learned senior counsel also submitted that the appellant had been waiting for the outcome of the writ petition filed by Azhar Navid, otherwise, she would have got admission for the BDS course. Learned senior counsel submitted that the learned single Judge of the High Court had rightly found that the appellant could stake her claim for the vacant seat and that, in appropriate cases, this Court can extend the time limit fixed for admission to the professional courses. Learned senior counsel in support of his contention referred to the various judgments of this Court such as *Anil Kumar Gupta and Others v. State of Uttar Pradesh and Others* (1995) 5 SCC 173, *Dolly Chhanda v. Chairman, JEE and Others* (2005) 9 SCC 779, *Vijay Jamini v. Medical Council of India and Others* (2005) 13 SCC 461, *Mridul Dhar (Minor) and Another v. Union of India and Others* (2008) 17 SCC 435 and *Medical Council of India v. Manas Ranjan Behera and Others* (2010) 1 SCC 173.

9. Shri Sunil Fernadez, learned counsel appearing for the Board, submitted that the appellant has no legal right to raise a claim for admission in that vacant MBBS seat of the year 2010, especially when she had secured only 117 marks, while there were four other female candidates who had secured more marks than the appellant. Those female candidates did not make any claim for that MBBS seat since there was a stay of

A filling up of that seat and if they had not accepted BDS seats, they would have lost those seats as well. Learned counsel submitted that the Division Bench of the High Court was justified in dismissing the appellant's claim for that vacant seat which fell vacant in the year 2010.

B 10. Shri Amit Kumar, learned counsel appearing for the Medical Council of India, submitted that it would not be possible to reserve an MBBS seat for the appellant for the year 2012 at the expense of other meritorious candidates. Even otherwise, learned counsel submitted that this Court in several judgments
C held that this Court cannot be generous or liberal in issuing directions to Medical Council of India to enhance seats for the MBBS course.

D 11. We have heard learned counsel on either side. We are of the view, on law as well as on facts, that the appellant has no right to make any claim for the vacant MBBS seat of the year 2010 in the year 2011 or subsequent years. The Board should have allotted that seat to another female candidate that is Nusrat Rashid who had secured 121 marks. Since litigation was on
E she could not have waited indefinitely for that seat and hence she had accepted the BDS seat. Next two candidates in line of merit were Mehrul-Nisa and Farah Chowan, who had secured 118 marks each, however got admission to the MBBS course. Another candidate Abida Parveen ranked above the
F appellant had to satisfy herself with a BDS seat because of the then ongoing litigation, lest, she might lose that seat as well. Appellant, never got herself impleaded in the writ petition filed by Azhar Navid, raised any claim over that seat in the year 2010. Only when the writ petition filed by Azhar Navid was
G dismissed on 08.07.2011, for the first time, she had filed a representation in the year 2011 raising a claim over that 2010 unfilled seat, by that time the cut-off date fixed by this Court i.e. 30th September for 2010 for admission was over. Further, few female candidates who had secured more marks than appellant
H had to contend with BDS seats. If that 2010 unfilled MBBS seat

is offered to the appellant in the year 2012, that will be a great injustice to candidates who were ranked above the appellant. The appellant did not claim that seat in the year 2010 but only in the year 2011, by filing OWP No. 1010 of 2011 on 25.7.2011 claiming an unfilled seat of the year 2010.

12. A medical seat has life only in the year it falls that too only till the cut-off date fixed by this Court i.e. 30th September in the respective year. Carry forward principle is unknown to the professional courses like medical, engineering, dental etc. No rule or regulation has been brought to our knowledge conferring power on the Board to carry forward a vacant seat to a succeeding year. If the Board or the Court indulges in such an exercise, in the absence of any rule or regulation, that will be at the expense of other meritorious candidates waiting for admission in the succeeding years.

13. The Medical Council of India Act provides that admission can be made by the medical colleges only within the sanctioned capacity for which permission under Section 10A/ recognition under Section 11(2) has been granted. This Court in *State of Punjab and Others v. Renuka Single and Others* (1994) 1 SCC 175, held that the High Court or the Supreme Court cannot be generous or liberal in issuing such directions which in substance amount to directing authorities concerned to violate their own statutory rules and regulations, in respect of admissions of students. In *Medical Council of India v. State of Karnataka* (1988) 6 SCC 131, this Court held that the number of students admitted cannot be over and above that fixed by the Medical Council as per the Regulations and that seats in the medical colleges cannot be increased indiscriminately without regard to proper infrastructure as per the regulations of the Medical Council. In *Medical Council of India v. Madhu Singh and Others* (2002) 7 SCC 255, this Court held that there cannot be telescoping of unfilled seats of one year with permitted seats of the subsequent year. Recently, this Court in *Satyaprata Sahoo and Others v. State of Orissa and Others*

A JT 2012 (7) 500 has reiterated that it would not be possible to increase seats at the expense of candidates waiting for admission in the succeeding years.

B 14. Learned senior counsel appearing for the appellant referred to few judgments of this Court stating that this Court had previously given certain directions to accommodate candidates in the succeeding years, but that was done in our view only in extraordinary circumstances and issued in view of the mandate contained in Article 141 of the Constitution which cannot be treated as a precedent for this Court or the High
C Courts to follow. We, therefore, hold that a seat which fell vacant in a particular year cannot be carried forward or created in a succeeding year, in the absence of any rule or regulation to that effect.

D 15. We are, therefore of the view that the Division Bench of the High Court has rightly dismissed the claim made by the appellant. The appeal is, therefore, dismissed. There will be no order as to costs.

B.B.B.

Appeal dismissed.