
(2013) 07 P&H CK 0238

In the Punjab And Haryana At Chandigarh

Case No : CWP No's. 13957 and 15958 of 2013

Rupinder Singh and Others

APPELLANT

Vs

Baba Farid University of Health Sciences
 Dr. Manjyot
Bajwa Vs State of Punjab and Others

RESPONDENT

Date of Decision : 31-07-2013

Acts Referred:

Citation : (2014) 1 SCT 168

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Advocate : R.K. Malik and Mr. Nikhil Sharma in CWP No. 13957 of 2013, Mr. Gurminder Singh in CWP No. 15958 of 2013, Dr. Rajiv Atma Ram and Mr. Arjun Partap Atma Ram in CWP No. 15018 of 2013, for the Appellant; Karan Singh Sandhu, Advocate for Respondents Nos. 1 and 2. in CWP No. 13957 of 2013, Mr. Suresh Singla, Addl. A.G. Punjab in CWP No. 13957 of 2013 and in CWP No. 15018 of 2013, Mr. Sandeep K. Sharma, Advocate for Respondent No. 5 in CWP No. 13957 of 2013, Mr. A.S. Barnala, Advocate for Respondent No. 6 in CWP No. 13957 of 2013, Mr. B.B.S. Sobti, Advocate in CWP No. 15018 of 2013 and Mr. Puneet Gupta, Advocate for Respondent No. 7 in CWP No. 15018 of 2013, for the Respondent

Final Decision : Allowed

Judgement

Rakesh Kumar Jain, J.—This order shall dispose of three writ petitions bearing CWP No. 13957 of 2013 titled as "Rupinder Singla and others Vs. Baba Farid University of Health Sciences, Sadiq Road, Faridkot and others"; CWP No. 15958 of 2013 titled as "Dr. Manjyot Bajwa Vs. State of Punjab and others" and CWP No. 15018 of 2013 titled as "Dr. Sunil Garg Vs. State of Punjab and others" because identical question of law is involved therein. However, for the sake of convenience, the facts are extracted from CWP No. 13957 of 2013. A notification was issued by the Sate of Punjab on 5.4.2013 for admissions to the Postgraduate Degree/Diploma Courses Session-2013 in the Health Sciences Institutions (Medical/Dental). Thereafter, the University issued the prospectus on 17.5.2013

for admission to the Postgraduate Courses which were thrown open to the candidates, who have qualified NEET (PG)-2013/NEET (MD)-2013.

2. The petitioners passed the NEET-(PG)-2013 qualifying exam and were allotted their All India and State rank accordingly. It is mentioned in the notification dated 5.4.2013 that the distribution of seats shall be in the same manner as that of the Postgraduate seats and the tentative list shall be displayed by the Director Research and Medical Education on the official website i.e. www.punjabmedicaleducation.org. It is also mentioned in the prospectus that the tentative list of the institutions/distribution of seats/specialty wise will be displayed on the website of the university.

3. As per the eligibility criteria, 50% seats were to be filled up on the basis of All India Rank and 50% from the State quota out of which 60% was kept reserved for in-service PCMS Doctors and 40% was kept open for MBBS Graduates.

4. The dispute in the present case is regarding admission to the 40% quota of General Candidates, who had opted State of Punjab. The case set up by the petitioners is that in view of the terms and conditions of the prospectus, the distribution of seats for admission to various Postgraduate Courses Session-2013 in Government Medical Colleges of Patiala, Amritsar and Faridkot was uploaded on the official website of the Department of Health in which seats kept under the Head of "Institutional Preference" has been shown and in the footnote it has been mentioned that "institutional preference means candidates who have passed their MBBS from Baba Farid University of Health Sciences/Faridkot/Gurunanak Dev University, Amritsar/Punjabi University, Patiala.

5. The grievance of the petitioners is that in the first round of counselling all the seats in both Government and management quota have been filled and no seat has been given for "Institutional Preference". It is further submitted that one day prior to the counselling, Secretary Health vide letter dated 18.6.2013, informed the Vice Chancellor that Government is contemplating to relax certain eligibility conditions prescribed in the prospectus for the PCMS candidates. In this regard a statement was made on 16.7.2013 before this Court by counsel for the State, on instructions received from Sohan Lal, Joint Director, Department of Health, that Government has decided not to take into consideration letter dated 18.6.2013 and also not to grant any relaxation.

