



2024 : DHC : 3863



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 1135/2024 and CM APPL. 4772/2024

SATWIK RAJ

..... Petitioner

Through: Mr. Govind Manoharan, Ms.  
Samiksha Godiyal and Ms. Singha  
Ganguly, Advocates

versus

JAWAHARLAL NEHRU UNIVERSITY  
AND ANR.

..... Respondents

Through: Mr. Vasanth Rajasekaran,  
Standing Counsel with Mr. Harshvardhan  
Korada, Advocate

**CORAM:**

**HON'BLE MR. JUSTICE C.HARI SHANKAR**

**JUDGMENT (ORAL)**

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**10.05.2024**

### **The Controversy**

1. The petitioner, who is an unreserved category student aspiring to enrol for the Ph.D. programme in Spanish studies conducted in the Centre for Spanish, Portuguese, Italian & Latin American Studies (CSPILAS), School of Language, Literature and Culture Studies of the Jawaharlal Nehru University (JNU) concededly could not make the grade for admission to the Ph.D. programme as an unreserved (UR) category candidate.

2. His claim is that, as he is the *first UG category candidate in merit, after those who secured admission*, and as there are three seats



available in the Foreign National category, for admission to the Ph.D. program which have remained unfilled, he should be adjusted against one of the seats. This Court is required to examine whether he can stake a claim in that regard.

### **Facts**

3. The petitioner enrolled in the five-year BA-MA Programme in Spanish, offered by the CSPILAS, in 2018. He graduated from the programme and, thereafter, joined the master's programme in Spanish in the CSPILAS, which he completed in 2023. He, thereafter, desired to enrol for the Ph.D. programme in Spanish studies at the CSPILAS.

4. Admission to Ph.D. programs in the JNU is through a Computer Based Test (CBT) conducted by the National Testing Agency (NTA). In the advertisement released by the CSPILAS for enrolment to the Ph.D. programme in Spanish, one seat was UR, one seat was reserved for foreign national through entrance examination and two seats were reserved for foreign nationals in *absentia*. The petitioner appeared in the written test followed by *viva voce* conducted by the CSPILAS for entrance into the Ph.D. programme in Spanish.

5. The merit list of candidates who had undertaken the CBT for enrolment in the Ph.D. program in Spanish in the CSPILAS was released on 13 January 2024. The petitioner was fourth in merit in UR category. As there was only one UR category seat, the petitioner was not selected, either in the first or in the second merit list.



6. As per the averments in the writ petition, the candidate at S. No. 1 in the UR merit list forewent the seat offered to him, and the candidate at S. No. 2 applied for admission against the seats reserved under the JRF<sup>1</sup> category. As such, the one UR seat was offered to candidate at S. No. 3. The petitioner, as already noted, was at S. No. 4.

7. It is thus that the petitioner contends that he is upper most in merit in the UR category candidates who have yet to obtain a seat in the Ph.D. programme of the CSPILAS.

### **Rival Contentions**

8. Mr. Govind Manoharan, learned Counsel for the petitioner, places reliance, to canvass his case, on the judgment of a coordinate Bench of this Court in *Manmeet Kaur Sareen v. UOI*<sup>2</sup>.

9. Mr. Govind Manoharan also drew my attention to Clause 6.3 of the admission policy of the JNU, which reads thus:

“6.3 Candidates selected are required to block their seats through online mode within the time period permitted by the Admission Branch after payment of requisite fee and uploading of required documents. Subsequently, the seats left vacant in each course will be offered to the candidates *next in the merit list* to block the remaining seats in order of the merit. Considering the fact that admissions are required to be closed on or before the deadline mentioned in the SCHEDULE in the e-prospectus, such offers in batches shall be offered accordingly depending on the time left and number of vacancies/available for qualified candidates.

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<sup>1</sup> Junior Research Fellowship

<sup>2</sup> Order dated 11 September 2017 in WP (C) 7730/2017



No candidate is eligible for admission unless he/she secures a minimum overall score in CBT as given in the table below:

Programme of study	Minimum marks for		
	General & EWS Category	OBC Category	SC/ST & PWD Category
M.Tech., M.P.H., P.G.D., M.A., M.Sc., MCA, B.A.(Hons.)1 <sup>st</sup> Year, B.Sc.-M.Sc. integrated programme and Part Time (COP & ADOP)	30%	27%	25%

10. Mr. Manoharan would seek to contend that the word “next in the merit list”, as employed in Clause 6.3, would entitle him to admission *in any category* in which the vacancy has still remained to be filled.

11. As already noted, Mr. Manoharan places reliance on judgment of this Court in *Manmeet Kaur Sareen*. He also cites the decision of the High Court of Karnataka in *M. Shravana Kumar v. Karnataka Regional Engineering College*<sup>3</sup>, the High Court of Patna in *Asha Kumari v. The Rajendra Agricultural University*<sup>4</sup> and the High Court of Punjab and Haryana in *Hari Singh Nalwa Trust v. State of Haryana*<sup>5</sup>.

