
(2014) 07 SHI CK 0108
In the High Court Of Himachal Pradesh
Case No : CWP No. 4557 of 2014-F

Pavika Bhardwaj	Vs	APPELLANT
Himachal Pradesh University		RESPONDENT

Date of Decision : 23-07-2014

Acts Referred:

Citation : (2014) 07 SHI CK 0108

Hon'ble Judges : Mansoor Ahmad Mir, C.J.; Tarlok Singh Chauhan, J

Bench : Division Bench

Advocate : Dilip Sharma, Senior Advocate and Manish Sharma, Advocate for the Appellant; J.L. Bhardwaj, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, C.J.—Petitioner has sought writ of mandamus commanding respondents No. 1 and 2 to admit the petitioner in B. Tech (CSE) course in UIIT, H.P. University on the basis of her ranking in the merit obtained by her in combined entrance test, has also sought quashment of the actions of respondents No. 1 and 2 whereby the petitioner has been denied admission in the said discipline and in follow up action, if required, admission of respondent No. 3 in B. Tech (CSE) be quashed, on the grounds taken in the memo of writ petition.

2. The matter came up for consideration before this Court on 9th July, 2014, and notices were restricted to respondents No. 1 and 2, at that stage. Respondents No. 1 and 2 have filed reply and resisted the writ petition on the grounds taken in the memo of reply.

3. Respondents No. 1 and 2 issued the advertisement notice, which was published in a Hindi daily "Amar Ujala" on 30th March, 2014 (Annexure P-1) whereby online applications were invited for admission to B. Tech in Information Technology and B. Tech in Computer Science. The last date for submission of application form was 17th May, 2014 and for submission of PDF application form

in UIIT Office was 20th May, 2014.

4. The petitioner submitted online application (Annexure P-2) for admission and has given first preference to B. Tech (IT) and second preference to B. Tech (CSE). The eligible candidates appeared in the entrance test held on 1st June, 2014 and result was declared online on UIIT site of H.P. University on 17th June, 2014 (Annexure P-3). The petitioner has obtained 140 marks out of 200 marks as a general category candidate in terms of the tentative merit list (General category) (Annexure P-4) and her ranking was 23rd. She appeared in the counselling on 23rd June, 2014, which was notified in terms of Annexure P-5.

5. During counselling, the petitioner expressed her interest to have admission in B. Tech (CSE) instead of B. Tech (IT) for the reason that she was not interested to seek admission in B. Tech (IT). She has made an application and has expressed her intention and desire vide application, dated 23rd June, 2014 (Annexures P-6) during the course of counselling.

6. The list of the candidates, who came to be selected for getting admission in B. Tech (CSE) and B. Tech (IT) was declared category-wise and as per merit. It was notified online on 27th June, 2014 (Annexure P-7), in terms of which the petitioner was shown to have got admission in B. Tech (IT) at serial No. 3 instead of B. Tech (CSE).

7. Feeling aggrieved, the petitioner has questioned the action of respondents No. 1 and 2 for not selecting her in the discipline of B. Tech (CSE), has sought writ of mandamus and writ of certiorari.

8. Respondents No. 1 and 2 have resisted the petition on the ground that in the advertisement notice, it is notified that the candidates, before filling up the application form online, have to read the prospectus carefully and fill up the form strictly as per the terms and conditions contained in the prospectus. Further, in terms of the prospectus, preference is to be given by the candidates; the purpose of giving and recording the preference is to make admission in various disciplines as per merit-cum-preference. It is also contended that everything is done online and after applications are filled up online and submitted, no change can be made. When preference is made, the candidate is precluded from changing the preference and change of preference is not permissible as per the terms and conditions contained in the prospectus. If such course/action is permitted, that will not only open the flood gates, but will also destroy the mechanism and sanctity of the entrance test and would cause chaos and confusion in various disciplines.

9. We have gone through the prospectus. The expression "preference" has not been defined.

10. The questions, which arise for consideration, are-what is "preference" and when "preference" is recorded, can it be a ground to deny admission in the discipline, for which second preference has been recorded, that too, if the

candidate is shown to have successfully obtained the admission in the discipline of his/her first preference?

11. In order to answer these questions, we deem it proper to examine the dictionary meaning of the expression "preference". In Black's Law Dictionary, Sixth Edition, the expression "preference" has been defined at page 1178 as under:

Preference. The paying or securing to one or more of his creditors, by an insolvent debtor, the whole or a part of their claim, to the exclusion or detriment of the rest. The act of an insolvent debtor who, in distributing his property or in assigning it for the benefit of his creditors, pays or secures to one or more creditors the full amount of their claims or a larger amount than they would be entitled to receive on a pro rata distribution.....

(Emphasis added)

12. While going through the said definition, it can be safely said that once first preference is made by a candidate, it excludes other preference and first preference is detriment of the rest. The word "detriment" means that the candidate has forborne other options.

13. In Webster's Encyclopedic Unabridged Dictionary of the English Language, Deluxe Edition, the expression "preference" has been defined, at page 1524, as under:

Preference. 1. the act of preferring. 2. the state of being preferred. 3. that which is preferred; choice. His preference is vanilla, not chocolate. 4. a practical advantage given to one over others. 5. a prior right or claim, as to payment of dividends or to assets on dissolution. 6. the favoring of one country or group of countries by granting special advantages over others in international trade.

14. It defines that it is act of preferred choice or a prior right or claim. It is practical advantage given to one over others.

