

CWP No.11555 of 2015

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.11555 of 2015
Date of decision:30.06.2015**

Vishav Bandhu Jabalia

...Petitioner

Versus

Baba Farid University of Health Sciences and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. R.K.Malik, Senior Advocate, with
Mr. Ramandeep Singh, Advocate, for the petitioner.

Mr. Manish Dadwal, Advocate,
for respondent No.1-University.

Mr. Anant Kataria, DAG, Punjab,
for respondents No.2 to 4.

Rakesh Kumar Jain, J. (Oral)

The petitioner is a PCMS doctor and belongs to the Backward Class (BC) category. Respondent No.1 issued prospectus for admission to the MD/MS/PG Diploma and MDS Courses for the session 2015. According to the prospectus, 50% of the total seats were to be filled up by the Government of India at all India level through All India Test-2015 and the remaining seats were to be filled up through AIPGMEE-2015 at the State level from amongst the candidates having Punjab Resident status. Out of State quota seats, 60% seats were to be filled up from amongst the eligible PCMS in-service doctors and 40% seats were open to all eligible medical graduates. There was separate merit list for in-service 60% quota

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candidates and for those who are not covered under the category of in-service candidates. Out of in-service 60% quota seats, 25% seats were reserved for Scheduled Castes (SC) category, 5% for Backward Classes (BC) category and 3% for Physically Handicapped category. Respondent No.1 issued a tentative distribution of PG seats under the 60% quota meant for the in-service PCMS doctors, which is as under:-

General category	67
SC category	20
Backward Class category	1
Handicapped category	2
Total	90

According to the petitioner, the aforesaid distribution of seats was incorrect and it should have been as under:-

General category	60
SC category	23
Backward Class category	4
Handicapped category	3
Total	90

Counsel for the petitioner has submitted that in the original merit list of the BC category candidates under 60% in-service quota, the petitioner was at Sr. No.4, but since the candidates at Sr. Nos.1 and 3, namely, Manpreet Kaur and Rajbir Singh, were admitted in the General category and candidate at Sr. No.2, namely, Nimarbir Kaur was not granted NOC by the department and was held ineligible, therefore, the petitioner was at Sr. No.1 in the BC category at the time of counselling held on 25.05.2015 and had opted for the only seat meant for BC category in the

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specialty of MS (Orthopedics). However, the petitioner was informed at the time of counselling that since Dr. Boparai, Professor in MS Orthopedics Department in Government Medical College, Amritsar, has retired, therefore, no admission can be given against that seat.

The petitioner has then challenged the action of the respondents, denying him admission in his category.

It is submitted by learned counsel for the petitioner that there is no fault of the petitioner if the teaching faculty is not available in the Government Medical College, Amritsar, as a result thereof, he has been declined admission in the specialty of MS (Orthopedics). It is also submitted that 4 seats in the specialty of MS (Surgery) under the 60% in-service quota are still lying vacant against which the petitioner can be accommodated.

In view of this argument raised by learned counsel for the petitioner, at the time notice of motion was issued by this court, one seat in the specialty of MS (Surgery) in the General category of 40% open category quota, coming from 60% in-service PCMS doctors quota was ordered to be kept reserved.

On the other hand, counsel for the respondents have argued that 100 point roster has been maintained specialty-wise/quota-wise/category-wise in the respective medical colleges and there are 9 sanctioned seats in the Department of Orthopedics at Government Medical College, Amritsar, out of which 4 seats were reserved for All India Quota (50%) and 5 seats were reserved for the State Quota (50%), but with the retirement of

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Dr. Boparai, Professor, 2 seats were reduced and with the eligibility of Dr. Jaspal Singh, Associate Professor, one seat was added. Finally, there are 8 seats in the specialty of Orthopedics, out of which 4 seats are for All India Quota and 4 seats for the State Quota. Out of 4 seats meant for the State Quota, 2 seats were reserved for 60% in-service quota and 2 seats for 40% open category quota. As per 100 roster point in 60% in-service quota, 2 seats are at roster point 53 and 54 but the said roster points are reserved for General category, whereas the roster point 55 is reserved for BC category, which is not available in this session because of the retirement of Dr. Boparai and would be available only in the next session. It is also submitted that the grant of one seat to the petitioner in the specialty of MS (Surgery) is illogical.

Counsel for the petitioner has submitted that since 5% reservation has been given in the prospectus to the BC category, therefore, the petitioner, being at Sr. No.1 in the merit list of the said category, is entitled to a seat in the MS/MD course which can be offered by the respondents in the specialty of MS (Surgery), which are lying vacant and one is kept reserved under the order of this Court.

I have heard learned counsel for the parties and examined the available record.

There is no dispute that there is reservation of 5% for the BC category under 60% in-service quota in the Government Medical Colleges and the respondents had reserved one seat in the said category. It is also not disputed that the petitioner is at Sr. No.1 in the merit list of the BC category

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and is entitled to the seat which is reserved for that category. The only dispute in this case is that the specialty allocated to that seat, i.e. Orthopedics, is not being offered to the petitioner on the ground that Dr. Boparai has since retired. The reason assigned by the respondents appears to be totally unreasonable because in this manner, 5% reservation much-less, one seat reserved for the BC category, will remain unfilled in this session and the petitioner, who is at Sr. No.1 in the BC category, would be deprived of his right to take admission in his category on the reserved seat.

Thus, in view of the totality of the facts and circumstances, it would be just and expedient if one seat, which was reserved in the specialty of MS (Surgery), when the notice was issued in this writ petition, is allowed to be given to the petitioner in the BC category, so that the only seat reserved for the said category, can be consumed.

Accordingly, the present writ petition is hereby allowed and the respondents are directed to give one seat to the petitioner in the specialty of MS (Surgery), which is lying vacant and kept reserved in the General category, to fill up the void created to the detriment of the petitioner. The Medical Council of India is also directed to regularize admission of the petitioner in the discipline of MS (Surgery).

A copy of this order be given to the learned counsel for the parties for compliance under signatures of the Special Secretary attached to this Bench.

June 30, 2015
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(Rakesh Kumar Jain)
Judge