

(1998) 09 P&H CK 0015
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 13789 of 1998

Mandeep Sodhi

APPELLANT

Vs

P.G.I. and Others

RESPONDENT

Date of Decision : 23-09-1998

Acts Referred:

Citation : (1999) 2 ILR (P&H) 94

Hon'ble Judges : S.S. Sudhalkar, J; R.S. Mongia, J

Bench : Division Bench

Advocate : G.K. Chatrath and Anu Chatrath, for the Appellant; Arun Nehra, for Respondent Nos. 1 to 3, Mahabir Ahalawat and P.R. Dogra, Respondent No. 5, for the Respondent

Judgement

R.S. Mongia, J.—Respondent Post Graduate Institute of Medical Education and Research, Chandigarh (in short PGI) issued prospectus for admission to para-medical courses for Session-September 1998. The courses for which the admissions were to be made are as under:

1. B.Sc. Medical Technology (Laboratory)
2. B.Sc. Medical Technology (X-ray)
3. B.Sc. (Audiology & Speech Therapy)
4. B.Sc. Medical Technology (Radio-therapy)
5. B.Sc. Physical Therapies (B. Ph.T.)
6. Operation Theatre Assistant.

2. The number of seats for each course for general category as well as for the reserved categories were as follows:

s. No Name of Course Total seats Seats reserved for SC/ST

1. B. Sc. Medical Technology (Laboratory) 15 4

2. B. Sc. Medical Technology (X-ray} 10 2
3. B. Sc. (Audiology & Speech Therapy) 6 2
4. B. Sc. Medical Technology (Radiotherapy) The duration of the above courses is three academic years. 5 ..
5. B. Sc. Physical Therapies (B. Ph. T) The duration of the course is four & half academic years. 10 2
6. Operation Theatre Assistant Course. The duration of the course is one academic year. 10 2

(3) It has been mentioned in the prospectus as follows:

For course at Sr. Nos. 1, 2, 3 and 5 candidate are required to submit only ONE application. Choice of course be mentioned in appropriate space on the application form. Separate applications are required for other two courses. Before indicating the choice of the course candidates must ensure that they are eligible to apply for the same in accordance with the qualifications and other terms and conditions for the purpose.

4. The prospectus also gives the method of selection which he following terms : Relevant portion)

METHOD OF SELECTION:

(i) The selection of candidates will be made on the basis of their performance in the theory paper, carrying 100 marks, to be held for the purpose. The details regarding the composition of theory paper are given under item 5 below. Merit list will be prepared for each category of candidate viz. General, those belonging to Scheduled Castes/Scheduled tribes, deputed/sponsored and foreign candidates, if any. Candidates, will then be selected for each course from the respective list, strictly in order of merit keeping in view the order of performance of the candidates for the course applied for, provided they are otherwise eligible.

(ii) General candidates including sponsored candidates and foreign candidates who do not obtain 50% marks in the theory examination will not be eligible for selection. In the case of candidates belonging to Scheduled Castes/ Scheduled Tribes the eligibility for selection will be 45%. marks in the theory examination.

5. The other relevant clause in the prospectus for purpose of this case is 12(g), which is to the following effect:

No request for a change of the subject/Course or the category applied for is entertained after the submission of the application to the Institute.

6. The applications for admission for para-medical courses i.e. B.Sc. Medical Technology (laboratory); B.Sc. Medical Technology (X-ray); B.Sc. (Audiology & Speech Therapy) and B.Sc. Physical Therapies (B. Ph. T.)(for which only ONE application form was to be submitted) indicating the choice of the Course/

Courses was as follows:

Sir,

I apply for admission to the following course for session commencing from September, 1998.

1. _____

2. _____

3. _____

4. _____

Paste here a signed passport size photograph

I am an Applicant under the category ticked () below:

(a) General (b) S.C./S.T. (c) Sponsored/Deputed (d) Foreign National (e) Vocational

N.B. 1. Candidates should consult the admission notice to confirm the eligibility for applying for the courses.

2. For B.Sc. Medical Technology (Lab.), B.Sc. Medical Technology (X-Ray), B.Sc. (Audiology & Speech Therapy), B.Sc. Physical Therapies (B.Ph.T.) course candidates are required to submit, only one application.

3. For Operation Theatre Assistants Course a separate application is required.

4. For the B.Sc. Medical Technology (Radio-Therapy) course only * sponsored/deputed candidates are eligible. A separate application is required for the course.

7. The Petitioner as well as Respondent Nos. 4 and 5 all belong to Scheduled Caste category. Petitioner as well as Respondent Nos. 4 and 5, apart from others applied for admission in the S.C. category. Petitioner had given his four choices for admission in the following order of preference:

1. B.Sc. Physical Therapies (B.Ph.T.)

2. B.Sc. (Audiology & Speech Therapy)

3. B.Sc. Medical Technology (X-ray)

4. B.Sc. Medical Technology (Laboratory)

Respondent No. 4--Aman Pal Singh and Respondent No. 5--Vavita Rani had indicated their choice in the application forms for admission in the different courses in the following order:

Respondent No. 4--Aman Pal Singh:

1. B.Sc. Medical Technology (Laboratory);

2. B.Sc. Medical Technology (X-ray);
3. B.Sc. (Audiology & Speech Therapy); and
4. B.Sc. Physical Therapies (B.Ph.T.)

Respondent No. 5--Vavita Rani:

1. B.Sc. Medical Technology (Laboratory);
2. B.Sc. Medical Technology (X-ray);
3. B.Sc. (Audiology & Speech Therapy); and
4. B.Sc. Physical Therapies (B.Ph.T.).

