

(2013) 09 P&H CK 0043

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition Nos. 19107, 18929, 18675 of 2013 (O and M)

Ritu Rani (Minor) through her Father

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 17-09-2013

Acts Referred:

Citation : (2014) 173 PLR 323

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Judgement

Rakesh Kumar Jain, J.—This order shall dispose of three writ petitions bearing CWP No. 19107 of 2013 titled as Ritu Rani minor through her father v. State of Haryana and others, CWP No. 18929 of 2013 titled as Sandeep Singh v. State of Haryana and others, and CWP No. 18675 of 2013 titled as Mitali v. State of Haryana and others, as the questions involved in all these petitions are identical. However, the facts are being extracted from CWP No. 19107 of 2013. The petitioner, after qualifying 10+2 examination from the CBSE Board, passed NEET securing 11749 rank with 98.2019 percentile marks. Respondent No. 2 published the prospectus for admission through counseling to MBBS/BDS course. The admission applications forms were to be submitted positively by 19.7.2013 upto 5:00 P.M. The petitioner submitted her admission form within the due date. Clause 10 of the admission form needs to be mentioned which reads as under:--

2. The petitioner applied under the reserved category of "Economically Backward Person" [EBP] only and attached the certificate duly attested by the First Class Magistrate. About a week prior to the date of 1st counselling, respondent No. 1 uploaded provisional merit list of the EBP category in which petitioner's name was shown at Serial No. 22 and the students who had opted for more than one reservation were also mentioned, like some students filled in their category of reservation as EBP as well as Ex-servicemen (ESM). The respondents informed that the counseling for Economically Backward Persons is to be held on 30.7.2013 and the candidates from rank 1 to 100 were asked to be present at

1:00 pm with all their original documents. The petitioner was quite sanguine of her admission in BPS Government Medical College for Women, Khanpur Kalan (Sonapat) but to her utter surprise, she found out on 1.8.2013, on the website, that "as per decision of the Admission Committee, it is for the information of all the candidates who appeared for counseling on 30.7.2013 for admission to MBBS/ BDS in the category of Economically Backward Persons (EBP) that some clarifications have been asked by this institute from Government of Haryana and the admission list will be displayed only after getting the clarification from the Government". She further came to know from another notice uploaded on the website by the respondent/institute that there would again be counseling for EBP category on 26.8.2013 after getting clarification from the Chief Secretary to Government of Haryana. The institute also uploaded two provisional lists. The first one was of the candidates who had claimed admission in EBP category and the second one for the candidates who had claimed a EBP category along with other reserved category though, as per her admission form she had only claimed for reservation in the category of EBP.

3. It is admitted by the petitioner that she is a Jat, who are identified as "Special Backward Class" [SBC] in the State of Haryana. But Clause 11 of the General Instructions specifically provided that "in case a candidate does not fill up his reserved category in his application form, he/she will not be subsequently considered for admission against that category" and it is also provided in the notification dated 23.1.2013 issued by the Department of Welfare of Scheduled Castes and Backward Classes, Haryana that "the reservation for. Economically Backward Persons shall be vertical and not horizontal and the person who claims benefit of reservation under other categories shall not be entitled in this category". It is thus, submitted that the petitioner, though belonging to the category of SBC had only opted for EBP category for the purpose of reservation which cannot be declined to her after process of admission has started and counseling had taken place, on the basis of clarification of the Government that EBP is meant only for the General caste.

4. He has further relied upon a judgment of the Supreme Court in the case of Parmender Kumar and Others Vs. State of Haryana and Others, .

5. Learned counsel for the respondents has submitted that the notification dated 23.1.2013, followed by the petitioner categorically provides that it pertains to General Caste category because on the next day, a notification dated 24.1.2013 was issued by the Department of Welfare of Scheduled Castes and Backward Classes, Haryana declaring Jats to be members of "Special Backward Classes". Since, the petitioner is admittedly a Jat, she should have applied in the category of SBP or SBC instead of EBP, which is meant for only General Caste category. Although, the petitioner gave option for admission in MBBS course at BPS Government Medical College for Women, Khanpur Kalan (Sonapat) but no list for EBP was displayed and the clarification from the Government was sought. Thus, it is argued that once the petitioner was not eligible even to apply in the EBP

category, which is meant for General Caste category as she is a Jat and belongs to Special Backward Class (SBC), the petitioner is herself to be blamed because the notification defining Jats in Haryana as Special Backward Class" was issued on 24.1.2013 whereas the admission form was filled up by the petitioner on or before 19.7.2013. Similar is the position in other two cases namely, CWP No. 18929 of 2013 titled as Sandeep Singh v. State of Haryana and others, and CWP No. 18675 of 2013 titled as Mitali v. State of Haryana and others, which are being disposed of with the present writ petition because in those cases also the petitioners are Jats and had applied in the EBP category only.