15. While going through the definitions, reproduced hereinabove, read with the reply filed by respondents No. 1 and 2, it appears that once preference is made, it cannot be changed thereafter.

16. The Apex Court in a case titled as Sher Singh versus Union of India and others, reported in (1984) 1 Supreme Court Cases 107, while dealing with the case, has also discussed the expression "preference". It is apt to reproduce relevant portion of para 7 of the judgment herein:

7..... The expression "preference" amongst others means prior right, advantage, precedence etc. But how would it be possible to give precedence one over the other. It signifies that other things being equal, one will have preference over the others..... Preference in this context would mean that other things generally appearing to be qualitatively and quantitatively equal though not with mathematical accuracy, statutory provision will tilt the balance in

favour of the Undertaking.....

17. The Apex Court in another case titled as The Secretary, Andhra Pradesh Public Service Commission Vs. Y.V.V.R. Srinivasulu and Others, , while discussing the case that preference be given to additional qualification, has also discussed the word "preference". It is apt to reproduce relevant portion of paras 10 and 11 of the judgment herein:

10. The word "preference" in our view is capable of different shades of meaning taking colour from the context, purpose and object of its use under the scheme of things envisaged. Hence, it is to be construed not in an isolated or detached manner, ascribing a meaning of universal import, for all contingencies capable of an invariable application.....

11. Preference, in the context of all such competitive scheme of selection would only mean that other things being qualitatively and quantitatively equal, those with the additional qualification have to be preferred.....

18. Applying the dictionary meaning of the expression "preference", reproduced hereinabove, read with the Apex Court judgments, it is necessary to reproduce the relevant portion of the prospectus, under the head "Deciding Merit", as under:

DECIDING MERIT

The Merit shall be determined on the basis of aggregate marks obtained by candidates in the common entrance test and a merit list shall be prepared for B. Tech IT & CSE and admission will be given in the order of course preference given by candidate in his/her online application form. In case of tie i.e. student obtaining equal marks (aggregate) in the competitive examination, the issue shall be resolved according to higher marks obtained by the candidate in Paper-I of entrance test followed by marks obtained in Paper-II. Even if there is tie in ranking after exhausting the above procedure, then the candidate older in age will be given preference.

19. It is mandate of the prospectus to record preference for the reason that merit has to be decided on the basis of aggregate marks obtained by the candidates in the common entrance test and admission is to be given in the order of preference. In the instant case also, merit list was to be prepared in B. Tech (IT) & B. Tech (CSE) and admission has to be given in the order of course preference given by the candidates. It suggests that if a candidate fails to make a preference, his/her admission form is incomplete. The purpose of making it mandatory is to issue a selection list in terms of the merit read with course preference recorded. Having said so, change cannot be made midway.

20. The prospectus also contains the Instructions For Filling Online Application Form and it provides as to what steps the candidate, while filling up the form, has to take. It is apt to reproduce clauses 8 and 9 of the said instructions herein:

7. Click on Save & Continue to see your filled application details on the computer,

before proceeding further please make sure that all the fields are filled in correctly in the confirmation screen before clicking the submit Button. Once you click on the Submit button of your application page, you cannot Edit/Change the details entered.

9. After clicking on Submit button new window will appear on the Screen displaying full details of the applicant which you have entered in the application form. Take the print out of the same page and attach the photocopy of payment receipt alongwith the application form and sent it by registered post with the quote on the envelope "Application for B. Tech (IT/CSE) Entrance Test-2014" at following address.....

(Emphasis added)

21. A bare perusal of these instructions reveals that the candidate is required to click on "Save & Continue". Once a candidate clicks the "Submit" button, he/she cannot edit or change the details entered. Clause 9 provides that after clicking "Submit" button, new window appears on the screen, which contains full details of the applicant, which have been entered in the application form and that details cannot be changed thereafter. This is the guiding factor to the officers how to call the candidates for counselling in terms of the merit list read with the preference made.

22. Learned Senior Counsel appearing on behalf of the petitioner has placed reliance on a judgment rendered by the Punjab and Haryana High Court in a case titled as Hemlata versus State of Punjab, being Civil Writ Petition No. 14832 of 2002, decided on 13th December, 2002.

23. The judgment is not in favour of the petitioner but against her for the reason that the petitioner after making the application online, participated in the common entrance test, made a grade, appeared in the counselling, cannot make a u-turn after noticing her merit position, that too, at the cost of respondent No. 3.

24. In the said judgment also, it is held that once admission is granted to all the candidates as per the preference made, he/she cannot make a claim for admission to a course for which he/she has made second preference or an inferior preference. It is apt to reproduce para 17 of the judgment herein:

17. In so far as the fourth contention noticed on behalf of the respondents is concerned, the same in our view, does not arise for consideration insofar as the instant case is concerned. In the instant case, none of the candidates (petitioners herein) has been granted admission to a course for which they had expressed their preference while filling up Item No. 15 of the application form. As such the fourth submission projected is clearly misconceived. However, in our view, in case a candidate had made a preference for a particular course and was successful in gaining admission to the course for which he had made a preference, he would clearly be debarred for admission to a course for which he

had made an inferior preference, or for which he had not made a preference.

(Emphasis added)

25. The Apex Court in a case titled as J. and K. Public Service Commission Vs. Israr Ahmad and Others, , though was dealing with a case of different nature, has held that once an option is exercised by the candidate, cannot be allowed to change the option after submission of application and after completion of all formalities.

26. Having said so, the writ petition merits to be dismissed. Dismissed as such alongwith all pending applications. Interim directions, if any, are vacated.