

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.14399 of 2015(O&M)

Date of decision: 12.8.2015

Swati Bishnoi

...Petitioner

Versus

Panjab University and another

...Respondents

CORAM: MR.JUSTICE G.S.SANDHAWALIA

Present: Mr. Vivek Slathia, Advocate for the petitioner.

Mr. Subhash Ahuja, Advocate for the respondents.

G.S.SANDHAWALIA, J, (Oral)

Civil Misc. No.9016 of 2015

Prayer made in the present Civil Misc. Application for placing on record written statement on behalf of respondents No.1 and 2 is allowed.

Written statement is taken on record.

Office to tag the same at appropriate place in the file.

The Civil Misc. Application stands disposed of accordingly.

Civil Writ Petition No.14399 of 2015

The prayer in the present writ petition is for quashing the criteria of allocation of 50% weightage to the marks obtained in the qualifying examination for the purpose of preparation of merit list for LL. B. (Three Year) Course as contained in the Prospectus (Annexure P/2) issued by the respondent-University. Resultantly the quashing of the provisional merit list (Annexure P/4) has been prayed for and a writ of Mandamus has been sought to be issued for a fresh revised merit list purely on the basis of marks secured in the entrance examination.

The pleaded case of the petitioner is that she has obtained her

Bachelor's degree in Commerce from Maharaja Ganga Singh University, Bikaner and applied for admission in the said course whereby the minimum qualification prescribed was of 45% of aggregate marks in graduation. 641 seats were to be filled in the three years LL.B. course at Chandigarh and other regional centres and the weightage was prescribed in the prospectus. The petitioner having fulfilled the minimum eligibility criteria was issued E-Admit Card and appeared in the entrance test on 21.6.2015. At that stage she was not aware of the consequence of the break up for drawing up of the merit list and the process to be adopted by the respondent-University. She obtained 45.5 marks out of 75 marks in the entrance test and her rank was shown at 221 in the result published on 29.6.2015(Annexure P/3). The merit list was put up on 14.7.2015 wherein her rank was shown as 497 on the basis of the criteria prescribed in the prospectus.

The response of the University in its written statement is that principle of estoppel will come in the way of the petitioner. The procedure was well known to the candidates and the writ petition should have been filed before the start of the process and the terms and conditions of the prospectus having force of law was binding upon the candidates. A large number of candidates have been admitted whose admissions would have to be cancelled and neither they have been impleaded as parties. No right was conferred on the petitioner and the result has been declared as per norms laid down in the prospectus which was a valid criteria and which is not arbitrary in any manner.

Counsel for the petitioner has raised arguments that by virtue of giving 50% weightage of the qualifying examination, candidates who had secured high marks in the entrance test have slipped to a lower position whereas the candidates who had secured poor marks in the

entrance test have climbed up in the merit list. To substantiate the argument a comparative chart has been prepared to show that one candidate who on the strength of marks obtained in the entrance test would be at No.1172 but by combining marks obtained in the qualifying examination, he has climbed up in the merit list to Sr. No.145.

After hearing the counsel for the petitioner, this Court is of the opinion that the present writ petition is liable to be dismissed keeping in view the basic hurdle which has arisen for the petitioner and which cannot be over come.

Admittedly in pursuance of the prospectus as per the pleadings itself of the case, the petitioner has taken a chance to appear in the entrance test and had accepted the criteria which prescribed that 50% weightage had to be given to the marks secured in the qualifying examination whereas other 50% was out of the marks obtained in the entrance test. The petitioner had secured 45.5 marks out of 75 marks in the entrance test and as per criteria adopted she obtained 60.67 marks out of 100. She had obtained 56.72% marks on the basis of qualifying examination (graduation marks) and as such her total marks were 117.39. She being aware of the criteria had sat in the entrance test and accepted the terms of the prospectus. The challenge had never been raised at a initial stage. Now the argument raised that the persons who had not done well in the entrance test had succeeded to climb up cannot now be accepted. It has time and again been held by six Full Bench decisions of this Court that admission brochure or the prospectus has a force of law which is to be strictly followed. Reference can be made to **Amardeep Singh Sahota Vs. State of Punjab 1993(4) S.C.T. 328**, **Raj Singh Vs. Maharishi Dayanand University 1994(2) S.C.T. 766**, **Sachin Gaur Vs.**

