

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

LPA No. 668 of 2000 (O&M)
Date of Decision: 21.08.2015.

Sumit Kumar Appellant.

Versus

State of Punjab and others Respondents.

Coram: Hon'ble Mr. Justice S.S. Saron
Hon'ble Mrs. Justice Rekha Mittal

Present: None for the appellant.

Mr. P.P.S. Thethi, Additional Advocate General, Punjab,
for respondent No.1 - State.

Mr. S.P. Yadav, Advocate for respondents No.2 and 3.

S.S. Saron, J.

This appeal has been filed by appellant - Sumit Kumar against the judgment and order dated 27.10.1999 passed by the learned Single Judge in CWP No.11073 of 1999 titled 'Sumit Kumar v. State of Punjab and others', which was disposed of as infructuous along with connected cases in terms of the judgment and order passed on 27.10.1999 in the case of Miss Chitra and others v. State of Punjab and others CWP No.12501 of 1999.

Civil miscellaneous applications were also filed seeking exemption from filing certified copies of Annexures P1 to P4, for restraining the respondents from downgrading the appellant from Computer Engineering and allowing him to continue studies in Computer Engineering and for condoning delay of 17 days in filing the appeal. The latter application for condoning delay in filing the appeal was allowed on 13.06.2000.

The matter has been considered and learned counsel representing the respondents have been heard.

Sumit Kumar (appellant) was a candidate for the Common Entrance Test for the year 1999 conducted by the Punjab Technical University, Jalandhar (respondent No.2) for admissions to the Engineering Courses in the State of Punjab. In the prospectus that was issued, a provision was made earmarking two quotas for admissions to the said Engineering Courses i.e. 85% seats for candidates who had passed their qualifying examinations from the schools and colleges situated in Punjab and 15% for Punjab candidates living outside Punjab. The appellant though a candidate from outside Punjab inasmuch as he had passed his qualifying examination for admission to the Engineering Courses from Chandigarh, claimed consideration against 85% quota earmarked for wards of employees of Punjab Government in the reserved category of Freedom Fighters in terms of Rule 3.6 of the Rules for Common Entrance Test, 1999 in one of the Engineering Colleges under the Punjab Technical University. The petitioner was, however, considered under the 15% quota of Punjab residents who had qualified their qualifying examination from outside Punjab State.

The petitioner passed his senior secondary certificate examination with 63% marks from the Government Model School, Sector 19-C, Chandigarh. The result of the Common Entrance Test, 1999 was declared on 30.05.1999/01.07.1999. The petitioner secured 2925 rank in the said Common Entrance Test. According to the petitioner, his parents were employees of the Punjab Government and were posted at Chandigarh.

Therefore, he passed his qualifying examination from Chandigarh. It is for the said reason that he passed his qualifying examination from outside the State of Punjab, i.e. from Chandigarh. The petitioner was initially admitted to Electronics and Instrumentation Engineering on 04.08.1999. He was upgraded to Computer Engineering on 20.08.1999 and assigned roll No.155 which was, however, withdrawn. Therefore, he filed the writ petition out of which the present appeal arises.

When the case was taken up for hearing before the learned Single Judge on 27.10.1999, learned counsel representing the respondents placed on record an order dated 25.10.1999 passed by the Principal Secretary, Technical Education and Industrial Training-cum-Vice Chancellor, Punjab Technical University whereby it was decided not to fill any vacant seat. The office and the Punjab Technical University were instructed for taking necessary action by way of withdrawing/cancelling the State Government letter dated 19.08.1999 to the Punjab Technical University and its advertisements dated 20.08.1999 and 04/05.09.1999. The learned Single Judge observed that it could not be disputed during the course of arguments that in view of the said order dated 25.10.1999, all the petitions (including that of the appellant) had become infructuous. The learned counsel representing the petitioners before the learned Single Judge, however, prayed that they may be permitted to amend their petitions. The learned Single Judge was of the considered view that such a permission could not be granted as challenge to the order dated 25.10.1999 that had been placed on record, would be on entirely different set of facts and grounds and

the same would have nothing to do with the challenge to the advertisement. As such, it was said that it would not be a case of amending the pleadings and rather quite to the contrary it would be a new cause of action. Accordingly, the petitions were dismissed as infructuous on 27.10.1999 with liberty to challenge the order dated 25.10.1999.

