
(2013) 08 P&H CK 0061
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 14663 of 2013

Yash Thareja

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

Date of Decision : 30-08-2013

Acts Referred:

Citation : (2014) 1 PLR 261 : (2014) 1 SCT 104

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Advocate : D.S. Patwalia, for the Appellant; V. Ramswaroop, Addl. A.G. Punjab, for the Respondent

Judgement

Rakesh Kumar Jain, J.—The petitioner has passed his 10+2 examination in Medical Stream from the SKB, DAV Centenary Public School, Fazilka in the year 2013 securing 89% marks. He also appeared in the National Eligibility-cum-Entrance Test 2013, a prerequisite for being considered for MBBS/BDS Course. He has secured a percentile of 97.39 with an All India Rank of 17105 and Punjab rank of 738. Unfortunately, in the year 2007, he was diagnosed with Acute Lymphoblastic Leukemia and was referred to the Tata Memorial Hospital, Mumbai for treatment of Cancer. The petitioner overcame the trauma of cancer and finished his therapy. However, follow ups/check-ups are still going on with regular intervals.

2. Respondent No. 2, for the purpose of admission to various MBBS/BDS Courses in Medical/Dental Colleges in Punjab, issued prospectus on yearly basis to regulate the admissions. Respondent No. 1 issued a notification dated 31.3.2008 for the academic Session 2008-2009 which provided not only the eligibility but also reservation.

3. Sub-Clause X of Clause 5(A) of the reservation policy enshrined in the notification dated 31.3.2008 reads as under:--

(x) Tsunami Victims/Cancer/AIDS Victim 1%

Note: The reservation under Tsunami Victims category shall be available only to the wards/children of all Ex-servicemen settlers of Campbell Bay Island in Andaman & Nicobar. Provided that in case of AIDS Victim the admission will be subject to the clearance/advice of special medical board constituted by State Government. Para amended vide corrigendum No. 5/3/08-3HBIII/2728 dated 29.4.2008 and No. 5/3/08-3HVIII/2431 dated 28.03.2011.

That they are not required to take the entrance test as condition contained in Para 6.2 and 7.3. Para amended vide Corrigendum No. 5/3/083HBIII/3997 dated 27.6.2008.

4. However, the petitioner has found that by way of the notification dated 5.6.2013, Clause of "Reservation for Tsunami/Cancer/AIDS Victims" to the extent of 1% has been completely deleted. According to the petitioner, he came to know that the deletion had occurred in view of the order passed by this Court in CWP No. 14569 of 2012 and LPA No. 1749 of 2012.

5. The petitioner further found that respondent No. 1 had issued a corrigendum dated 5.7.2013 by which Clause 15 of the notification dated 5.6.2013 has been amended and reservation to the extent of 1% has been kept for the Tsunami victims alone.

6. Aggrieved from the notification dated 5.6.2013 by which reservation of 1% in respect of Tsunami/Cancer/AIDS victims has been deleted and by corrigendum dated 5.7.2013 reservation has been maintained only for Tsunami victims to the extent of 1%, the present writ petition has been filed alleging that the petitioner, being a Cancer victim, in terms of notification dated 31.3.2008, would have been eligible.

7. After notice, petitioner has been permitted to provisionally join the counseling in 1% quota. Learned counsel for the State made a statement on 7.8.2013 that one seat has been reserved for Cancer patient at the Government Medical College, Patiala.

8. In reply filed by the respondents, it is averred that apart from Cancer there are many other disease more deadlier than Cancer which require life-long treatment and monitoring such as Haemophilia, Hepatitis, Renal failure, some of the Heart problems, Liver failure, XDR Tuberculosis etc. If 1% reservation is provided to Cancer victims then persons with some other deadly disease will claim his/her right over some seats in various courses. Thus, it was the conscious decision of the Government to exclude Cancer victims from the list of reservations. Cancer and AIDS victims cannot equate themselves with Tsunami victims because for Tsunami victims health will not be a factor hindering their performance to expose best of their ability. It is further submitted that it is nowhere mentioned in the notification that LPA verdict is the basis for cancelling Cancer/AIDS victim's reservation.

