

(1990) 05 P&H CK 0070

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 1859 of 1989

Bhupinder Singh Mahay and another

APPELLANT

Vs

The State of Punjab and others

RESPONDENT

Date of Decision : 10-05-1990

Acts Referred:

Citation : AIR 1991 P&H 7

Hon'ble Judges : J.V. Gupta, Acting C.J.; M.S. Liberhan, J

Bench : Division Bench

Advocate : R.K. Chopra, for the Appellant; H.L. Sarin, Addl. A.G. and Ms. Jaishree Thakur, for the Respondent

Judgement

M.S. Liberhan, J.—This judgment will dispose of three Letters Patent Appeals Nos. 1859, 1810 and 2019, all of 1989 as a common question of law has been decided by a common judgment.

2. To appreciate the point arising for determination, it would be expedient to note the brief facts as given in Letters Patent Appeal No. 1859 of 1989, arising out of Civil Writ Petition No. 5572-A of 1989.

3. Applications were invited by the Principal, Medical College, Amritsar through an Advertisement, from Medical Graduates of either sex for admission to Postgraduate Medical Degree/ Diploma Courses in various subjects at both the State Medical Colleges Amritsar/Patiala. 25 per cent seats were reserved for candidates belonging to Scheduled Castes/ Tribes. Roster points were fixed according to the seats, speciality and the college.

4. The learned counsel for the appellants (hereinafter referred to as the petitioners) claimed the reservation of seats by fixing the Roster points was erroneous. The charter of claim for reservation was made on the basis of the total number of seats in both the Colleges, i.e. Amritsar as well as Patiala. The fixation of roster points was given by percentage of reservation provided by the advertisement for admission. While elaborating the submission, it was submitted

that total number of seats was 325, out of which 25 per cent were to be filled on all India basis through a Competitive Entrance Examination. Out of the remaining seats, 60 per cent seats were to be filled up from amongst Registrars/ Demonstrators and remaining seats were to be offered to PCMS II Officers with a minimum of 3 years Rural Service, their ad hoc service continuous with regular service was to be counted. 40 per cent seats were to be filled strictly on merit from fresh Graduates PCMS II Officers and Registrar/ Demonstrators. The learned counsel pointed out that reservation of 25 per cent seats for the members of Scheduled Castes/ Tribes was provided in the advertisement. He urged that there being 18 seats in both the Medical Colleges (Amritsar and Patiala), i.e., 9 each in different specialties, 5 seats should have been given to the members belonging to Scheduled Castes/Tribes. He further submitted that even if the mode of fixing the roster points was considered to be a good criteria for admissions for Scheduled Castes/Tribes, in that eventuality roster points should have been fixed from 18, i.e, total number of seats in both the Colleges and not according to the College-wise seats. The learned counsel also contended that only three Scheduled Castes candidates were admitted against the reservation quota. Half-heartedly it was urged that there was a discrimination with respect to reservation in other departments, though such a submission was never made before the learned single Judge.

5. The learned counsel for the petitioners further urged that the process adopted by the respondents by interpreting the instructions making reservation, would reduce the percentage of reservation of seats for the members of the Scheduled Castes/Tribes, which is against the policy.

5-A. The learned counsel for the respondent-Colleges refuted the submissions made by the counsel for the petitioners, it was submitted that the Colleges are affiliated to two different Universities. The roster points had been fixed according to the Government instructions, otherwise it would have resulted in grave injustice to the meritorious, talented students who may have been deprived of being admitted to higher education. There was a separate reservation for each specialty and for each College. The roster points were fixed keeping in view the maximum limit for reservation at 30 per cent. It was urged that calculation of the roster points was made for each specialty and for each College, as advertised. In order to support the contention, the learned counsel for the respondents urged that in case the formula suggested by the counsel for the petitioners is accepted in some of the specialties where there is only one seat, it may result in 100 per cent reservation or in the alternative a student from Scheduled Castes/Scheduled Tribes may never be able to enter the specialty. Resultantly, it necessitated the fixation of roster points. It was urged that the petitioners never applied for the specialty on which roster point was available.

6. We have gone through the respective contentions of the learned counsel for the parties. In our considered view, there is no violation of any rule, or instructions which categorically prohibit the reservation at roster points. Though

the fixing of maximum limit of reservation is much at a lower side especially in higher education where the number of seats is scarce, in some cases even one or two, there is no arbitrariness in fixing the roster points of reservation quota. The balancing between the maximum reservation to be less than 30 per cent and providing of reservation being 25 per cent has been most reasonably worked out. The college authorities have acted fairly, permitting the peculiar facts and circumstances of this case. The authorities have clearly worked out within the framework of the instructions, the prospectus, the roster, points. The learned counsel for the petitioners has failed to point out even remotely the arbitrariness or unfairness in fixing roster points or that the same affected the petitioners prejudicially. The Administration on the face of it seems to be just and reasonable. In some of the specialties, the number of seats is as small as one. The interpretation put by the learned counsel for the petitioners on the instructions on reservation would push it to the point of resulting in perpetuating injustice whereby meritorious students would be deprived of their educational career. The Nation will be deprived of the talents in the field of medicine and health services. Efficiency shall be sacrificed at the altar of expediency. The result of the reservation as suggested by the counsel for the petitioners would be nothing else but 100 per cent reservation in particular specialties which cannot be accepted from the view point of reasonable person. The policy of reservation cannot be insisted to an unreasonable extent. The reservation may be a laudable and praiseworthy act but at the same time it cannot be made so disproportionate and large that the efficiency, the efficacy and talent is sacrificed or effaced from the National scene. The Nation's right to have the meritorious persons in such an important field as medicine and utilise their talent, intelligence etc. cannot be lost at the cost of expediency.