6. In reply, filed on behalf of respondents No. 3 & 4 by Dr. Tejbir Singh, Director, Research & Medical Education, Punjab, Chandigarh, it is alleged that the distribution of seats including the "Institutional Preference" as claimed by the petitioners is not a part of the prospectus. There is no provision in the prospectus for "Institutional Preference" seats. The distribution of seats was displayed on the official website of respondent No. 4 but later on a meeting was held under his chairmanship and the distribution table was changed with consent of all the participants and was uploaded on the official website on 21.5.2013. It is also alleged that the changed roster does not contain any "Institutional Preference"

seat and the record pertaining to it would be produced in the Court at the time of arguments.

7. The aforesaid averment made by Dr. Tejbir Singh was challenged by the counsel for the petitioners and on 26.7.2013, following order was thus, passed:-

Reply on behalf of respondents No. 3 and 4 has been filed in the Court and the same is taken on record.

In the reply filed by Dr. Tejbir Singh, Director, Research & Medical Education, Punjab on behalf of respondents No. 3 and 4, it has been averred that the distribution of seats was displayed on the official web site of respondent No. 4 but later on a meeting was held under the chairmanship of the respondent and distribution table was changed with consent of all the participants and was uploaded on the official web site on 21.5.2013.

However, counsel for the petitioner has submitted that changed roster is still not displayed on the official web site. He has shown to the Court the web site on his mobile phone which has been produced by the petitioners and which is originally prepared by them and produced by the petitioners in the writ petition.

In view thereof, the respondents are directed to produce the record in the Court on 29.7.2013 indicating the decision taken by them for uploading the changed distribution table on their web site. They are also directed to produce the material that the changed distribution table has been uploaded on the web site as it has been seriously disputed by the petitioners.

Adjourned to 29.7.2013.

To be shown in urgent matters.

8. Today, learned counsel for the State is asked to produce the record showing the decision taken for uploading the changed distribution table on their website.

9. However, the decision of the Government regarding "Institutional Preference" seat was not found part of the record. Dr. Tejbir Singh, Director, Research & Medical Education, Punjab, Chandigarh was present in Court, asked for some time to file his affidavit which was ultimately filed during the course of the day. The Affidavit dated 29.7.2013 is taken on record. In this affidavit, he has attached the proceedings of the meeting, received from Baba Farid University, as Annexure A-1. The said meeting held on 21.5.2013 under the Chairmanship of the deponent Dr. Tejbir Singh, in which Principals of 8 Medical Colleges, of Punjab participated and the decision was taken to convert and include the "Institutional Preference" seats in General Category as per the Government notification.

10. On the other hand, learned counsel for the petitioners has submitted that the process of admission started with the issuance of notification dated 5.4.2013 followed by the prospectus issued by the University on 17.5.2013. The last date for depositing the fee was 25.5.2013. The last date for submitting the printout copy of admission application form by hand was 26.5.2013. The first counselling

for 40% quota was 27.5.2013 and admissions were given on 17.6.2013.

11. In this regard, judgment of the Supreme Court has been relied upon in the case of Parmender Kumar and Others Vs. State of Haryana and Others, to contend that once the process of selection of candidates for admission is commenced on the basis of prospectus, no change could thereafter be effected by the Government orders to alter the provisions contained in the prospectus.

12. In regard to the provision of "Institutional Preference" in the prospectus, the petitioners have relied upon Clause 11 of the instructions which reads thus: -

The tentative list of the institutions/distribution of seats/specialty wise will be displayed on the website of the university. The admission for PG courses shall be made only to those institutions and to those specialties for which the permission from all of the concerned authorities including the affiliation of the University are received by the concerned institute.

13. It is submitted that the distribution of seats was displayed on website of the Government in which "Institutional Preference" has been specifically mentioned which has been deleted, according to the respondents, on 21.5.2013.

14. It is further argued by counsel for the petitioners that in case of " Saurabh Chaudri and Others Vs. Union of India (UOI) and Others, , the reservation by way of "Institutional Preference" has been held to be legally valid and constitutional.

15. In the case of "Dr. Manish Sethi and others Vs. State of Punjab and others" decided by this Hon"ble Court on 24.5.2007 in CWP No. 5446 of 2007, "Institutional Preference" in the General Category has been accepted.