At the time of motion hearing, this Court, on 13.06.2000, noticed the facts and the contentions that were raised. It was *inter alia* submitted on behalf of the appellant that his consideration against the 15% quota and not 85% quota meant for employees of Punjab Government in the reserved category of Freedom Fighters in accordance with Rule 3.6 of the Rules for Common Entrance Test had resulted in loss of his merit for Computer Science Engineering Course. It was also submitted that the appellant had been upgraded to the Computer Engineering Course from the Electronics and Instrumentation Engineering on 20.08.1999 during the second counselling by the college and that he was then downgraded from Computer Engineering to Electronics and Instrumentation Engineering. It was further stated that he was compelled to file a second petition, i.e. CWP No.16752 of 1999, and under the directions of the learned Single Judge he had to file a third petition, i.e. CWP No. 17637 of 1999, which was dismissed *in limine* on 21.01.2000.

It was *inter alia* observed in the third petition, i.e. CWP No.17637 of 1999 that 15% quota and 85% quota were self-exclusionary. A candidate falling in one would not be eligible in the other quota. The petitioner was given admission and he took it in the 15% quota in Electronics

and Instrumentation Engineering. He accepted it without demur. Change of course of filling seats that fell vacant including the one in Computer Engineering claimed by the petitioner, it was observed, was subject matter of his first petition CWP No.11073 of 1999 i.e. the petition out of which the present appeal arises. It was further observed that the said first writ petition had been rendered infructuous by the decision that was taken by the Principal Secretary, Technical Education and Industrial Training-cum-Vice Chancellor, Punjab Technical University on 25.10.1999 not to fill vacant seats. The said decision had not been challenged. It was not challenged in the second writ petition No.16752 of 1999 nor in the third one. There was, therefore, no question of the petitioner being allowed to change the Course from Electronics and Instrumentation Engineering to Computer Engineering. More so, because at the time of initial admission he did opt for Computer Engineering but in view of his lower merit position, he accepted the paid seat in Electronics and Instrumentation Engineering. Since the decision not to fill up the vacant seats had become final, the claim of the petitioner to be given the vacant seat in Computer Engineering at the said stage could not be entertained. In view of the said discussion, no merit was found in the third writ petition (CWP No.17637 of 1999), which was dismissed *in limine*.

During the course of preliminary hearing of the present appeal on 13.06.2000, it was pointed out to learned counsel for the appellant that the relief claimed by him had already been disallowed by a Division Bench of this Court vide order dated 21.01.2000 (Annexure P3) i.e. the order passed in the third petition (CWP No. 17637 of 1999). However, in view of the

position explained in the said order dated 13.06.2000, notice was issued in the appeal as well as in the civil miscellaneous application for stay.

Another civil miscellaneous application No. 1605 of 2000 was filed in this Court on 18.08.2000 in which a prayer was again made for restraining the respondents from downgrading the appellant from Computer Engineering and issue a direction to the respondents to allow him to continue studies in Computer Engineering. In terms of order passed on 21.08.2000, it was considered not necessary to issue notice in the said application in view of the order of the Division Bench dated 13.06.2000. The case was then taken up on 24.08.2001 on which date none appeared for the appellant. Then in terms of order dated 02.01.2002, it was ordered to be put up after decision in the case of Damandeep Singh and others v. State of Punjab and others (LPA No.669 of 2000), in which arguments had been concluded.

In Damandeep Singh's case (supra), the issue was whether students studying in institutions located in the Union Territory, Chandigarh, which is the capital of Punjab State could be deprived to compete for Punjab Medical Entrance Test as they had not qualified their qualifying examination from institutions located in the State of Punjab. In the decision of the Division Bench there was a dissent between the Hon'ble Judges constituting the Division Bench. Accordingly, the Division Bench, on 13.09.2002, referred the matter to the Full Bench.

Hon'ble the Full Bench, on 03.07.2009, observed that the appeal, according to the appellant's counsel had become infructuous because of considerable lapse of time; besides, the appellants had sought admission in

other colleges or chosen alternative careers.

The present appeal, as already noticed, vide order dated 02.01.2002 was ordered to be put up after decision in LPA No.669 of 2000. The same at this stage it is not disputed has now been rendered infructuous. Therefore, the same is disposed of as infructuous in terms of the order of the Full Bench dated 03.07.2009 passed in the case of Damandeep Singh and others (supra).

(S.S. Saron)
Judge

(Rekha Mittal)
Judge

21.08.2015

PARAMJIT/A.Kaundal