

(2013) 08 P&H CK 0217
In the Punjab And Haryana At Chandigarh
Case No : LPA No. 1368 of 2013

Baba Farid University of Health Sciences	APPELLANT
Vs	
Dr. Heena Bharti and Others	RESPONDENT

Date of Decision : 14-08-2013

Acts Referred:

Citation : (2013) 08 P&H CK 0217

Hon'ble Judges : Sanjay Kishan Kaul, C.J; Augustine George Masih, J

Bench : Division Bench

Advocate : Krishan Singh Dadwal, for the Appellant; Gurminder Singh, Advocate for Respondents No. 1 and 2, for the Respondent

Final Decision : Allowed

Judgement

Augustine George Masih, J.—This appeal has been preferred by Baba Farid University of Health Sciences (hereinafter referred to as "appellant-University") challenging judgment dated 31.07.2013 passed by the learned Single Judge allowing the writ petition preferred by respondents No. 1 and 2 (hereinafter referred to as "private respondents"), who were candidates seeking admission in Post Graduate Medical Course Session-2013 under the sports category in 40% quota (open category) seats. Briefly, the facts are that the private respondents, in pursuance to the Prospectus issued by the appellant-University, applied for admission to the Post Graduate Medical Course in the Session 2013-14. According to the said prospectus, admission to the Post Graduate Courses is open to the candidates, who have qualified NEET(PG)-2013 and the merit/eligibility was to be determined as per the Punjab Government notification incorporated in the prospectus in Part-B and possessing the basic qualification of MBBS for various Medical Post Graduate Courses. As per the Punjab Government Notification dated 05.04.2013 contained in Part-B, candidates qualifying the NEET-PG-2013 shall be eligible to apply for admission in Government/Private Colleges, who obtained the minimum qualifying marks as per the provisions of the NEET-PG.

2. Since in the present case, we are concerned with the admission to Government institutions, it need to be pointed out that as per clause 14(I) of the Prospectus, 50% of the total seats in each institution were mandated to be filled by the Government of India at all India level through NEET-PG-2013. The remaining 50% seats were to be filled through NEET-PG at State level from amongst candidates having Punjab resident status. Out of these 50% State quota seats, 60% seats are to be filled up from amongst the eligible PCMS in-service doctors and 40% shall be open to all eligible medical graduates. Suffice it to say, at this stage, that there are two separate quotas provided under the prospectus for the 50% State quota seats and each quota provides for reservation to various categories separately and even laying down the roster point. The reservation is provided under clause 24 of Part-B of the Prospectus. The roster point for 60% in-service candidates and 40% open category seats, as issued by the State of Punjab, has been appended as Annexure P-6 to the writ petition.

3. Clause 14(I)(D) deals with conversion of unfilled seats under the All India Quota/60% and 40% Quota/NRI. According to this clause, the allotment of the seats shall be made through counselling (personal appearance) as per 100 point approved roster register being maintained. The counselling is to be done according to the category rank and roster as per 60%/40% and other reserved categories. After exhausting 60% reserve category candidates, the vacant seats are to be transferred to General Category candidates of 60% quota. In case, the candidates in 60% quota are not available and surrendered seats of All India Quota, if any, the said vacant seat(s) will be offered to the eligible candidates in 40% quota in the same category. If after exhausting all reserve category candidates in 40% quota, still the seats are vacant, the same would be transferred to General Category candidates of 40% quota. It also says that there shall be separate merit list for in-service 60% quota candidates and a separate merit list for those, who are not covered under the category of in-service candidates.

4. The controversy in the present case has arisen because of non-availability of eligible candidates in the 60% in-service quota seats. As per the admitted facts, 89 seats came to the share of in-service quota, out of which, only 40 candidates took admission and 49 seats were lying vacant. Under the reserve category of sports persons, 2 seats were earmarked as per the distribution of seats (as mentioned in Annexure P-6 appended to the writ petition), 1 seat of MD Medicine at Government Medical College, Patiala and 1 seat of MD Radio-Diagnosis at Government Medical College, Amritsar. There is one seat of MD Orthopedics at Government Medical College, Amritsar, which is earmarked for the sports persons under the 40% open quota, thus, there are total three seats reserved for the sports persons.

5. The private respondents contend that because of non-availability of sports persons in 60% in-service quota, unconsumed seats of MD Medicine and MD

Radio-Diagnosis would automatically be available to the 40% open category candidates of sports category. This the private respondents contended placing reliance upon clause 14(I)(D), Part-B of the Prospectus by asserting that 60% quota seats, which had remained vacant, are to be offered to eligible candidates in 40% quota in the same category while the appellant contends that the seat has to be de-reserved first and thereafter, it has to be treated as a general seat, which has to be filled up from the said category of 40% quota candidates. The appellant also laid emphasis on the words "the same category" as provided in the clause, referred to above to mean general category whereas the private respondents assert it to mean reserved sports person category.

