
(1999) 05 P&H CK 0127

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 14954 of 1998

Madhu Bala

APPELLANT

Vs

Sital Singh Sarao and Others

RESPONDENT

Date of Decision : 07-05-1999

Acts Referred:

Citation : (1999) 122 PLR 466

Hon'ble Judges : Harjit Singh Bedi, J

Bench : Single Bench

Advocate : N.S. Sitta, for the Appellant; T.P. Tung, for Respondent Nos. 1 and 2 and Sandeep Kumar, for Rajan Gupta, for the Respondent

Final Decision : Allowed

Judgement

Harjit Singh Bedi, J.—The petitioner applied for admission to the Diploma in Physical Education course against one of the 40 seats advertised in respondent No. 2, Shaheed Kanshi Ram College of Physical Education, Bhagoo Majra. The admission was to be made on the basis of marks obtained in the qualifying graduate examination after passing a physical test. On declaration of the result on 1.8.1998, it was found that the petitioner had not succeeded in getting admission on merit. The petitioner approached the respondent-College time and again over the next few days but was informed that no seat was available as the seats were filled up by the persons higher in merit. It is the petitioner's case that though she has been denied admission on the ground that she was not in the merit, yet two candidates, namely, Rajan Preet Kaur and Kiran Deep, respondent Nos. 4 and 5 respectively, who were lower in merit had nevertheless been granted admission in the course in question. Aggrieved thereby, the petitioner has approached this Court by way of present writ petition.

2. On notice of motion, a reply has been filed on behalf of respondent No. 2 College as also on behalf of respondent No. 3, the Punjabi University, Patiala. In the reply filed on behalf of respondent No. 2, it has been pointed out that respondent No. 4, Rajan Preet Kaur belonged to the reserved category of

Teachers wards and as she was at Sr. No. 1 on the waiting list of that category and a seat in that category had fallen vacant, she had been granted admission thereunder. It has further been pleaded that respondent No. 5, Kiran Deep had been granted admission on the directive issued by the Vice Chancellor, Punjabi University, Patiala on the creation of an additional seat for her. A copy of the communication dated 13.8.1998 addressed by the University to the Principal of the College has been appended as Annexure R-1/1 with the reply. Two separate replies have been filed by respondent No. 3. As the first one was wholly vague a direction was issued that an additional written statement be filed. The additional written statement dated 8.2.1999 is also on record and in para 5 of the written statement, it has been submitted that two additional seats for the Sessions 1998-99 had been created for respondent No. 5 and one Vivek Chhabra as both these candidates belonged to the sports category and it was thought that sportsmanship would be promoted by the creation of additional seats. It has been pleaded that both these seats had been created subject to the approval of the Academic Council and during the course of the hearing, it has been pointed out that this approval had been granted in the meeting held on 1.2.1999.

3. Mr. Sitta, the learned counsel for the petitioner, has argued that in the light of the written statement filed by the respondents, it was evident that respondent Nos. 4 and 5, who had been granted admission, were lower to the petitioner in merit. Arguing further, he has urged that it was evident from Annexure R-1/1 and also from the record produced in Court that the Pro-Vice Chancellor had ordered the creation of an additional seat for respondent No. 5 despite the fact that she had failed to qualify the physical test for admission to the course, which was a pre-requisite for being called for interview prior to admission. He has also pointed out that no provision had been referred to by the University, which authorised the Vice Chancellor to create an additional seat and that too for a specific candidate.

4. Mr. Tung, the learned counsel appearing for respondent No. 2-College, has, however, submitted that the College was bound by the orders of the Vice Chancellor and as it had merely implemented the orders, it had nothing much to do with the matter.

5. The learned counsel for the University has, however, relied on the record, to contend that the Vice Chancellor had created an additional seat pending approval of the Academic Council, which too had been granted subsequently.

6. After hearing learned counsel for the parties, I am of the opinion that this writ petition deserves to succeed, though partly inasmuch as the admission granted to respondent No. 5 cannot be sustained but the petitioner also gets no benefit on that account. As already mentioned above, no provision has been pointed out in the written statement or during the course of hearing under which the Vice Chancellor could create an additional seat specifically for respondent No. 5. This matter was heard on May 4, 1999 and judgment was pronounced and dictated in Court but as there appeared to be some contradictions in the findings that had

been recorded, the matter was relisted for hearing today, when Mr. Rajan Gupta, the learned counsel appearing for the University, has brought to my notice sub Section (8) of Section 9(A) of the Punjabi University Act, 1961, to contend that the creation of an additional seat was visualised thereunder. This clause is reproduced below:

Section 9(A)

xx xx xx xx xx xx "(8) If, in the opinion of the Vice-Chancellor an emergency has arisen which requires immediate action to be taken, the Vice-Chancellor shall take such action as he deems necessary and shall report the same for confirmation at the next meeting to the authority which, in the ordinary course, would have dealt with the matter:

Provided that if the action taken by the Vice-Chancellor is not approved by authority concerned, he may refer the matter to the Chancellor whose decision thereon shall be final:

Provided further that where any such action taken by the Vice-Chancellor affects any person in the service of the University, such person shall be entitled to prefer, within thirty days from the date on which he receives notices of such action, an appeal to the Chancellor."

