
(2001) 01 P&H CK 0158

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 10098 of 2000

Samir Anand

APPELLANT

Vs

Army Institute of Law

RESPONDENT

Date of Decision : 30-01-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2001) 01 P&H CK 0158

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

**Advocate : Mr. Manohar Lal, Mr. P.M. Anand and Mr. V.K. Suri, for the Appellant;
Mr. S.K. Pipat and Mr. Rajiv Atma Ram, for the Respondent**

Judgement

R.L. Anand, J.—This writ petition bearing No. CWP 10098 of 2000 was initially filed on 2.8.2000 by Master Samir Anand against Army Institute of Law in which he prayed for the issuance of a writ of Certiorari quashing the admissions of the wards of Army personnel of 30 seats being in excess for 50% quota and against the law settled by the Hon'ble Supreme Court. This writ petition was subsequently amended and it was filed against the Army Institute of Law. Respondents 2 to 7 belong to Army category (students of First year of BALLB course), and respondents 8 to 13 belong to Punjab quota. With the amended prayer, the petitioner prayed for quashing of the admissions of the wards of the Army personnel and Punjab residents beyond 51 seats being in excess of 85% quota. The petitioner further made a prayer that direction be issued to the respondents to admit the petitioner in LL.B. First Year Course.

2. The case set up by the petitioner in the amended petition is that the respondents is an institute established by the Army Welfare Education Society. It is affiliated to the Punjabi University, Patiala. Respondent No. 1 invited applications for admission to the First Year of LL.B. Course for the session 2000-2001. The entrance test for this purpose was held on 21.5.2000. The petitioner's name appeared at serial No. 16 of the list prepared for All India

category candidates. The petitioner and the candidates placed at serial No. 15 in the merit list were bracketted inasmuch as both of them secured 196 marks in the written test. Now the petitioner understands that he is at No. 3 in the waiting list of All India Category candidates. It is alleged by the petitioner that the respondents had invited applications for the admission of 60 students in the First Year of BA.LL.B. Course. The break-up of the-seats as given in the Prospectus is as under :-

(a) Wards of Army Personnel

:

48

(b) Punjab residents

:

09

(c) All India General category

:

03

3. The grouse of the petitioner is that respondent No. I has provided more than 50% reservation for the wards of the Army personnel. This is not in accordance with law. Even otherwise, the excess reservation for the wards of the Army Personnel is discriminatory and unsustainable on the touch stone of yardstick of Constitutionality. The petitioner has relied upon a judgment of the Hon"ble Supreme Court in Anant Madaan and others Vs. State of Haryana and others, and according to the petitioner this judgment specifies that only 85% of the total seats are permissible for the candidates belonging to a particular region or institute and the rest of the seats i.e. 15% are to be left open for the candidates belong to All India General Category. In the present case, the respondents made reservation for institution and regional candidates to the extent of 95% of the seats which is not in conformity with the ratio of the judgment of the Hon"ble Supreme Court. Thus, the stand of the petitioner is that admissions made in respect of the institutional and regional candidates beyond 85% of the seats deserves to be quashed and petitioner who was at serial No. 3 in the waiting list has become eligible for seeking admission in the Law Course. With this background, the petitioner has made the above prayer.

4. Notice of the writ petition was given to the respondents. Respondent No. 1 Army Institute of Law filed written statement and it was inter alia objected that the writ is not maintainable against the respondents as it is not a State. It is running without any aid or grant by the Central or State Government and the institution as well as its funds are managed by the Army Welfare Education Society. This institution was established with the sole object to impart legal

education to the children/wards of the Army personnel and to prepare them to degree course keeping in view the difficulties and hardships being faced by the Army personal due to frequent transfers in the border areas to defend the borders of the country and keeping in view aims and objects established in this institution, the present writ is lot maintainable. It was also pleaded that the petitioner is estopped by his act and conduct from invoking the extra ordinary jurisdiction of this court as he failed to submit the complete form. On merits, the stand of respondents is that there is no reservation as such. This institution was established solely for the children/wards to the Army Personnel/Ex-Army personnel. Certain seats were given to civilians in category Nos. 2 and 3 which deals with Punjab category and All India General Category. The children/wards of the Army personnel from every comer of the country without any discrimination in respect of region, caste, or sex are admitted strictly on merit after the entrance test. There is no excess reservation for the wards of Army personnel so far as Army Institute of Law is concerned. There is no reservation for the wards of the Army personnel as they can retain 100% seats available to them. The Army Welfare Education Society was established in order to create or augment the educational and technical/vocational training for military students to meet the needs of the children; to develop co-educational Army Schools and to promote the academic excellence in order to achieve that end Army Institute of Law was established. The reservation, if any, in this institution is only to the extent of 12 seats. The rest of the seats have to go to the wards of the Army personnel irrespective of their caste, religion or region. With this background respondent No. 1 prays for the dismissal of the writ petition. No separate written statement was filed on behalf of respondent No. 8.

5. I have heard Mr. Manohar Lal, learned counsel for the petitioner, Mr. S.K. Pipat, Advocate, for respondent No. 1 and Mr. Rajiv Atma Ram, Advocate, for respondent No. 8 and with their assistance I have gone through the record of the case.

6. The case set up by the petitioner is that by aliening 48 seats to the wards of the Army personnel; 9 seats to the Punjab residents, the reservation is more than 85% which is not permissible in view of the judgment of the Hon"ble Supreme Court in Anand Madaan"s case (supra) wherein it was observed as follows :

"Preference in admissions on the basis of residence, as well as institutional preference is permissible so long as there is no total reservation on the basis of residential or institutional preference. In the present case, the reservation which has been made on the basis of candidates having studied for the preceding three years in recognised schools/colleges in Haryana is in respect of 85% of seats. It excludes 15% seats which have to be filled in on all-India basis. This eligibility criterion, therefore, is in conformity with the decisions of the Supreme Court. It cannot, therefore, be considered as arbitrary or unreasonable or violative of Article 14."