6. The learned Single Judge, on considering provisions as contained in Clause 14(I)(D), has, interpreting the term "in the same category", concluded that the private respondents would be entitled to the two seats earmarked as per roster for the sports persons category in the 60% quota as the same would be available to the sports persons of 40% quota. Direction has, thus, been issued that both the private respondents be allowed to join counseling against 60% quota seats earmarked for the sports category converted into 40% quota seats meant for sports persons as earmarked therein.

7. It is the contention of the counsel for the appellant that the procedure, as laid down under Clause 14(I)(D) of Part-B of the Prospectus, is required to be followed while moving from one step to another, according to which, if the reserved category seats remain unfilled, the same, firstly, have to be transferred to the general category candidates of 60% quota and thereafter, in case of non-availability of candidates in 60% quota, seats have to be offered to the eligible candidates of 40% quota in proportion to the seats available qua that quota, which remain unfilled but the roster point seats earmarked for that particular category cannot be made available to the candidates under the 40% quota seats, which have to be filled as per the general merit although the unfilled quota of that particular category shall remain intact. In support of this contention, counsel for the appellant has placed reliance upon a Division Bench judgment of this Court in CWP No. 6695 of 2005 titled as Dr. Amanpreet Kaur vs. State of Punjab and others, decided on 01.09.2005. He has also brought to the notice of the Court that the Hon'ble Supreme Court in Writ Petition (Civil) No. 433 of 2013 titled as Dr. Fraz Naseem and others vs. Union of India and others, vide order dated 01.08.2013 while modifying its earlier order dated 23.03.2012 passed in I.A. No. 16 in C.A. No. 1944 of 1993 titled as Anand S. Biji vs. State of Kerala and others, has directed that if 4th round of online allotment process will be conducted for the seats in Medical Postgraduate Courses, which remain vacant in the All India Quota and the same be completed by 21st August, 2013, therefore, it was contended that the counseling for filling up the vacant seats can still go on as the last date stands extended. Prayer has, thus, been made for setting aside the impugned judgment passed by the learned Single Judge.

8. On the other hand, counsel for the private respondents contends that the

judgment passed by the learned Single Judge is in accordance with the provisions, as contained in the Prospectus issued by the appellant-University. Clause 14(I)(D) is a specific provision dealing with the conversion of unfilled seats whereas Clause 24 only deals with reservation in Government Colleges. His contention is that the view taken by the learned Single Judge does not call for any interference by us. Prayer has, thus, been made for dismissal of the appeal.

9. We have considered the submissions made by the counsel for the parties and have gone through the records of the case.

10. The issue involved in the present appeal revolves around Clauses 14(I)(D) and 24, Part-B of the Prospectus. The same are, therefore, reproduced as below:-

14(I)(D). Conversion of seats under All India Quota/60% & 40% Quota/NRI Unfilled seats:

The allotment of the seats shall be made through counselling (personal appearance) as per 100 point approved roster register being maintained. The counselling shall be done according to category rank and roster as per 60%/40% and other reserved categories.

In case of private Un-aided Health Education Institutions (Medical/Dental Colleges) shall be as per reservation fixed by the Government. After exhausting 60% reserved category candidates, the vacant seats will be transferred to General Category candidates of 60% quota.

In case of non-availability of candidates in 60% quota and surrendered seats of All India Quota, if any, the vacant seat(s) will be offered to the eligible candidates in 40% quota in the same category. After exhausting all reserve category candidates in 40% quota, the vacant seats will be transferred to General Category candidates of 40% quota.

There shall be separate merit list for in-service 60% quota candidates for Medical/Dental Colleges and a separate merit list for those who are not covered under the category of in-service candidates. The merit list for general and reserve candidates shall be combined. Reserve candidates will be eligible for open seats i.e. in general also, as per their merit, eligibility and option as the case may be except for SC & BC candidates having 40th percentile or more but less than 50th percentile.