6. I have heard learned counsel for the parties and perused the record.

7. The controversy involved in this case is in a narrow compass as it is to be decided whether the petitioner being a Jat could have applied in EBP category or should have applied in SBC category. There is no dispute to the fact that in Clause 10(i) of the admission form, the candidates were specifically asked as to whether they wanted to be considered in any of the reserved category as provided in the prospectus to which the petitioner has said "Yes" and in Clause 10(ii) of the application form, it is provided that if the answer of the above clause 10(i) is in affirmative then he/she has to choose the reserved category in order of preference but the petitioner has only given one preference of EBP. The question is thus as to whether the petitioner could have given the preference of EBP when she does not belong to the said category? It is pertinent to mention that by virtue of notification dated 23.1.2013 issued by the Department of Welfare of Scheduled Castes and Backward Classes, Haryana, 10% reservation was provided in jobs under Government/Government Undertakings, and Local Bodies as well as in Educational Institutions for Economically Backward Persons in the General Caste's category of the State. The criteria for consideration as EBP was also provided and it was further provided in the said notification that the person who claims benefit of reservation under other categories would not be able to avail reservation in the category of EBP, meaning thereby in case somebody has to avail the reservation of EBP, he would not be able to avail reservation in any other category.

8. The very next date, on 24.1.2013, the Department of Welfare of Scheduled Castes and Backward Classes, Haryana, issued another notification providing 10% reservation in jobs under Government/Government Undertakings and Local Bodies as well as in Educational Institutions for Special Backward Classes in exclusion to the already notified 27% reservation provided to the Backward Classes and in this Special Backward Classes", the Government included (i) Bishnoi; (ii) Jat; (iii) Jat Sikh; (iv) Ror and (v) Tyagi.

9. Since, the petitioner is a Jat and was supposed to apply in the SBC category because the EBP category was meant for the Economically Backward persons in General Caste and not for the person belonging to a caste which has already been declared as "Special Backward Class", therefore, the petitioner at the time of applying for admission did not belong to General Caste rather she had already

turned into a "Special Backward Class".

10. Though the notification dated 23.1.2013 itself clearly says that 10% reservation has been given to the Economically Backward Persons in the General Caste's in the State, it was decided by the respondents/University, on the basis of a decision of the Admission Committee, to put on hold the admission list till a clarification is sought from the Government about the category of EBP. The said clarification was given by the Chief Secretary, Haryana by his letter dated 16.8.2013 to the following effect:--

It is intimated that as is clear from the title of the category (i.e. Economically Backward Persons in General Castes), 10% reservations for Economically backward Persons in General Castes category is meant for General Castes only and in any case this is not to be offered to any other reserved category. Administrative Department is advised to act accordingly.

11. Although, the aforesaid clarification has been given by the Government but it is apparently clear from the notification dated 23.1.2013 that "Economically Backward Class" reservation to the extent of 10% was meant for General Caste's category and not for any other category, who had also been given separate reservation like in the case of the petitioner, who is a Jat and was put in the "Special Backward Class" on 24.1.2013, the very next day, giving her reservation to the extent of 10% in her own category to get admission. Therefore, the petitioner cannot be allowed to consume the reservation offered to a different category namely EBP of General Caste category. Insofar as, the decision in the case of Parmender Kumar and others (Supra) is concerned, it is not applicable to the facts and circumstances of the present case because in this case, the petitioner is not eligible to claim admission in the EBP category while belonging to the category of SBC. If there is any fault in the entire process, it is of the petitioner herself who should have been vigilant at the time of submitting the admission form because if notification of EBP was issued on 23.1.2013, the notification of SBC to which the petitioner belongs was issued on 24.1.2013, the very next day, and was presumed to be in her knowledge. In view of the aforesaid discussion, I do not find any merit in all the writ petitions and the same are hereby dismissed.