12. Mr. Manoharan emphatically points out that there is no provision in the rules or regulations governing the Ph.D. programme

<sup>3</sup> ILR 1991 Kar 594

<sup>4</sup> AIR 1997 Parna 102

<sup>5</sup> 2014 SCC Online P&H 20880.



in Spanish in the CSPILAS, whether in the prospectus released by the JNU in that regard or elsewhere, which *proscribes* adjustment of the petitioner against a vacant seat in the Foreign National category. He submits that the principles which apply to adjustment of candidates falling under one reserved category against a vacancy in another category, in service law, would not apply *mutatis mutandis* to education law. This proposition, he submits, has been clearly laid down in *M. Shravana Kumar* and *Hari Singh Nalwa Trust*, amongst others. The guiding principle when dealing with vacancies for admission into educational institutions, he submits, is that vacancies should not be allowed to remain unfilled, in the interest of ensuring that the reach of education is maximised. Where a candidate, who is willing to undergo the Ph.D. programme in Spanish is available, albeit in another category, he should not be denied admission merely because the vacancy is not in the category to which he belongs. It is this prevailing philosophy, he submits, which also guides Clause 6.3 of the admission policy of the JNU.

**13.** A counter affidavit has been filed by the JNU which, in paras 14 to 17, seeks to explain why it is not possible to grant the relief that the petitioner seeks, thus:

“14. In relation to the plea that the seat reserved under Foreign Nationals category which are 3 (three) in number, may be utilised for admission of the Petitioner, it is submitted that the same cannot be done at the whims and fancies of the Petitioner. The seats under the Foreign Nationals category are "supernumerary" in terms of the applicable UGC regulations and are meant for foreign nationals only.

15. In fact, not only are the terms of admission for the Foreign Nationals category different, even the admission criteria and



admission fee also vary when compared to UR category. In other words, UR and Foreign Nationals are two distinct categories statutorily created for two distinct set of individuals and the same cannot be interchanged.

16. As admitted by the Petitioner, no provisions exist either in the E-Prospectus or otherwise the admission criteria enabling the conversion of unfilled seats in Foreign Nationals category. This must be viewed as a conscious choice of JNU keeping in mind the UGC regulations that apply to the present matter.

17. In this regard, reliance is placed on the University Grants Commission (Minimum Standards and Procedures for Award of Ph.D. Degree) Regulations, 2022 ("UGC Ph.D. Regulations").

In terms of Clause 6.3 of the UGC Ph.D. Regulations, an eligible Professor/ Associate Professor/ Assistant Professor can guide up to eight (8)/ six (6)/ four (4) Ph.D. scholars, respectively, at any given time. Further, in terms of Clause 7.1 of the UGC Ph.D. Regulations, each supervisor can guide up to two (2) international research scholars on a supernumerary basis over and above the permitted number of Ph.D. scholars under all other categories.”

14. Mr. Harshvardhan Korada, learned Counsel for the JNU, submits that the decisions on which Mr. Manoharan places reliance are clearly distinguishable. He draws attention to the afore-extracted passages from the counter affidavit to contend that the respondents were bound by the University Grants Commission (Minimum Standards and Procedures for Award of Ph.D. Degree) Regulations, 2022 (hereinafter referred to as “the 2022 UGC Regulations”), Clause 6(3) thereof reads thus:

“6(3) An eligible Professor/Associate Professor/Assistant Professor can guide up to eight (8) / six (6) / four (4) Ph.D. scholars, respectively, at any given time.

15. Thus, Mr. Korada would submit that Foreign National candidates are in a class by themselves; *sui generis*, as it were. They



constitute a supernumerary class, over and above those which are sanctioned for admission. They cannot, therefore, be regarded as interchangeable with the UR category students. The claim of the petitioner is liable to be rejected even on this ground.

### **Analysis**

**16.** First, to advert to the judicial authorities cited by Mr. Manoharan, none of these decisions can, in my considered opinion, come to the aid of the petitioner. The facts of this case are, as Mr Korada correctly submits, distinguishable. Paras 14 to 17 of the counter-affidavit (reproduced *supra*) clearly set out the reason why the petitioner could not be accommodated against the unfilled seats reserved for Foreign Nationals. The seats reserved for Foreign National belong to a supernumerary category. None of the decisions cited by Mr Manoharan deal with supernumerary category seats. Nor, therefore, is there to be found, in any of them, a direction to accommodate candidates, who are lower in merit in the general category, against unfilled vacancies in another *supernumerary* category.

**17.** The contention that the Foreign National vacancies fall in a supernumerary category is predicated on the 2022 UGC Regulations, clause 6(3) of which fixes a cap on the number of Ph.D. Scholars whom any eligible Professor/Associate Professor or Assistant Professor could guide. A Professor is permitted to guide 8 Ph.D. Scholars, an Associate Professor is permitted to guide 6 Ph.D. Scholars, and an Assistant Professor is permitted to guide 4 Ph.D.



