
(1988) 09 P&H CK 0025

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No 6485 of 1988 and C.M. No. 9882 of 1988

Miss Ritu Khanna

APPELLANT

Vs

The Punjab University, Chandigarh and another

RESPONDENT

Date of Decision : 12-09-1988

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (1988) 09 P&H CK 0025

Hon'ble Judges : M.M. Punchhi, J; Amarjeet Chaudhary, J

Bench : Division Bench

Advocate : H.L. Sibal, Mr. P.K. Palli, M/s S.C. Sibal and Mr. A.V. Palli, for the Appellant; J.L. Gupta and Mr. Jaswant Singh, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Punchhi, J.—The Department of Laws, Punjab University, Chandigarh, in its prospectus for the year 1988-89 opened admission to the Three-years LL.B. Course requiring the prospective candidates to submit forms by July 18, 1988. 150 seats were created for the morning classes and an equal number for the evening classes. Whereas morning classes were open to all, the admission to the evening classes was open only to regular employees of Government/Semi-Govt. institutions/Affiliated Colleges/ Statutory Corporations and Government Companies. A candidates applying for admission to the evening classes was required to attach a no-objection/permission letter from his present employer with his or her application for admission. For both the morning as well as evening classes provision was made for reservation of seats in favour of Scheduled Castes/Scheduled Tribes/Backward Classes, Physically Handicapped persons, Outstanding Sportsmen, Defence personnel and their dependents etc. The sum total of these reservations stood within the permissible limits.

2. The dispute-herein relates to the admission to the evening classes and is variously shaded. Presently there are seven Civil Writ Petitions to be disposed, but earlier thereto two petitions were brought to this Court and were disposed of

3. A self employed person in CWP No. 6193 of 1988 staked claim to admission, raising the plea that being a self-employed person he was at par with an employee and that classification between employees resorted to by the University violated Article 14 of the Constitution. We repelled the plea in limine on July 26, 1988, holding that the Petitioner in that case could not be permitted to assert that he was himself an employee when he was factually not an employee and to rake up the dispute between classification of employees.

4. A privately employed person in CWP No 6354 of 1988 then staked claim to admission just three days later. It was almost on the similar lines as in the previous case. That case was dismissed too by us in limine on July 29, 1988, observing that the provision of evening classes in the Law Department has been subjected to classification keeping in view the need of the employees of the government and other classified employees due to their special difficulties and that the others can successfully rub shoulders with the others for the morning classes and adjust accordingly. It was further observed that this Court was not inclined to disturb the working of the Law Department in confining the admission of evening classes to the specified categories.

5. Then came these seven writ petitions, CWP Nos. 6485, 6519, 6654, 6755, 6871, 6872, 6936 of 1988, which are in hand, challenging the correctness of our earlier view in the afore-mentioned two cases. The Petitioners' learned Counsel were able to persuade us to have a second look in the matter, and that is how these matters are listed before us in motion hearing. Encouraged, a Review Application No. 84 of 1988 was filed by the Petitioner in CWP No. 5354 of 1988 which we ordered to be taken up with these petitions. Since the matter cannot brook delay with the consent of the learned Counsel for the parties, we decided to dispose of these matters at the motion stage.

6 In CWP No. 6485 of 1988. the Petitioner is a temporary government employee, having applied on July 13, 1988, and securing the same day the post of a Helper in the office of the Director, Water Resources Directorate, Punjab, Chandigarh, for less than three months duration. The University in its return disputes the claim of the Petitioner as her job is temporary and thus not regular.

7. In CWP No. 6519 of 1988 the Petitioner is an Accounts officer with Rallis India Limited, a company registered under the Companies Act, 1956. The University in its reply disputes the claim of the Petitioner to admission as its employer is not a government company.

8. In CWP No. 6654 of 1988 the Petitioner with effect from July 8, 1988, was employed as a helper on temporary basis by the General Manager, Haryana Roadways, Chandigarh, on daily charged rates. In the return filed by the University the claim of the Petitioner is disputed he being not a regular employee.

9. In CWP No. 6755 of 1988 the Petitioner is a Junior Laboratory Technician in the Post Graduate Institute of Medical Education and Research, Chandigarh, which is a statutory body on ad hoc basis. The University in its reply disputes the

claim of the Petitioner since she was not a regular employee

10. In CWP No. 6871 of 1988 the Petitioner is an Accountant on probation for six months with effect from June 2, 1988. with Agro Chem Punjab Limited, a private company, jointly ventured with the Punjab Agro Industries Corporation Limited, Chandigarh, which is a Punjab Government Undertaking. The University disputes the claim of the Petitioner as the company in which he is employed is not a Semi-Govt. Institution and cannot have a wider meaning than a government company and a government company is one where the share of the government is 51 per cent or more.