7. The learned counsel submitted by elaborating that by allotting 48 seats to the wards of the Army Personnel, respondent No. 1 has given 80% seats and by allotting 9 seats to the Punjab residents, it has given 15% seats. The joint ratio comes to 95% which is not permissible. To the All India General Category, only 3 seats have been given which comes to 5%. This mode of distribution of the seats is unconstitutional. On the contrary, learned counsel for respondent No. 1 and 8 submitted that it is not a reservation in the correct and real sense, rather it is a distribution of the seats from various sources and this distribution of the seats is not based on any domicile criteria etc. Learned counsel for respondent No. 1 Mr. Pipat submitted that the Institution was primarily created for the benefits of the wards of the Army personnel as the parents of these wards experienced difficulties in imparting education to their children on account of their arduous nature of duties. 48 seats out of 60 seats have been given to the wards of the Army personnel and in these 48 seats, there is no distinction of region, religion, caste or sex because to the Indian Army every State contributes its share. Similarly in All India General Category, there is no distinction on the basis of the religion or region. Reservation is only to the extent of 9 seats i.e. 15% which is primarily marked for Punjab residents. This reservation is permissible and is within the limits. Mr. Rajiv Atma Ram, learned counsel for respondent No. 8 also adopted the arguments of Mr. Pipat, learned counsel for respondent No. 1 but he also raised one point more that this writ petition is liable to be dismissed because of the conduct of the petitioner as the prospectus of the examination was issued somewhere in April, 2000. The petitioner was aware of the distribution of the seats. He entered the test fully knowing that there are only 3 seats and once he has taken the test, it is not open for him to challenge the admission or the distribution of the seats. Mr. Rajiv Atma Ram also submitted that the examination of First Semester was to start somewhere in November, 2000 and now on this juncture to disturb the ratio of the distribution of the seats will be an extreme act of hardship. Mr. Rajiv Atma Ram relied upon a judgment of the Hon'ble Supreme Court in *Ashu Kamboj v, Sant Longowal Institute of Engineering and Technology & others*, 2000(3) Services Cases Today 406. In para No. 7, it was observed as follows by their Lordships :-

"Learned counsel appearing for the institute argued that even if the petitioner had a case on merit, he cannot be granted admission at this late stage of the course. He places reliance upon the judgment of the Hon'ble Supreme Court of India in the case of *State of Uttar Pradesh and others Vs. Dr. Anupam Gupta, etc.*, and Full Bench judgment of this Court in the case of *Swaranjit Singh v. State of Punjab* 1997(4) RSJ 512 : (1997) 4 SCT 511 (P&H) in support of this contention. It is clear that the course had started in the year 1999. The last date for admission, as declared in the brochure, was July, 1999. The course had started in August, 1999. The first semester had already concluded and, in fact semester was over on 1st December, 1999. In these circumstances, I have no hesitation even in accepting this contention pleaded on behalf of the respondent-institute."

8. I have considered the rival contentions of the learned counsel for the parties. I may mention at the first instance that this Court is not in agreement with the contentions and the arguments raised by Mr. Rajiv Atma Ram, learned counsel appearing for respondent No. 8 on a limited extent that he wanted to defeat the writ on the ground of delay alone. In this case, the writ has filed in August, 2000. Subsequently, it was amended in November. The petitioner cannot be allowed to suffer if the writ is not disposed of early on account of the heavy pendency in this Court or due to the non-availability of time with the Motion Bench. The point for determination is that if there is illegality in the action whether it deserves to be quashed. A short delay of few months should not be the criteria for defeating the legitimate claim. However, I agree with Mr. Rajiv Atma Ram that this writ deserves to be dismissed on the ground that the petitioner did participate in the examination. He has aware of the distribution of the seats. He has not challenged the distribution of the seats immediately on the issuance of the Prospectus or before taking the examination. Once he has participated in the examination fully realising the distribution of the seats, it will be most unfair on the part of the Court to disturb the admission and examination.

9. Be that as it may, the material point for determination is whether the distribution of the seats i.e. 48 for wards of Army Personnel; 9 for Punjab residents and 3 for All India General Category is violative of the principles of Articles 14 and 16 of the Constitution of India. The answer of the Court is in the negative. In fact, it is a case of limited, reservation. If 9 seats are given to the Punjab residents then ratio of this reservation comes to 15% only which is permissible. This reservation is based on region. So far as distribution to the extent of 85% is concerned, it is not a reservation rather it is a source of taking the candidates. This institute-respondent No. 1 is primarily a set up by the Army from the Army Welfare Fund and its principle object was to give benefit to the wards of the Army personnel taking into consideration their exigencies of service. When this institute takes 48 candidates, it does not attach any condition with regard to any region or caste or religion. It is totally a merit examination. Any State can represent for any number of seats not exceeding 48. Similarly, while distributing 3 seats in All India General Category, again a principle of merit has been applied but this time for the civilians.

10. Therefore, I hold and decide that the distribution of seats is not based on reservation premise but a source of recruitment has been laid down and that source is not related with any factor of caste, region or religion or province or zone. Only 15% seats have been allotted on the basis of the reservation when 9 seats were given to the Punjab residents and this is permissible and is not violative of Articles 14 and 16 of the Constitution of India."

11. In this view of the matter, I do not see any merit in this petition and the same is hereby dismissed with no order as to costs.

12. Writ petition dismissed.