16. Mr. Gurminder Singh, learned counsel appearing in the Case of Dr. Manjyot Bajwa, has argued that the competent authority regarding provision of admission procedure is the State Government and the decision taken by the State vide its Notification No. 5/12/2008-3HBIII/538 dated 21.1.2011 is to the effect that "the Governor of Punjab is further pleased to reserve, by way of institutional preference upto 50% available seats for general category candidates who have passed their qualifying examination from Baba Farid University of health Sciences, Faridkot/Guru Nank Dev University, Amritsar/Punjabi University, Patiala, except from Christian Medical College, Ludhiana. The Selection of various PG seats will be purely on basis of marks obtained in PGET."

17. He has further argued that the Vice Chancellor is neither the competent authority nor such a decision could be taken after the process of counselling is started. The respondents have not issued any corrigendum for amendment/quashing of the aforesaid notification or any corrigendum in terms of the alleged decision taken in the meeting held on 21.5.2013. He has relied upon a decision of the Supreme Court in the case of " Anant Madaan and others Vs. State of Haryana and others, to contend that regional preference or preference on the ground of residence in granting admission to medical colleges is not arbitrary or

unreasonable so long as it was not a wholesale reservation on that basis. He has further argued that the very fact that the change has been brought in the meeting held on 21.5.2013 shows that the earlier distribution of seats regarding "Institutional Preference" was there which is not a reservation like the reservation given to the SC & ST etc. but it is a part of seats meant for General Category in which 100 point roster has been maintained. He has further argued that in CWP No. 15018 of 2013 respondent Nos. 8 & 4 namely, Dr. Jorawar Singh and Dr. Arvinder, respectively, have not joined till 18.7.2013 as per the endorsement on the service report of dasti summons.

18. Mr. Rajiv Atma Ram, learned senior counsel, while arguing for Dr. Sunil Garg, has submitted that different distribution of seats was there for the Government Medical College, Patiala, Amritsar and Faridkot on the one hand and separate distribution of seats in Dayanand Medical College, Ludhiana, Guru Ram Dass College of Medical Sciences and Research, Amritsar, Gian Sagar Medical College and Hospital, Banur, Adesh Institute of Medical Science, Bathinda. Since the petitioner-Dr. Sunil Garg is qualified MBBS from Dayanand Medical College, Ludhiana, therefore, he is seeking "Institutional Preference" in that College for the PG Course. He further submitted that as per the distribution of seats in the Dayanand Medical College, Ludhiana, there were number of seats for "Institutional Preference" both in the Government quota and in the management quota. Out of total of 68 seats meant for PG (MD/MS) Course (excluding 15 seats for Diploma Courses), 16 seats are reserved for institutional preference, 12 in Government quota (in MD/MS) and 4 seats in Diploma Courses. The learned senior counsel has also relied upon a decision in the case of Saurabh Chaudri and others (Supra) and has referred to an order passed by this Court in the case of Dr. Manish Sethi and others (Supra) in which liberty was given for reservation of 11 seats out of 21 seats by way of "Institutional Preference" pertaining to the Dayanand Medical College.

19. Opposing his arguments, Mr. B.B.S. Sobti, Advocate, has submitted that there is no question of "Institutional Preference" in Dayanand Medical College, Ludhiana because in the distribution of seat available on the website, relied upon by the petitioners, preference is only to the Government Colleges.

20. Learned counsel for the respondents has submitted that there is no provision of "Institutional Preference" in the prospectus which is binding upon the parties. It is further submitted that there is no challenge either to the notification dated 5.4.2013 or to the terms and conditions of the prospectus and the entire reliance has been placed upon a document on the website of DRME Punjab which is much prior to the issuance of Government notification dated 5.4.2013 and the issuance of prospectus thereafter is misplaced because the said document was never the part of the Government notification or prospectus. The plea of estoppel is also raised.

21. Mr. Puneet Gupta, learned counsel appearing for respondent No. 7, has submitted that the answering respondent is a meritorious student and all the

seats in the MD/MS have already been filled up in the first counselling.

