

(1989) 11 P&H CK 0021
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 13799 of 1989

Parveen Hans

APPELLANT

Vs

The Registrar, Punjab University and Others

RESPONDENT

Date of Decision : 30-11-1989

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1991) 2 ILR (P&H) 365 : (1990) 97 PLR 490

Hon'ble Judges : S.S. Sodhi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.S. Sodhi, J.—The controversy raised here pertains to admission to the L.L.B. course of the Department of Laws of the Punjab University, Chandigarh and is founded upon the creation and reservation of 5% seats for employees of the University and their wards.

2. There was no mention in the prospectus of any reservation of seats for admission for the employees of the University and their wards. On July 26. 1.989 the day on which admissions were to be completed and finalised, the Punjab University vide its letters of the date Annexure P/1, created additional seats to the extent of 5% and reserved them for the employees of the University and their wards. 15 seats were thus, created in the Department of Laws and these were filled up from amongst this category.

3. It is the case of the petitioner Parveen Hans that reservation of seats for admission, for the University employees and their wards was not permissible in law and he being higher in merit than those admitted by virtue of this reservation, was entitled to admission, against one of the newly created seats.

4. Such reservation of seats for University employees and their kin is indeed discriminatory and wholly unwarranted and has been held to be so by a string of judicial precedents. To begin with, there is the judgment of the Full Bench of the

High Court of Patna in *Umesh Chandra Sinha Vs. V.N. Singh and Others*, . The matter there pertained to admission to the Patna Medical College. The relevant provisions in the Ordinance governing admissions provided for a 2% reservation for the children of the University employees receiving a salary upto Rs. 100/- per month. It was held that there was no reasonable nexus between the object intended to be achieved and the principle on which children of the employees of the University were selected for preferential treatment. The object to be achieved by the Ordinance was making of provision for proper selection of candidates for admission to the medical course and this had no reasonable nexus with the pecuniary difficulties or the meritorious services rendered by the employees of the University. Preferential treatment to the children of the University employees would thus, amount to favoritism and patronage. The reservation was accordingly struck down.

5. Again in *Prasanna Dinkar Sohale etc. v. The Director-in-charge Laxminarayan Institute of Technology, Nagpur*, A. I. R. 1982 Bom. 176, reservation of seats in favour of wards of the University employees were struck down with the following observations : -

"Another important factor deserves to be considered. While making a classification there must be some peculiarities which distinguish that class from the rest. For example, the State and Central Government servants can be classified separately, because they are liable to transfer. The staff employed in the foreign Mission would be a separate class as such staff would be experiencing difficulties in the education of their children. Similarly, the wards of the political sufferers would be a different class as such wards on account of the activities of their parents (in the freedom fight) would not have the usual educational facilities which others will get. In the present case, there is no such intelligible differential while classifying the University employees separately. There is no possibility of such employees being transferred from one place to another. Similarly, the University employees cannot be termed as those who could not arrange for the education of their children on account of any other peculiar difficulties. The "wards of the University employees" are thus at par with wards of any other employees. Not only that but they are also at par with wards of other persons such as petty traders, businessmen artisans etc. In view of this discussion it is clear that by creating four reservations in favour of the Wards of University employees, the University has acted in a discriminatory manner and the principal of equality had not been followed. The discrimination can be seen from the fact that the four students of this category (who are respondents Nos. 3, 6, 7 and 8 in Writ Petition No. 2707/1979) were admitted though on merit, they could not have been admitted Their (except respondent No. 8) percentage of marks was far below that of many of the petitioners before us and it is in this way that the petitioners are entitled to say that the reservation in question is bad. The result, therefore, is that the four reservations in favour of the Wards of the University employees cannot be allowed to stand"

6. Later this judgment of the High Court of Bombay was followed by the Divisional Bench of this Court in *Ajay Kumar Vs. Chandigarh Administration Union Territory, Chandigarh and Others*, , which pertained to the Punjab Engineering College, Chandigarh, where 7 seats had been filled from amongst children of the employees of the College after the last date of admission. All these admissions were for the same reasons struck down.

7. There is then the judgment of our Court in *Ajay Kumar Mittal Vs. Haryana Agricultural University, Hissar and Others*, , where 2% reservation for admission to the Veterinary College for children of the College employees was held to be unconstitutional. A similar view also recently been taken in *Ashwinder Kaur Vs. Punjab University, Chandigarh and Another*, .

8. Faced with this situation, Mr. Jawahar Lal Gupta, Senior Advocate, appearing for the respondent-University sought to contend that as this reservation in favour of the wards of the University employees had been made against newly created seats, no right of persons claiming admission under other categories was, in any manner, adversely affected. Further the effect was to justify this reservation on the plea that it was done as a measure of welfare for the University employees. He also adverted to the agitation by the University employees in this behalf To lend credence to his argument there was also an attempt by counsel, to seek to equate such reservation for the University employees and their wards with the Railway passes being given to the employees of the Indian Railways. This is indeed a wholly untenable stance. Admissions to the University are for society at large and the reservations that are made, are designed to make allowances for the disadvantage or handicap that a special category may be suffering from. They are not there to be given merely as a measure of welfare The analogy of Railway passes being given to the Railway employees cannot, therefore, stand scrutiny. The reference to agitation by the University employees cannot justify the University authorities succumbing to a course of action, which is clearly contrary to law. Reservations, as has been held in the binding judicial precedents, referred to earlier, bear no reasonable nexus with the object to be achieved and are plainly discriminatory and have thus to be held to be wholly unconstitutional.

9. Further the plea of the petitioner Parveen Hans that he was higher in merit than the persons who had been granted admission against these newly created seats, has not been controverted. This being so, the petitioner is clearly entitled to the admission sought and a direction is accordingly hereby issued to the respondent-University to grant admission to the petitioner forthwith.

10. As regards the admission granted to the University employees and their wards, in pursuance of the impugned reservation in their favour, keeping in view the fact that they were made as far back as July and it is now the end of November 1989, it would clearly be unfair to cancel their admission as it would now be too late for them to seek admission elsewhere. Any claim for admission against any of these seats would clearly be barred by laches. It is in these

circumstances and in the context of the larger interests of justice that the admissions already made are not being interfered with and instead, the University is directed to create an additional seat to accommodate the petitioner Parveen Hans.

11. Before parting with this matter it must be observed that it was in blatant disregard of the known and settled law that the University created and reserved additional seats for its employees and their wards and this action must, therefore, invite adverse comment, it is clearly incumbent upon the University authorities to ensure that such disregard of law never recur. If such reservation is ever again made, the University authorities would be well advised to bear in mind that it would run the risk of being construed as a deliberate violation of the prohibition reiterated here and those making it would lay themselves open to the penal consequences, that in usual course flow from disobedience of the directions of this Court.

12 This writ petition is accordingly hereby accepted with costs. Counsel's fee Rs. 500/-.

13. Let a copy of this judgment be sent to the Vice Chancellor of the Punjab University, Chandigarh.