11. In CWP No. 6872 of 1988 the Petitioner is a permanent employee of the Punjab Power Generation Machines Limited, stately a Joint Sector Company of the Punjab State Industrial Development Corporation Limited and derivate a State Government Undertaking or a Semi-Govt. Institution. The University in its return denies the status of the employer of the Petitioner, as according to it, where the government, has provided more than 51 percent of the finance of a particular institution, that alone was considered a Semi-Govt. Institution by it.

12. In CWP No. 6936 of 1988 the Petitioner does not specifically aver as to what is his nature of employment at a T-Mate, whether regular, permanent or temporary and of what duration. All what is said is that he is working in the office of the Executive Engineer, Irrigation Development Investigation Division No 1. The University was not called upon to file a reply in the instant case.

13. So we have an assortment of temporary government servants or servants of Semi-Govt. Institutions or Statutory Corporations or regular servants of private companies or Corporations. Apparently they lack in one or the other qualification for seeking admission to the evening class

14. Mr. Hira Lal Sibal, Senior Advocate, who spear-beaded the attack against confining the admission to the evening classes only to regular employees of Government/Semi Government Institutions etc, vehemently urged that the University had violated Article 14 of the Constitution and his attack branched off in directions, each of which we notice and deal with separately taking into account the defence of the University.

15. Firstly, it is contended that there is 100 per cent reservation in the evening classes for regular employees of Government/Semi Government Institutions etc. and nothing has been kept for candidates other than those. The claim of the University is that this is no reservation at all and only the source has been defined from which candidates would be taken for admission to the evening classes. It is also maintained that the LL.B. Course is one and for convenience and other considerations education is imparted in two Sessions, morning and evening. Id both the Sessions, there are reservations in favour of Scheduled Castes/ Scheduled Tribes etc. and less than 50 per cent seats are reserved for those categories, and that is permissible under the law. Additionally, it has been maintained that the Morning Session is open for all, that is to say, non-

employees or employees, of Government Institutions or non-Government Institutions, and the only restrictions imposed are "merit and availability of seats". But the Evening Session is thrown open to regular employees of Government/Semi Government Institutions etc. because that Session is meant to impart education in law to Government servants etc. in view of their special difficulties in not being able to attend to classes in the Morning Session because of the demands of their office. To this learned Counsel for the Petitioners countered that these difficulties were equally experienced by privately employed candidates who too could be available only in the evening hours for higher studies. Reliance has been placed by learned Counsel on both sides on some judgments of the Supreme Court in cases of admission to medical colleges, which we would presently deal with, besides other judgments.

16. In *Kumari Chitra Ghosh and Another Vs. Union of India (UOI) and Others*, , seats were reserved in respect of some categories of persons contained in the rule of the *Mulana Azad Medical College Prospectus*. A few categories out of those were subjected to challenge unsuccessfully on the strength of Article 15 (i) of the Constitution, but with regard to the questioned reservation, meeting the challenge of Article 14, the Supreme Court took the view that since the Central Government bore the financial burden of running the Medical College, it was for it to lay down the criteria for eligibility, as from the very nature of things it was not possible to throw the admission open to students from all over the country. Further, the Court took the view that the Government cannot be denied the right to decide from what sources the admission will be made and that essentially was a question of policy depending inter alia, on an overall assessment and survey of the requirements of residents of particular territories and other categories of persons for whom it was essential to provide facilities for medical education. Further the Court also took the view that if the sources are properly classified, whether on territorial, geographical or other reasonable basis, it was not for the Courts to interfere with the manner and method of making the classification. Then touching each classification one by one the Court found it well connected with the objects sought to be achieved and held other classifications to be reasonable.

17. It is noticeable that the Supreme Court conceded the Government the right to decide from what sources the admission will be made. In other words, the Court left it to the Government to decide who were the eligibles and if it could properly classify the sources on a reasonable basis, it was not for the Courts to interfere in that event.

18. Now here the sources for admission appear to us well classified. To begin with, there are Government employees. They as such already have a constitutionally recognised classification, for they have protection of Article 311 of the Constitution, which non-Government employees do not have. Employees of Semi-Government Institutions are also on the same footing and can also be described as properly classified. According to the University, an Institution which

is financed by the Government to the extent of 51 percent or above is considered by it a Semi-Government Institution. Due to the predominant financial control of the Government, the employees of these Institutions are also properly classified. Same is the case of Statutory Corporations and Government Companies and since the Government has effective control over these, because of its involvement, their employees are also properly classified. Justly, the employees of affiliated colleges also have security of service under the Punjab Affiliated Colleges (Security of Service of Employees) Act, 1974, and an identical Act is applicable in Haryana, whereunder the respective State Governments provide protective cover to such employees. It is patent thus that the sources from which the eligibles are sought to be drawn are properly classified. And whether it has been done on a reasonable basis is to be seen in the backdrop of the Indian principle of governance. Ours is a Society, as is well known governed by the Rule of Law. The elected government from this society must know the law in order to rule the country. Not only the elected representatives but the entire civil servants, inclusive of bureaucracy, officers, clerks, ministerial and under-lings would do well in knowing the law if the Rule of Law through their hands is to be fostered, preserved and perpetuated. We see nothing unreasonable in the University confining its evening session in these circumstances to a regular set of government or semi-government employees and to spread legal literacy and education to such classified people in the larger interests of the country. In our view, the nexus is well established and the purpose sought to be achieved is easily perceivable. On this basis we feel the test of reasonableness has easily been satisfied so as to legitimise the sources of admission having regard as well to the special difficulty of such classified persons due to their inability to receive education in the morning classes.

