
(1997) 09 P&H CK 0116
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4490 of 1997

Swaranjit Singh and Another	Vs	APPELLANT
State of Punjab, Deptt. of Education and Others		RESPONDENT

Date of Decision : 04-09-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1998 P&H 61 : (1997) 117 PLR 691 : (1997) 4 RCR(Civil) 511

Hon'ble Judges : K. Sreedharan, C.J.; Swatanter Kumar, J.; N.K. Sodhi, J

Bench : Full Bench

Advocate : R.K. Singla, for the Appellant; Hemant Kumar, A.A.G. (for Nos. 1 and 2) and A.S. Jatana, (for Nos. 3 to 5), for the Respondent

Judgement

N.K. Sodhi, J.—The State of Punjab (Department of Education) decided that selection of candidates for admission to Elementary Teachers Training (ETT) course for the session 1996-98 all the twelve District Institutes of Education and Training and one J.B.T. Institution of the State shall be made by holding a competitive entrance examination. The State Council of Education Research and Training, Punjab (for short the Council) published admission notice in the newspapers and the last date for sending admission forms was 20-8-1996. Admission to the ETT Course was to be based on relative districtwise merit of candidates determined on the result of the entrance examination subject to reservation of seats for the Scheduled Castes/ Tribes and other categories specified by the State Government. The relevant part of the admission notice which concerns the dispute that has arisen in the present petition may be reproduced hereunder for facility of Reference :--

"Distribution of Seats : Number of seats allotted to each district is 100 students i.e. 50 boys and 50 girls.

5. Eligibility for admission to ETT Course.

I. A candidate except SC/ST category must secure a minimum 50%-marks in the

competitive entrance test to qualify for the admission. However, candidates belonging to the SC/ST shall be eligible only if he/she secures a minimum of 45% marks in the competitive entrance examination.

II

Note : Seats left vacant in any reserve category due to one reason or the other may be filled from the eligible candidates belonging to general category except in the case of S.C./S.T.

Seats are reserved for the categories noted below and to the extent mentioned against each :--

1. Scheduled Castes/Scheduled Tribes 25% 2. Backward Classes 5% 3. Rural Area 2% 4. Border/Bet/Backward Area 2% 5. Children/Grand Children of Political Sufferers 2% 6.(a) Children/Widow of defence personnel who are killed or disabled to the extent of 50% or more in war 1% 6.(b) Children of serving/ex-paramilitary personnel 1% 7. Physically Handicapped 1 % 8.(a) Children/Widow of para military

personnel/Police personnel killed or disabled in action to the extent of 50% or more. 1% 8. (b) Children of serving/ex-para military. police personnel killed/disabled to the extent of 50% in action. 1% 9. Children/widow of Punjab Police and P.A.P., personnel killed or disabled to the extent of 50% in action. 3% 10. Sportsmen/Sportswomen. 2% 11. Wards of Teachers (Serving/Retired). 2% 12. (i) The children of innocent civilians killed/sustained 100% disability by terrorists/security forces action in aid of civil war, (ii) The children of victims of November, 1984 riots (iii) The children of army deserters killed/100% physically disabled and (iv) The children of internal/external migrants. 2%

As is clear from the admission notice which is in conformity with the Brochure issued by the Council number of seats allotted to each district were 100 out of which 50 were meant for boys and the remaining 50 for girls, subject to the overall distribution of seats in the ratio of 50-50 between boys and girls, seats were reserved for the categories mentioned in the notice and to the extent mentioned against each. As per one of the notes appended to the admission notice seats left vacant in any reserve category due to one reason or the other were to be filled from the eligible candidates belonging to general category except in the case of Scheduled Castes/Scheduled Tribes. Although seats were allotted to each District, candidates were at liberty to submit their application through the District of their choice. The entrance test was held on 29-9-1996. The petitioners sent their forms through District Bathinda and appeared in the said test under Roll Numbers 68940 and 68858 and were successful each obtaining 128.50 marks and they were placed in the waiting list in the general category (Males) at numbers 3 and 4. Their grievance is that four seats of reserve categories against which males were not available were given to the females instead of filling those from the eligible male candidates belonging to general category with the result that 54 girls have been admitted instead of 50.

The argument indeed is that since males were not available against four reserve seats, these four seats should have been filled up from amongst those on the waiting list from the general category of males to make up the ratio of 50-50. The petitioners are at serial numbers 3 and 4 on the waiting list and it is, therefore, urged that they are entitled to be admitted against those seats. Reference in this regard is made to the note in the admission notice which provides that vacant seats in any reserve category would be filled up from the eligible candidates belonging to the general category.

2. In the written statement filed on behalf of the State and the Council, it is stated that 54 girls were admitted to the ETT course. The explanation for this as given by the respondents is that the distribution of seats in four reserve categories between males and females resulted in the allotment of fractions of seats and since no admission was possible against a fraction, it was decided that whole of the seat should go to the candidate of that category whether male or female depending on who secured more marks out of the two. It so happened that in four reserve categories the eligible candidates for the fraction of the seat were only girls as they had secured more marks than the eligible boys in those categories and this led to 54 girls being admitted.

3. When this writ petition came up for motion hearing, the petitioners placed reliance on a Division Bench judgment of this Court in Jagrup Singh v. State of Punjab, Civil Writ Petition 7065 of 1997 decided on 30-7-1997 wherein a direction was issued to the respondents to admit the petitioners therein as they were candidates from District Bathinda who were placed at serial numbers 1 and 2 on the waiting list pertaining to the general category (Males). While directing the admission of the petitioners, R.S. Mondia, J. speaking for the Bench in that case directed that the petitioners therein would be deemed to have completed the 1st Semester and would be treated as having failed in the 1st Semester examination and that they would have to clear the papers of the 1st Semester thereafter. It appears that : The Motion Bench in the instant case had some reservation in regard to this direction and ordered that a case be heard by a larger Bench. This is how the case has been placed before us for decision.

