
(1998) 11 P&H CK 0143
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 11868 of 1998

Jyoti

APPELLANT

Vs

Maharishi Daya Nand University and Others

RESPONDENT

Date of Decision : 13-11-1998

Acts Referred:

Citation : (1999) 121 PLR 770

Hon'ble Judges : H.S. Bedi, J

Bench : Single Bench

Advocate : B.S. Rana, for the Appellant; B.L. Gupta, for Respondent No. 1, Gobind Goyal, for Respondent Nos. 2 and 3 and Aman Dahiya, for the Respondent

Final Decision : Allowed

Judgement

H.S. Bedi, J.—The petitioner passed the B.Sc. (Non-Medical) examination in the year 1998 from the G.V.M. Girls College, Sonapat. She applied for taking the common entrance test for admission to the M.Sc. (Physics) Course to be bid by respondent No. 3, the Hindu College, Sonapat. She also qualified the test and was called for interview on July 15, 1998 and on the display of the merit list, was placed at Sr. No. 15 thereon. It is the petitioner's grievance that though she was a backward class category candidate and had submitted her backward class certificate dated 23.4.1998, Annexure P-2 to the petition, she had not been considered against the reserved category despite the fact that she was the solitary candidate. It is also the petitioner's case that when the notice dated July 14, 1998, Annexure P-1 calling the candidates for interview on July 15, 1998 was displayed, the name of Puspiata, respondent No. 11 was not in that list but on the declaration of the final selection list on July 15, 1998, her name had figured and she had been granted admission in the M.Sc. (Physics) Course.

2. On notice of motion, a reply has been filed by respondents 2 and 3 alone and it has been averred that in the Information Brochure issued by the College on June 1, 1998, no reservation of any kind had been carved out and as such, the petitioner's claim to admission as a backward class category candidate was not

in order. It has also being pointed out that the name of Puspiata, respondent No. 11, who had very high marks, had been left out in the notice dated July 14, 1998 as her detailed marks card had not been appended alongwith her application form and on her representation that she had received the card in the meantime, the Principal of the College had thought it fit to consider her case.

3. Mr. B.S. Rana, learned Counsel for the petitioner has pointed out that though in the Information Brochure issued by the College on June 1, 1998, no reservation of any kind had been carved out yet respondent No. 3, College had itself given admission to reserved category candidates in the M.A. (Previous) Class on account of the reservations made in the Information Brochure for the year 1998-99,. issued by the M.D.U. Rohtak and as reservation was provided for backward class candidates in this Admission Brochure, this reservation should also have been given effect to by the College in the M.Sc. (Physics) course as well. In support of his argument, that respondent No. 3, the College, had in fact followed the reservation policy as given in the Brochure for the year 1998-99, a merit list of the M.A. 1st year admissions has been appended as Annexure P-7 with this writ petition, in which it is clearly stated that five S.C./S.T./B.C. students had been granted admission.

4. After hearing learned Counsel for the parties, I am of the opinion that the petition deserves to succeed.

5. It is clear from what has been brought out in the course of arguments that the reservation had been provided in the Admission Brochure issued by the University and in Chapter VIII thereof, 27% seats in all had been reserved for various categories including Backward Class Candidates. It is also evident from the Information Brochure issued by the College for the year 1998-99, that no reservation of any kind had been spelt out in it, which makes it clear that the College was to follow the policy of the University with regard to reservations. It is also evident from Annexure P-7 that the College had in fact granted admission to certain reserved category candidates in the M.A. previous class and in this situation, the submission of the learned Counsel for the respondents that there was no reservation for backward class candidates, is not tenable.

6. The second argument raised by Mr. Rana with regard to the admission of respondent No. 11, Puspiata, however, lacks merit. It is the admitted position that Puspiata had cleared the qualifying examination and it was on that basis that she had been allowed to appear in the entrance test and had in fact obtained very high marks. In that eventuality, the mere fact that she had not been able to attach the detailed marks certificate of the qualifying examination with her application form would not dis-entitle her from producing the same at the time of interview. While dealing with a similar situation, the Hon'ble Supreme Court of India in *Chaties K. Skaria and Ors. v. Dr. C. Mathew and Ors.* AIR 1980 SC 1230, held that the evidence with regard to the marks obtained in the qualifying examination could be put before the interview Board at the time of interview though it may have not been appended with the application form. It

was observed as under:-

"What is essential is the possession of a diploma before the given date, what is ancillary is the safe mode of proof of the qualification. To confuse between a fact and its proof is blurred perspicacity. To make mandatory the date of acquiring the additional qualification before the last date for application makes sense. But if it is unshakably shown that the qualification has been acquired before the relevant date as is the case here to invalidate this merit factor because proof, though indubitable, was adduced a few days later but before the selection or in a manner not mentioned in the prospectus, but still above board is to make procedure not the handmaid but the mistress and form not as subservient to substance but as Superior to the essence.

Before the selection committee adds special marks to a candidate based on a prescribed ground it asks itself the primary question, has he the requisite qualification? If he has, the marks must be added. The manner of proving the qualification is indicated and should ordinarily be adopted. But, if the candidate convincingly establishes the ground, though through a method different from the specified one, he cannot be denied the benefit. The end cannot be undermined by the means. Actual excellence cannot be obliterated by the choice of an incontestable but unorthodox probative process, Equity shall overpower technically where human justice is at stake."

7. The permission granted to Pusplata, therefore, to produce her detailed marks certificate before the Interview Committee on July 15, 1998 cannot, therefore, be faulted.

8. It has not been denied that the petitioner was the only backward class category candidate to apply under that category to the course in question. To my mind, it was obligatory for the college to have created a reservation of this kind in M.Sc. (Physics) as it was provided in the Brochure issued by the University. This petition is accordingly allowed and it is directed that the petitioner will be granted admission to the course in question as a backward class category candidate. Respondent No. 1, the University is also directed to grant sanction for the creation of an additional seat. No costs.

9. Dasti order.