Punjabi University 1996(1) S.C.T. 837 Rahul Prabhakar Vs. Punjab Technical University, Jalandhar 1997(3) S.C.T. 526, Indu Gupta Vs. Director of Sports, Punjab 1999(4) S.C.T. 113 and Rupinder Singh and others Vs. The Punjab State Board of Technical Education & Industrial Training, Chandigarh and others 2001(2) S.C.T. 726. The relevant observations made in **Rahul Prabhakar's** case (supra) read as under:-

“7. A Full Bench of this Court in [Amardeep Singh Sahota v. State of Punjab](#), (1993) 4 SLR 673 : 1993(4) SCT 328 (P&H) (FB) had to consider the scope and binding force of the provisions contained in the prospectus. The Bench took the view that the prospectus issued for admission to a course, has the force of law and it was not open to alteration. In [Raj Singh v. Maharshi Dayanand University](#), 1994 (4) RSJ 289 : 1994(2) SCT 766 (P&H) (FB) another Full Bench of this Court took the view that a candidate will have to be taken to be bound by the information supplied in the admission form and cannot be allowed to take a stand that suits him at a given time. The Full Bench approved the view expressed in earlier Full Bench that eligibility for admission to a Course has to be seen according to the prospectus issued before the Entrance Examination and that the admission has to be made on the basis of instructions given in the prospectus, having the force of law. Again Full Bench of this Court in [Sachin Gaur v. Punjabi University](#), 1996 (1) RSJ 1 : 1996 (1) SCT 837 (P&H) (FB) took the view that there has to be a cut off date provided for admission and the same cannot be changed afterwards. These views expressed by earlier Full Benches have been followed in CWP No. 6756 of 1996 by the three of us constituting another Full Bench. Thus, it is settled law that the provisions contained in the information brochure for the Common Entrance Test 1997 have the force of law and have to be strictly complied with. No modification can be made by the Court in exercise of powers under [Article 226](#) of the Constitution of India.”

Apart from the fact that principle of estoppel would also apply to the petitioner and therefore, having participated in the said process without any demur she cannot now turn around and challenge the process itself. Reference can be made to the judgment of the Apex Court in

Dhananjay Malik and others Vs. State of Uttaranchal & others 2008(3)

RSJ 223 wherein it was held that a candidate having taken calculated chance cannot turn round and contend that the process was unfair. Advertisement and the selection process had to be challenged without participating in the selection process. Similarly a Division Bench of this Court in **Yoginder Singh Yadav Vs. State of Haryana 2002(2) S.C.T. 281** also held to the same effect.

Even otherwise the argument is fallacious since the criteria prescribes and also takes marks obtained in the graduation which criteria cannot be held faulty and merely the merit of the candidates in the entrance test cannot be the sole criteria. Consistent performance of some candidates at their graduation level for a period of three years cannot be just taken away. The criteria thus prescribed by the University does not suffer from any irregularity. The factum that large number of candidates as many as 641 have taken admission on the basis of the said criteria and neither they have been impleaded as party cannot be ignored. A Division Bench of this Court in **Gaurav Walia Vs. Guru Nanak Dev University, Amritsar and others 1996(4) SLR 551** held as under:-

“There are two additional factors why no such direction deserves to be given in favour of the petitioners. Learned counsel for the respondents are right in contending that if the petitioners are to be given admission, some of the candidates who have already been admitted will have to lose their seats and it is one of the well recognised principles of law that in exercise of the jurisdiction under Article 226 of the Constitution of India, the High Court cannot issue a writ affecting the rights of those who are not before it. The principle of natural justice that no body should be condemned unheard has to be followed by the Courts with as much vigour as with which it is being enforced against the executive authorities as well as quasi judicial authorities.”

At this stage, even passing any adverse order against them

can not be done by this Court and in such circumstances no relief can be granted to the petitioner.

Accordingly, the present writ petition is dismissed.

August 12, 2015
Pka

(G.S.SANDHAWALIA)
Judge