4. The question that arises for our consideration is whether the respondents were justified in admitting 54 girls to the course when their quota was only of 50 and whether the respondents could justifiably transfer to the females the reserve seats against which male candidates were not available. The answers to both these questions, in our opinion, have to be in the negative. A perusal of the admission notice/Brochure issued by the Council makes it clear that 100 seats allotted to each district have to be distributed between the boys and girls in the ratio of 50-50 and all the reservations provided form favour of Scheduled Castes/ Scheduled Tribes/Backward Classes and other categories are subject to the aforesaid ratio of 50-50. In no case can the boys or the girls exceed their quota of 50 seats. In other words, the boys or the girls from the reserve categories together with those from the general category must not exceed the figure of 50.

What happened in the instant case is that due to the percentage of reservation provided for four reserve categories fraction of a seat became available for admission. It is obvious that fraction of a seat cannot be filled up and that whole of that seat had to be given to an eligible candidate. The question is to whom—to an eligible boy or to an eligible girl or to the one who has more marks. In our opinion that seat will go to that candidate, male or female whose quota of 50 is short. It cannot go to the one only course he or she has more marks than the other as that can upset the 50:50 ratio fixed in the Brochure. On the case in hand, 46 boys belonging to the general category and reserve categories were admitted to the course in District Bathinda as against 50 boys. Four more boys were to be given admission to raise their number to 50. Four seats, one in each of the reserve categories of Rural area, Wards of Freedom Fighters, Wards of ex-servicemen and sportsman were available but there were no boys available having the requisite percentage of marks so as to make them eligible. The respondents should have diverted those seats to the general category in terms of the admission notice and picked up four male students from the waiting list as per their merit. If this had been done, the two petitioners before us who are at serial numbers 3 and 4 on the waiting list would have got the admission. Instead of doing this, the respondents picked up four females from those reserve categories. This is how 54 girls were admitted as against 46 boys. The action of the respondents in transferring those seats to females on the ground that they had more marks than the eligible boys is contrary to the admission notice and the Brochure governing the conditions on which the admissions were to be made to the course. Thus, the admission granted to the four females, three of whom are respondents 3 to 5 in this petition was obviously wrong and illegal. The terms and conditions notified in the admission notice/Brochure issued by the Council are binding on it in the matter of granting admissions and they have the force of law and the Council cannot be allowed to act in contravention thereof. Reference in this regard may be made to a Full Bench judgment of this Court in *Amardeep Singh Sahota v. The State of Punjab* 1993 (2) PLR 212, wherein Chief Justice S.D. Agarwala speaking for the Bench observed as under :--

"Since the prospectus issued for admission to the 1992-93 course in the Medical College has the force of law and the students appeared in the examination on the basis of the instructions laid down in the said prospectus, it was not open to the State Government to issue contrary instructions and as such also the Notification dated July 13, 1992 issued by the State Government is invalid in law."

A similar view had been taken by a Division Bench of this Court in *Ravdeep Kaur v. State of Punjab* ILR (1985) P&H 343, which was approved by the Full Bench in *Amardeep Singh Sahota's* case (supra).

5. The question that now arises is that should the admission granted to the four female students including respondents 3 to 5 be set aside and the respondents directed to admit the first four boys from the waiting list of the general category including the petitioners. The course started in March/April, 1997 and the

examination for the 1st semester was held in July, 1997 in which girl students have appeared. To cancel their admission at this stage would not be fair. We, therefore, decline to set aside their admissions. The petitioners who are at serial numbers 3 and 4 on the waiting list would have got the admissions if the respondents had not ignored the rules and filled up the four vacant seats from the eligible candidates belonging to general category. The petitioners were refused admission due to the fault of the respondents and for no fault of their. We, therefore, in the circumstances of the case, direct the respondents to grant admission to the two petitioners who were entitled to the same even if it means creating extra seats. A similar course was adopted by the Full Bench in Amardeep Singh Sahota's case (1993 (2) PLR 212) (supra), and also by the learned Judges of the Supreme Court in Punjab Engineering College Chandigarh through its Principal Vs. Sanjay Gulati and Others, . In Anil Kumar Gupta v. State of Uttar Pradesh (1995) 5 SLR 203, their Lordships of the Apex Court while dealing with the admissions to the medical courses found that the admission of the students was faulty but did not interfere with the admission already finalised and instead directed the authorities to create 34 additional seats to accommodate the students who were otherwise entitled to admission.

6. Learned Counsel for the petitioners submitted before us that the petitioners may be allowed to be treated as having failed in the 1st semester examination and they would take the 1st semester examination along with other failed candidates and meanwhile they can continue with their studies in the second semester. He relied on the judgment of this Court in Jagrup Singh's case (supra) where a similar direction was given in regard to the two candidates who are higher in merit in the waiting list in District Bathinda. We are unable to agree with the view expressed by the Division Bench in regard to such a direction. The petitioners cannot be allowed to join second semester without attending any classes at all in the 1st semester as that would lower the academic standards. Since the respondents are at fault in not granting admission to the petitioners at the commencement of the course, we direct the former to give regular coaching to the two petitioners in regard to the course of the 1st semester and permit them to take examination of the 1st semester thereafter. Meanwhile they shall be allowed to join the course in the second semester. We make it clear that the two petitioners will be studying for the 1st and second semester simultaneously and shall be entitled to take a subsequent examinations in accordance with the rules. The petitioners shall have their costs which are assessed at Rs. 2000/-.