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

23. The issue in this case is as to whether the petitioners are entitled to "Institutional Preference" both in the Government Colleges and the private affiliated colleges. The sum and substance of the arguments of learned counsel for the respondents is that the prospectus is sacrosanct and if "Institutional Preference" is not provided therein, it cannot be introduced by the order of the Court.

24. On the other hand, the case of the petitioners is that the admission to the Postgraduate Degree/Diploma Course Session-2013 started with the notification dated 5.4.2013 in which it was provided that "the admission to the diploma courses shall also be based on the NEET (PG)-2013 merit. The distribution of seats shall be in the same manner as that of the postgraduate seats. The tentative list will be displayed by the Director Research and Medical Education on the official site i.e. www.punjabmedicaleducation.org". It is also provided in the prospectus that "the tentative list of the institutions/distribution of seats/specialty wise will be displayed on the website of the university. The admission for PG courses shall be made only to those institutions and to those specialties for which the permission from all of the concerned authorities including the affiliation of the University are received by the concerned institute".

25. There is no doubt that the admission process started with the issuance of prospectus dated 17.5.2013. It is also not disputed that on the website of the DRME Punjab, "Institutional Preference" has been shown in the general merit in respect of 40% quota seats. The Court is using the word "admittedly" about the "Institutional Preference" shown on the website of the DRME Punjab because it has been dispensed with by taking decision on 21.5.2013. However, the said decision has never been brought to light nor it was changed on the website of DRME till 26.7.2013 or any corrigendum was published, immediately thereafter, for the information of the petitioners. Moreover, the proceedings of the meeting dated 21.5.2013 has not even been found to be the part of the official record rather a Photostat copy of that meeting has been appended with the affidavit dated 29.7.2013 filed by Dr. Tejbir Singh, DRME, Punjab that too when he was confronted with the fact of non-availability of record.

26. Even till now, it has not been clarified in the replies filed by the respondents as to what was the Government notification on the basis of which "Institutional Preference" seats have been converted and included in general category. This information is not given to the Court. Moreover, the committee had not jurisdiction because the decision could have been taken by the Government of Punjab, dispensing with the "Institutional Preference".

27. A bare perusal of the reply filed by Dr. Tejbir Singh on 26.7.2013 would show that he had averred that the record pertaining to the change of distribution of table shall be produced before the Court at the time of arguments but the said

record was not found part of the record for the reasons best known to them. Rather he has relied upon the proceedings of the meeting which he has allegedly received from Baba Farid University and attached with affidavit dated 29.7.2013. The official respondents have not shown to the Court the process in which the meeting dated 21.5.2013 was held and there is no explanation as to why the intimation about the change of distribution of seats has not been given by way of wide publication in the print media.

28. Be that as it may, the fact remains that "Institutional Preference" was there when the admission process was started even if it is not a part of the prospectus in so many words but it has been mentioned therein that the list of the institutions/distribution of seats/specialty wise would be displayed on the website of the university which actually was done before it was changed on 21.5.2013 after the issuance of prospectus. In this regard, judgment of the Supreme Court in the case of Parmender Kumar and others (Supra) would apply with full force in which it was held that "once the process of selection of candidates for admission to the Postgraduate and Diploma Courses had been commenced on the basis of prospectus, no change could thereafter be effected by the Government orders to deal with the provisions contained in the prospectus".

29. In the present case, as per the stand taken by the respondents that the change has been brought on 21.5.2013, after the issuance of prospectus on 17.5.2013, on the basis of Government order much less a notification which though has not seen the light of the day in the present litigation as it has been withheld by the respondents who even do not have the proceedings of meeting dated 21.5.2013 in their record.

30. Moreover, in the case of Saurabh Chaudri and others (Supra) and in the case of Dr. Manish Sethi and others (Supra), pertaining to Dayanand Medical College itself, the "Institutional Preference" has been upheld, therefore, I am not inclined to accept the arguments that the "Institutional Preference" is only meant for the Government Colleges and not for the Colleges like Dayanand Medical College, Ludhiana.

31. In view thereof, all the writ petitions are hereby allowed. The petitioners are held entitled to "Institutional Preference" as per the distribution of seats available before its change on 21.5.2013. The respondents are directed to consider the case of the petitioners in terms of the institutional preference/distribution of seats/specialty wise, available in 40% quota of General Category. A copy of this order be given to counsel for the parties under the signatures of the Bench Secretary of this Court.