8. It may be observed here that in the merit list prepared by the Respondent--PGI for the reserved category of Scheduled Castes, Respondent Nos. 4 and 5 were kept higher in merit. Both were granted admission in B.Sc. Physical Therapy (B.Ph.T.), though this Course was their fourth choice and the Petitioner was not granted admission in this Course though this was his first choice and he was admitted in B.Sc. Medical Technology (X-ray), which was his third choice.

9. Petitioner has challenged the admissions of Respondent Nos. 4 and 5 in B.Sc. Physical Therapy (B.Ph.T.) and the denial of admission to him in that course on the ground that the admission should have been granted as per the order of choice or preference given by the various candidates and if a seat was available in the first choice given by the candidate then he/she should have been admitted in that course. Notice of motion was issued. Reply has been filed by Respondent Nos. 1 to 3 as well as Respondent No. 4.

10. Learned Counsel for the Petitioner argued that as per the prospectus the method of selection is that after a merit list is prepared of the different categories (General, SC/ST etc.) on the basis of the performance in the theory papers, then the candidate has to be selected for each course from the respective categories strictly in order of merit keeping in view the order of preference of the candidates for the courses applied for provided they are otherwise eligible. This is so provided in the method of selection in the prospectus which has already been reproduced above. It was further submitted that the word performance which has been used in the paragraph dealing with method of selection in the prospectus is a misprint or misnomer and in fact it should be preference as the word performance does not make any sense. To buttress his argument, learned Counsel for the Petitioner referred to Annexure P. 3, which is a compilation of the result by the Respondent-PGI in which against each candidate the order of choice of various courses in which they had applied for has been mentioned. In this Respondent Nos. 4 and 5 have been shown to have applied for four courses giving their choices as indicated in the earlier part of the judgment. B.Ph.T. course was the fourth choice of Respondent Nos. 4 and 5. Petitioner's counsel also referred to Annexure P. 6 attached with the replication which is the list of the general candidates showing their result and the

first choice being B.Ph.T. The argument proceeded that once the candidates had given their choices in a particular order or preference, that could not have been allowed to be changed as per Clause 12(g) of the prospectus, which has been reproduced above. Since Respondent Nos. 4 and 5 had given the " course of B.Ph.T. as their fourth choice, they could not have been admitted in the said course as seats in the other courses shown as their Choice from 1 to 3 were available. The Petitioner having given his first choice for admission to B.Ph.T. course should have been offered the seat in that course first in preference to Respondent Nos. 4 & 5.

11. On the other hand learned Counsel for the Respondent-PGI submitted that there was no indication that the candidates had to give their choices or order of preference in the application for admission to the various courses and they had just to mention the courses for which they were applying and after the merit list was prepared they were to be given a chance to choose any of the courses for which they might have applied. It was further submitted that as per the method of selection, the admission had to be given to any of the Courses depending upon the performance of the candidates for the course applied for and there was no misprint in the prospectus where method of selection was given. In fact, the word performance has been correctly used and it does not mean preference.

12. After hearing the learned Counsel for the parties, we are of the view that the petition is liable to succeed.

13. As observed above, for the four courses, there was to be only ONE application form. It was clearly mentioned in the prospectus that for the four courses in question, the candidates "are required to submit only ONE application. Choice of course be mentioned in appropriate space on the application form." According to us, this meant that the candidate while applying for the four courses on one application form must indicate his order of preference for various courses. We are further of the view that in the paragraph in the prospectus dealing with the method of selection (already reproduced above) the word performance in the last line of the paragraph should be read as preference as the word performance does not fit in nor it conveys any sense. The words in the prospectus are that the "candidates will then be selected for each course from the respective list, strictly in order of merit keeping in view the order of performance of the candidates for the course applied for, provided they are otherwise eligible." The reference to "separate list" is to earlier part of the paragraph, where separate merit lists are required to be prepared for general category candidates, reserved categories candidates etc. There is no separate examination or test for each of the course. There is one joint test. If the words axe to be read as order of performance of the candidates for the course applied for then there should be four different sets of performance to judge the performance in each course applied for. Since there was only one application form and one entrance test for the four courses, it would follow that after the merit list was prepared then the admission was to be granted in order of preference (and not performance) of the candidates for the

courses applied for. The candidates on the basis of their merit were to be given admission in the course of their first choice and. if seat was not available then they may be offered admission in the course of second choice and so on. Even Respondent-PGI understood the method of selection as indicated by us inasmuch as while compiling the result (as indicated in Annexure P. 3 and P. 6) the choice given by the candidates in their application forms had been indicated in the result. If a seat in the course of first choice is available then as per Clause 12(g) of the prospectus, reproduced above, the candidate cannot be allowed to change the order of preference. Since in the present case, Respondent Nos. 7, 4 and 5 had given the choice for B.Ph.T. course as their fourth choice, they should have been first offered the admission in course for which they have given preference at Sr. No. 1 and if the seats were not available in that course, then they. should have been offered the seat in the course of their second, third or fourth choice in that seriatim.

14. Consequently, for the purpose of this case, the admission of the candidate, lower in merit, amongst Respondent Nos. 4 and 5 is liable to be quashed and the seat is to be offered in the B.Ph.T. course to the Petitioner; that being his first choice. We order accordingly.

15. However, we may also observe here that it will be open to the Respondent-PGI to adjust the Petitioner in the B.Ph.T. course without disturbing the present arrangement if it decides to create an additional seat. Otherwise, out of the two Respondents i.e. Respondent Nos. 4 and 5, who is lower in merit amongst them will have to make room for the Petitioner.

16. The writ petition is disposed of accordingly.