19. The view above taken by us also meets the tests of the principles laid down in *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, . The persons which the University has validly taken together as eligibles, entitled to compete for admission, has obviously left out from the large group of employees other employees of other categories. But as hinted earlier, admission to the left-cuts is not totally barred and they are eligibles for the morning session. In that since, the contention of the learned Counsel for the Petitioners that there is 100 percent reservation in favour of government employees is totally misplaced.

20. In *D.N. Chanchala Ors. Vs. The State of Mysore and Others*, , the Court observed that a provision laying down sources from which selection for admission would be made is strictly speaking not a reservation, as suggested. It was further held that such provision was not a reservation as understood by Article 14 against which objection could be taken on the ground that it was excessive. These observations also adequately meet the claim of the Petitioners that by provision of evening classes per se 100 percent reservation in favour of the government employees etc. has been made. As amplified earlier, reservations as contemplated under Article 15, have already been made in favour of Scheduled Castes/Scheduled Tribes etc. below 50 percent of seats in the morning classes as

well as in the evening classes Defining sources from which selection for admission would be made is not causing a reservation but rather creating a classification, permitting the classified get in and keeping the unclassified remain out. Since such a measure has to stand the test of reasonableness such reasonableness is to be adjudged on the basis of the object sought to be achieved by resorting to classification Here, in the instant cases, repetitively we say, the classification is reasonable and well connected with the object sought to be achieved.

21. There is, however, a discordant note recorded in Jolly A.V. and Another Vs. State of Kerala and Another, . But that is a case on its own facts, because the Hon"ble Judge found it difficult to conceive of a rational policy behind the government action. Therein the dictum of the Supreme Court in Chitra Ghosh v. Union of India, was taken note of and finally observation was made that the matter was to be examined on the facts of each case. The Kerala decision poses no difficulty here in perceiving the reasonableness of the properly classified sources of admission. We would not burden this judgment with more judicial precedents.

22. The second point urged by Mr. Sibal was that temporary government servants or of semi-government institutions have unreasonably been left out. Pointed reference was made to the writ Petitioners who had been appointed on temporary or ad hoc basis. It was emphasised that the object sought to be achieved would not be frustrated by imparting legal education to temporary servants also. Mr. J.L. Gupta, learned Counsel for the University, maintained that the University had been imparting legal education in the evening session for the last so many years and had been throwing it open to employees without any classification and experience had told the University that temporary employments being often short lived (for at times suggested they were managed to secure admission) the Law Department was flooded with requests for transfer from the evening session to the morning session on account of the candidate not remaining in service Further it was pointed out that the prospectus provided only a regular employee of the kind to be eligible which meant the one who had a permanent regularised service, so that the Law Department could, with certainty, expect its candidates to remain in the 3 years course. Mr. Sibal maintained that in the admission form there was a column to specify whether the employment of the Petitioner was temporary or permanent, which, according to him, made a temporary person eligible. Mr. Gupta, however, explained that the admission form was only meant to draw pointed attention to the candidate lest he had any doubt about the regularity of his service. We are satisfied with the explanations of Mr. Gupta. No fault can be found with the University having chosen to leave out temporary servants as the eligibles to the course They cannot be said to have unreasonably been left out.

23. Mr. Sibal then made an attempt to challenge five per cent weight age given to the Defendant sons/daughters of the Punjab University employees We did not

encourage him in that regard, for that would be academic for the purposes of the present set of writ petitions. Undeniably, the admissions have been complete, Whosoever is the person who has secured weight age on that account has not been made a party to either petition We thus do not pronounce on the matter.

24. Lastly, it was contended by Mr. Sibal that the action of the University has only commenced from this academic year and since the Petitioners are locally based and have looked forward to seek admission in the Law Deptt. locally, some way be found to have additional seats to accommodate the Petitioners We find from the prospectus that the admission form which a candidate is required to submit to the Law-Department is a part of the prospectus meant to be bought by a candidate. The respective seats of both Sessions are mentioned. Mr. Gupta stated that all the seats had been filled and the University found no scope for creating additional seats by giving a go-by to its policy. So on this account too, this Court cannot help the Petitioners more so at this, stage

25. For the foregoing reasons, we find no merit in these petitions and order their dismissal, but without any order as to costs.

Sd/-Amarjeet Chandhary, J.