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24. Reservations in Government Colleges

In case enough eligible candidates are not available in the reserved category concerned, the seats will automatically be converted into same reserved category in general quota. The reservation in government category shall be as follows:-

11. As per Clause 24, if enough candidates are not available in a specified reserved category concerned, the seat(s) will automatically be converted into

same reserved category in general quota. This clause would be applicable where a situation arises that under a particular category, say sports persons, seats are earmarked, which is further sub-categorized and reserved for say scheduled caste or wards of terrorism/riot affected persons or for other similar sub-categories and if in that sub-category, a candidate is not available, the said seat would be automatically converted to that main reserved category, which would act as a general quota for that particular reserved category. Clause 24 would thus clearly indicate that the same would not be relevant as nothing hinges on this clause with regard to the controversy involved herein.

12. According to us, Clause 14(I)(D) is the one which requires to be looked into as the answer to the controversy lies therein. This clause deals with conversion of unfilled seats of the different quotas. Allotment of the seats is to be made through counselling (personal appearance) as per the maintained register of 100 point approved roster. The counselling in specified quota has to be done according to the category, rank and roster earmarked for the various categories. Each quota carries with it different qualifications for being eligible, broadly speaking, 60% reserved category candidates are those, who can be loosely termed as in-service category candidates whereas 40% quota has been earmarked for open categories where the condition of eligibility laid down for in-service candidates is not required to be fulfilled or the candidates do not possess the same. Each quota carries with it its own roster point where different seats are assigned in different fields such as Medicine, Orthopedic and Pediatrics etc.

13. The counselling has to be conducted quota-wise depending upon the roster point and the reservation. As far as 60% in-service category quota is concerned, first, the reserved category candidates are to be considered against the seats earmarked for them in the specified quota. After having completed the said exercise, in case, some seats are vacant, the same will be transferred to the general category candidates of the said quota. If still some seats are vacant, those seats will be offered to eligible candidates in 40% quota in the same category. Further, after exhausting the reserved category candidates in the 40% quota, the vacant seat(s) will be transferred to the general category candidates of 40% quota. This would mean that the first step is to exhaust reserved category candidates against the earmarked seats under the 60% in-service candidates quota. If the seats are not occupied or there are no candidates available, the said vacant seat(s) will be transferred to the general category candidates of 60% quota and would be offered to the general category candidates as per their merit, meaning thereby that the first option would be available to the general category candidates of the 60% quota to opt for the seats lying vacant belonging to the reserved category candidates. If the said seats are occupied, the effect would be that the seat in that stream of Post Graduation earmarked for the reserved category would be no more available for the reserved category candidates, meaning thereby that the roster point seat/stream earmarked for the reserved category candidates cannot now be made available to the 40% open quota candidates as the same has already been taken

up by a candidate of 60% quota.

14. The principle in this regard has been laid down by a Division Bench of this Court in CWP No. 10007 of 2003 titled as Kamal Sachdeva vs. Baba Farid University of Health Sciences, Kotkapura and another, decided on 16.01.2004, which has been reiterated and re-produced in the Division Bench judgment passed by this Court in Dr. Amanpreet Kaur's case (supra), which reads as follows:-

The scheme framed by the government for admission to Post Graduate Courses envisages separate ear-marking of seats for in-service doctors and open category. However, the policy of reservation contained in paragraph 8 cannot be stretched to violate the separate quota ear-marked for in-service candidates on the one hand and open category candidates on the other hand. If the eligible candidates of one quota are available for admission against the unfilled seat reserved for any subcategory specified in paragraph 8, then the same has to be offered to the candidate of general category of that quota and a candidate of reserved category, who had applied for admission against seats of the other quota, cannot claim admission against such seat.

15. However, in case the roster point/seat in a stream earmarked for the reserved category candidate(s) is not opted for and is not occupied by a general category candidate of 60% quota, the same would continue to be available for eligible candidates in 40% quota in the same category and in the same stream earmarked as in 60% quota.

16. It may be clarified here that the quota of reserved category seats, which were filled through general category candidates in the 60% quota, would be made available to the candidates belonging to that very category in the 40% quota and thereafter, if after exhausting of the reserved category candidates in the 40% quota, the seat(s) still remain vacant, they would be transferred to the general category candidate(s) of 40% quota.

17. The submission of the learned counsel for the appellant that the reserved category seat on transfer to the general category under the 60% quota would extinguish altogether the claim of the reserved category candidates of 40% quota, cannot be accepted in the light of the fact that the word used is "transferred" and not "converted". Further, if the seat is transferred and is not filled and remains vacant, the same seat/stream would revert back to the reserved category candidates of the 40% quota. This we state in the light of the words "same category" used in the clause.

18. In the light of the above, the judgment dated 31.07.2013 passed by the learned Single Judge is set aside with a direction to the respondents to proceed with the counselling, as per the procedure, which has been referred to above. The appeal stands allowed accordingly.