9. The petitioner filed rejoinder, in which he has averred that nothing has been

placed on record by the respondents to show as to why the reservation for Cancer patients has been withdrawn as neither any order nor any communication has been placed on record to that effect. It is also averred that the health of the petitioner would not be a hindrance in his pursuit of medical education as he has successfully completed his treatment. It is also alleged that the respondent/State is blowing hot and cold in the same breath as the reservation to Cancer patients has been withdrawn and on the other hand the reservation for Cancer patients has been introduced vide notification dated 5.6.2013 for students seeking admission in the Punjab Technical University which is also run by the State. It is further alleged that the judgments of this Court in CWP No. 14569 of 2012 and LPA No. 1749 of 2012 have been wrongly relied upon for the purpose of deleting the reservation.

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

11. There is no doubt that in the notification dated 31.3.2008, as per the Clause 5(A) Sub-section (x) of the reservation policy, there was a reservation to the extent of 1% for Tsunami/Cancer/AIDS victims. Since 2008, the candidates are taking advantage of the said reservation but by way of notification dated 5.6.2013, the aforesaid reservation has been completely deleted which has" later on re-appeared by way of corrigendum dated 5.7.2013 to the extent of 1% reservation to Tsunami victims. It is also not disputed that the petitioner is a Cancer patient, who has been taking treatment from Tata Memorial Hospital, Mumbai. A certificate in this regard is also placed on record.

12. The respondents have replied that since many other patients were suffering from deadly deceases like Haemophilia, Hepatitis, Renal Failure etc. and they would claim their reservation, therefore, it has been taken as conscious decision of the Government to exclude Cancer and AIDS victims from the list of reservations as they cannot equate themselves with Tsunami victims because for Tsunami victim's health would not be a factor hindering their performance to expose best of their ability.

13. On the other hand, the petitioner has appended public notice with the rejoinder, which has been issued in terms of the Punjab Government notification dated 2.7.2013 introducing from Session 2013-14 for Degree Level Courses in Engineering & Technology in various colleges, including MBA/MCA & B. Pharmacy, which reads as under:--

The reservation of 1% Tsunami affect person shall be available for the child/grand parents of original ex-serviceman settler of Campbell bay Island only

OR

Students suffering from Cancer/AIDS/Thalassemia (The claimant candidate will have to submit a certificate as a proof from the National Medical Institute like PGI, AIMS etc. in support of his/her claim)

14. The question thus arises that on the one hand the respondent/State is not

giving reservation to Cancer/AIDS victims on the ground that the other persons suffering from other deadly diseases would also put up their claim and that Cancer/AIDS victims cannot perform well due to their physical ailments and on the other hand the State of Punjab vide notification dated 2.7.2013 which has been issued three days prior to the corrigendum dated 5.7.2013 has offered reservation of 1% to the students suffering from Cancer/AIDS/Thalassemia in the Degree Level Courses in Engineering & Technology in various colleges, including MBA/MCA & B. Pharmacy which clearly shows that the State has not taken any conscious decision as alleged, as the reservation has been provided to not only Cancer/AIDS students but also to the students suffering from Thalassemia.

15. Apparently, the action of the respondents much less the impugned notifications are patently illegal as it offends Article 14 of the Constitution of India.

16. Insofar as the argument of learned counsel for the petitioner that the impugned notifications have been issued because of the order passed by this Court in CWP No. 14569 of 2012 and LPA No. 1749 of 2012 is concerned, it has been categorically denied by the respondents that it is nowhere mentioned in the notification that LPA verdict is the basis of cancelling Cancer/AIDS victims reservation. Even otherwise the said judgments were dealing with an issue as to whether the reservation of wards of terrorists and riots affected persons is to be tabulated by taking the total number of seats or seats meant for the said quota. Thus, looking from any angle, the impugned notification dated 5.6.2013 and corrigendum dated 5.7.2013 are illegal and are quashed and the notification dated 31.3.2008 is hereby restored. No costs.