7. A bare reading of this Clause would indicate that it does not even remotely deal with the creation of an additional seat as the creation of a seat could hardly be a matter touching on the emergency powers of the Vice Chancellor. Moreover, it is apparent that the additional seat had been created vide Annexure R-1/1 subject to the approval of the academic council. The argument of learned counsel for the University that this approval had been accorded vide item No. 20 dated 1.2.1999 (record produced in Court) is wholly misplaced for the reason that this item pertained to the approval of late admissions granted to students on payment of Rs. 300/- as late fee and there is no reference whatsoever to the approval being granted to the operation of an additional seat.

8. The very creation of an additional seat itself leaves much to be desired. It is clear from the record that respondent No. 5 had made an application dated 5.8.1998 addressed to the Vice Chancellor of the Punjabi University in which she had stated that she had appeared for the physical test but had failed to qualify the same despite great efforts on her part due to the fact that she had been suffering from a severe backache. She had accordingly requested that as she belonged to a family of Freedom Fighters, an additional seat be created for her. This application was recommended by the Principal of the College and the pro-Vice Chancellor of the University taking note of the recommendation recorded his order dated August 13, 1999 in Punjabi which when translated reads as under:

"On the recommendation of Higher Education and Language Minister and being the ward of Freedom Fighter and keeping in view the sacrifice of a Freedom Fighter, Kiran Deep D/o Pakhar Singh is granted admission in the S.K.R. College

of Physical Education, Bhagoo Majra in the Diploma in Physical Education against an additional seat."

9. The letter Annexure R-1/1 dated 3.8.1998 was issued in consequence of the aforesaid note and is reproduced below:

PUNJABI UNIVERSITY, PATIALA

No. 1376-77 (Ox(KGC 6) Dated 13.8.98 To The Principal, Shaheed Kanshi Ram College of Physical Education, Bhagoo Majra, (Kharar). Sub: Regarding admission in D.P.Ed, course.

You are hereby informed that Vice Chancellor has created one additional seat in D.P. Ed. course subject to the decision of the Academic Council. This additional seat has been ordered by the Vice Chancellor to be given to Kirandeep Kaur d/o Shri Pakhar Singh.

You are therefore directed to check the eligibility and other qualifications of the candidate at the time of admission.

Sd/- Dean College Welfare Council"

10. It is thus evident that the additional seat and been created not under any law but on a directive issued by a Minister. Moreover, Annexure P-1/1 would reveal that the direction issued to the Principal of respondent No. 2-College was to grant admission to respondent No. 5 after checking her eligibility and other qualifications at the time of admission. This condition was not followed as respondent No. 5 was not eligible for admission as she had failed to qualify the physical test held by the College. The assertion of the College, therefore, that the admission had been granted to her in accordance with the directive issued by the Vice Chancellor is not correct. The Principal, though fully, aware of the fact that respondent No. 5 had failed to qualify the physical test and was ineligible to gain entry to the course, still recommended her case to the University.

11. The challenge to the admission of respondent No. 4 is equally misplaced. It has been pleaded in the written statement filed by the Principal on 28.9.1998 that this respondent had been admitted against a seat reserved for teachers wards and as such there could be no clash between the petitioner and this respondent as well. During the course of re-hearing, Mr. Sitta has pointed out that though only one seat had been reserved for the teacher's wards category, yet respondent No. 4 had been accommodated against the 2nd seat and as such her admission was liable to be quashed. He has also urged that as two seats had since fallen vacant, the petitioner could be accommodated against one of those being the only available candidate in merit. Both these assertions are not borne out from the record in Court Moreover, the course in question being of one year's duration has since been completed by all candidates.

12. It is true that respondent No. 5 has undergone a year's study and is now settled to complete the course but the manner in which she has been

accommodated by the Vice Chancellor and the Principal creates no equity in her favour, it is the conceded position that she had failed in the physical test, which was a pre-requisite for gaining admission to the course. As already noted above, no provision whatsoever has been spelt out either in the written statement or during the course of hearing as to the authority under which the Pro-Vice Chancellor could order the creation of an additional seat for a (specific) candidate. Her admission to the course in question is accordingly quashed. The petitioner will nevertheless have her costs, which are quantified at Rs. 7,000/-. Rs. 5,000/- to be paid by the Pro-Vice Chancellor personally and another sum of Rs. 2,000/- by the Principal of respondent No. 2-College; this too personally.