Scholars. Regulation 7(1) permits each supervisor to guide 2 International Research Scholars on a supernumerary basis over and above the permitted number of Ph.D. scholars as specified in Regulation 6(3). In other words, each Professor is permitted to guide upto 8 Ph.D. Scholars and 2 additional International Research Scholars on a supernumerary basis, with similar dispensations for Associate Professor and Assistant Professors. “Supernumerary” is defined in P. Ramanatha Aiyar Law Lexicon as “a post exceeding the usual stated or prescribed number”. The Foreign National Ph.D. scholars whom the supervisor could guide are, therefore, separate and distinct from the number of “ordinary” Ph.D. scholars who could be guided by him or her. The notified vacancies for Foreign National scholars are, therefore, intended to cater *to the two additional supernumerary foreign national scholars whom each Ph.D. supervisor could supervise*. While the entitlement to guide Foreign National Ph.D. scholars is relatable to Regulation 7(1), the entitlement to guide other Ph.D. scholars is relatable to Regulation 6(3). The question of accommodated UR category scholars against such supernumerary seats can, therefore, simply not arise, as it would do violence to the entire scheme of treating the said seats as supernumerary.

**18.** There is, therefore, clear substance in the contention of Mr. Harshvardhan Korada, learned counsel for the respondent that these two categories of scholars are in different ‘buckets’, and conflating one with the other would clearly infract the 2022 UGC Regulations.

**19.** The above factors, when seen in the backdrop of Regulation 8





which places a cap on the number of Foreign National and other scholars whom any Ph.D. supervisor could supervise as a mandatory upper limit, clearly indicates that it is not permissible to adjust a candidate, who is not a Foreign National/International Research Scholar in the supernumerary posts which are reserved for them. Allowing such a practice may also otherwise breach Regulation 6(3) read with Regulation 8, as, if a general category Ph.D. scholar is permitted to be adjusted against the supernumerary seat reserved for an International Research Scholar, it may result in a supervisor being permitted to supervise more than the number of general category scholars which he is otherwise permitted to supervise as per Regulation 6(3) read with Regulation 8.

**20.** Though Mr. Manoharan sought to contend that there is no statement on facts by the respondent, that all the Ph.D. supervisors are supervising the maximum number of general category Ph.D. scholars as per Regulation 6(3), in my opinion no such assertion is required. We are concerned here with the interpretation of the Regulations. The Regulations clearly do not envisage a Ph.D. scholar who does not satisfy the definition of an 'International Research Scholar' to be supervised by any Ph.D. supervisor. Even for this reason, therefore, there is no substance in the petitioner's request for being adjusted against the unfilled seat reserved for Foreign Nationals.

**21.** No such situation obtains in any of the judgments on which Mr. Manoharan places reliance. The decision in *Manmeet Kaur Sareen* related to LL.B. admissions in the University of Delhi. There is no



reference to any seat being supernumerary in nature, nor is there any Regulation applicable in that case which may be said to be akin or analogous to the 2022 UGC Regulations. The same position applies to the decision of the High Court of Patna in *Asha Kumari*.

**22.** *M. Shravana Kumar* and *Hari Singh Nalwa Trust* are, additionally, completely distinguishable on facts as the challenge in those cases was to an instruction which prohibited unfilled seats reserved for SC/ST/OBC being filled by general category students or students belonging to other categories. The learned Single Judge of the concerned High Court in each of those cases held an instruction containing such a proscription to be illegal. We are not concerned in this case with any such instruction.

**23.** That apart, as I have already observed, the facts of the present case do not permit the grant of the relief that the petitioner seeks.

**24.** Mr. Manoharan has also placed reliance on Clause 6.3 of the admission policy of the Respondent. The said clause too in my opinion cannot help the petitioner. What it states is that the seats left vacant in each course would be offered to the candidates “*next in the merit list*” to block the remaining seats in order of the merit. The merit list applicable to Foreign National candidates who in my opinion cannot be conflated with the merit list of general category candidates. The intent of Clause 6.3 is clear that if in any particular merit list i.e. the merit list of the general category or the merit list of the Foreign National candidates, etc. one or more seats are left vacant, they have



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to be offered to the candidates next in merit to block the remaining seats in order of the merit.

**25.** This clause cannot therefore be cited as a basis to contend that the respondent should be directed to admit, against the unfilled seats reserved for Foreign Nationals, the petitioner, who is not a Foreign National.

**26.** There is no substance, therefore, in the writ petition, which is accordingly dismissed, with no orders as to costs.

**27.** The interim order earlier granted stands vacated.

**C.HARI SHANKAR, J**

**MAY 10, 2024/yg**

*[Click here to check corrigendum, if any](#)*