7. In our considered view, we find no wrong in the reservation as well as the process and methodology adopted for complying with the policy of reservation. Further in our considered view, the fixation of roster points for reserved category is one of the known processes for accommodating the reserved class among the meritorious students in order to balance the considerations of efficiency with the object of uplifting the persons belonging to the reserved category. It is for the experts to balance the same. We need not interfere with the process or the methodology of reservation in exercise of writ jurisdiction unless it is shown to be perverse; or erroneous in law; or any other substantial reason requiring our interference. Nothing substantial has been pointed out to show injustice or arbitrariness in fixing the roster points.

8. The learned counsel for the appellant in Letters Patent Appeal No.2019 of 1989 additionally urged that where 2 per cent reservation was provided for persons belonging to terrorist affected areas, that should be given effect to and reserved class should be accommodated in the specialty of their choice. It is only after first accommodating the candidates belonging to the reserved category that the left-over seats should be filled from amongst general category. The submission made by the learned counsel for the appellant is bereft of any

reason, as if such a course is adopted and the candidate of reserved class is accommodated in the specialty where there is only one seat, it would result in 100 per cent reservation and in popular specialties no meritorious student would ever be admitted leading to a logical result that the specialty would be filled from amongst totally inefficient persons and it may at given point of time be devoid of merit, talent persons and capable of dealing with the diseases. It was further urged that students less meritorious than the petitioners were admitted. The said submission was emphatically denied by the counsel for the respondents. The counsel for the appellant failed to point out even a single case of a student who had lesser marks and had been admitted against the category of the petitioner in the specialty for which she wanted admission.

9. The only common question the learned counsel for the appellants submitted was that while fixing the criteria for merit, it was provided that the admission shall be purely on merits and criteria for judging the merit would be the aggregate marks obtained in the professional examination, fixed marks being deducted for various failures. It was further provided that two failures and re-appear are to be treated as not qualified in the subjects. The learned counsel contended that the methodology adopted in preparing the merit list has resulted in injustice as the marks have been miscalculated. It was urged that the deduction of the marks on account of failure in the examination should have been made out of the total marks obtained by the candidate in the professional examination.

10. The submissions made by the learned counsel for the petitioners have been refuted. It was urged that since the aggregate of marks was different in different Universities and the admission was open to all students, in order to compare their merit, it was essential that the marks obtained by each student had to be brought to some basic marks. Since the Punjabi University had an aggregate of 2750 marks for the professional examination, resultantly the marks obtained by the students from the other Universities wherein aggregate marks were more than 2750, i.e., in some cases 3100 and in other still more marks were first brought down to the marks that a student would have obtained out of an aggregate of 2750 marks. It is only after this that 50 marks for each failure were deducted. The only objection raised by the counsel for the petitioners was that these 50 marks for each failure should have been reduced out of the aggregate marks of 3100 obtained by the candidate.

11. We find no force in the contention raised by the learned counsel for the petitioners. If the methodology suggested by the counsel for the petitioners is accepted, it would result in arbitrariness and discriminatory treatment in judging the merit of the students. As pointed out by the learned counsel for the respondents, by the method suggested by the counsel for the petitioners in case of the students from the Universities having higher aggregate marks, the reduction would be, say 44 per cent or less while in case of students from the Universities where the aggregate marks are 2750, it would be 50 per cent which

naturally would result in giving an advantage to the students appearing from the Universities having higher aggregate of marks which cannot be permitted and should not be permitted, as it would result in treating the students unequally. We find force in the contention raised by the counsel for the respondent-Colleges and agree with the finding returned by the learned single Judge. We find no force in the contentions raised by the counsel for the petitioner-appellants. We are of the considered view that in the affairs of education where the experts determine the methodology for admission of the meritorious students, no interference should be made, unless it is shown to be arbitrary, or for some other reasons the selection is shown to be bad. It should be left to the experts selecting the candidates. There is no malice attributed to the authorities in adopting the process and methodology of preparing the merit for selection, nor there is anything to show that the appellants have been treated unequally.

12. Resultantly, we find no force in the appeals. At this stage, it may be pointed out that the Letters Patent Appeal No.2019 of 1989 arising out of the order in Civil Writ Petition No. 4408 of 1989, has become in fructuous as the writ-petitioner was not admitted to the Course and the academic session has already come to a close and it would be futile to issue any writ even if the appellant had a case on merits. Still since we have repelled the contentions as above, on merits, the Letters Patent Appeal is dismissed, but with no order as to costs.

13. In Letters Patent Appeal No. 1859 of 1989, the learned counsel for the appellants contended that as Bhupinder Singh Mahaj had been granted admission and is undergoing the studies, the Letters Patent Appeal has become in fructuous and the same be dismissed as such. We order accordingly.

14. Kuljit Singh son of Sarwan Singh was admitted to the Course under orders of this Courts. He has virtually completed one year of his educational career out of a total period of two years. It would be inequitable and unjust to terminate his studies particularly when the studies are professional in nature and the candidate belongs to Scheduled Caste it is not desirable to bring an end to his carrier at this stage especially when he has invested time, money and energy for almost a year. However, it is the State Government which has invested money in educating him for a year. It would be in the interest of justice, equity and fair play to permit him to complete his course particularly when the respondents would not suffer on any count except the sufferance on principle for future. The learned counsel failed to point out any irreparable injury to the respondent-Colleges or the University if the appellant is allowed to continue his studies. Keeping in view the peculiar facts and circumstances and the general poverty of the community to which the petitioner belongs, the respondents are directed to permit appellant Kuljit Singh to continue his studies and complete his Course to which he has been admitted under the orders of this Court. In our above observations, the principles have been settled for future.

15. For the reasons recorded above, we find no force in the appeals. The same are dismissed, with no order as to costs.

16. Appeals dismissed.