

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

**CWP No.21411 of 2015
Decided on : 17.11.2015**

Sukhmeen Madaan

... Petitioner

Versus

Panjab University & others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr.Mansur Ali Advocate, for the petitioner.

Mr.Indresh Goel, Advocate, for respondents No.1 & 2.

Mr.Parminder Singh, Advocate, for
Mr.Amit Arora, Advocate, for respondent No.3.

Ms.Shivangi Sharma, Advocate, for respondent No.4.

G.S. Sandhawalia , J. (Oral)

Prayer in the present writ petition is for quashing of the notice dated 30.09.2015 (Annexure P6), whereby the candidates in the waiting list were asked to approach respondent No.2-Dental Institute, by 3 p.m., along with the necessary fees. It was mentioned that the candidates with higher merit would be admitted amongst the candidates present. Further prayer has been made to admit the petitioner in the BDS course in the General Category.

The categorical case of the petitioner is that the petitioner, by virtue of Rank No.41228 in the AIPMET, 2015, was at Sr.No.24 in the waiting list with respondents No.2 & 3. Accordingly, notice was put on the website, at the last moment, at 11.30 on

30.09.2015 and the petitioner could not be present due to paucity of time, being a resident of Moga, which is situated at a distance of more than 150 kms. It was submitted that candidates below the petitioner have been admitted.

In the reply filed, the defence taken was that no individual notice was given and the last date being 30.09.2015, serious and desirous candidates were required to be present in the institute. The mandatory duty of being present was absent in the case of the petitioner, since it was the last date, as per the directions of the Apex Court whereas the other candidates had also reported.

On 05.11.2015, the respondent-University was directed to file additional affidavit to show the last candidate who was admitted and at what serial number in the waiting list and whether any seats are still lying vacant. Resultantly, an additional affidavit has been filed by the Registrar of the respondent-University, today, wherein it has been admitted that a candidate below the rank of the petitioner, i.e., at Sr.No.26 has been admitted and there are 4 seats lying vacant with the respondent-Institute.

This Court is also aware of the limitations of the cut off date of 30.09.2015, but it is not disputed that the petitioner had approached this Court immediately by filing the writ petition on 05.10.2015 and the case came up for hearing, firstly, on

07.10.2015. The factum of the seats going waste is apparent and in this time and age of seamless communication, the University has not taken adequate steps to inform the candidates to approach them and give them the information of the vacant seats available, which could easily be done by resorting to Internet and SMS technology. The valuable infrastructure of the respondent-Institute has, thus, not been utilized to its full capacity and 4 seats are going waste on account of the waiting list candidates not being informed before the cut-off date of 30.09.2015.

A Division Bench of this Court in ***Association of Education Colleges Vs. Haryana State 2009 (1) SCT 157*** examined the issue whereby a large number of seats for the B.Ed. Course were going vacant and the University was opposing the said prayer for admission on the ground that it was at a belated stage and the students had not appeared in the entrance test. It was noticed that the seats were available in the Colleges and were supported by the infrastructural requirements stipulated by the NCTE, which was a valuable resource and should not be allowed to go waste, subject to the fulfilment of the academic standards. Accordingly, it was held that the students should be allowed to be admitted on the basis of merit who had appeared in the qualifying examinations, without holding any independent Common Entrance Test. Relevant portion of the judgment reads as under:

“14. The next question then is whether this Court should permit admissions or let the available seats go waste, Which out of the two options would serve the ends of justice is the only question that detained us. If one were to adopt a pedantic and hyper technical approach, one could say that admissions need not be made at this stage as the University's apprehension of dilution of academic standards and disturbance of academic calendar should not be disregarded. The wisdom behind that approach however, appears out- weighed by the compelling need to avoid the wastage of seats and denial of an opportunity to eligible students to get admitted against the same. It is true that academic standard needs to be maintained and academic decisions by expert bodies respected as far as possible, but it is equally true that when admissions are delayed, a certain amount of adjustment can and ought to be made by the Institutions as also the affiliating University. These adjustments do not, however, necessarily dilute the academic standard as is apprehended by the University in the instant case. The Institutions are ready and capable of making up the requisite number of working days by holding special classes for the students, who have joined late. The admission granted at this stage will not also require the University to compromise on the 40 days practice teaching or the percentage of lectures, which a student must have for being declared eligible for taking the examination. It is noteworthy that candidates admitted to a session has to perform by the same standard as is required of the other candidates in order to be declared successful in the examination. If a student, otherwise admitted late, is unable to come up to the standard of the University, he/she will be declared unsuccessful. Super-added to the above is the fact that the number of students, who may even now seek admissions, may not be very large to require holding of any test to determine

their inter-se merit for grant of admission. The argument advanced by Mr. Gupta that the Colleges may have to hold independent CET for granting admissions, which may delay the completion of admission process, is in our opinion, misplaced. Such a situation could arise only where the number of students applying is more than the number of seats available in the Institutions. That, however, is not the position in the instant case. Even so, the apprehension that lesser merited students may be admitted while ignoring meritorious students, can be allayed by directing that the Institutions shall grant admissions strictly in accordance with the merit in the qualifying examination, which is one of the recognized norms for granting such admissions.”

This Court is well aware of the cut-off-date fixed of 30.09.2015, but there is a window left open for the Courts by the Apex Court in ***Asha Vs. Pt. B.D. Sharma University of Health Sciences and others', 2012 (7) SCC 389***, wherein the Courts can exercise their power where they feel that the admission may be permissible where the ends of justice would be subverted and the process of law would stand frustrated. There is no fault which can be attributed to the petitioner and on account of the cut-off-date the admission cannot be denied to her, in view of the late opening of the website. The relevant part of the observations made read as under:-

“29. However, the question that immediately follows is whether any mid-term admission can be granted after 30th September of the concerned academic year, that being the last date for admissions. The respondents before us have argued with some vehemence that it will

amount to a mid-term admission which is impermissible, will result in indiscipline and will cause prejudice to other candidates. Reliance has been placed upon the judgments of this Court in Medical Council of India v. Madhu Singh and Others [(2002) 7 SCC 258], Ms. Neelu Arora and Another v. Union of India and Others [(2003) 3 SCC 366], Aman Deep Jaswal v. State of Punjab and Others [(2006) 9 SCC 597], Medical Council of India v. Naina Verma and Others [(2005) 12 SCC 626], Mridul Dhar and Another v Union of India and Others [(2005) 2 SCC 65], Medical Council of India v Madhu Singh and Others [(2002) 7 SCC 258].

30. There is no doubt that 30th September is the cut-off date. The authorities cannot grant admission beyond the cut-off date which is specifically postulated. But where no fault is attributable to a candidate and she is denied admission for arbitrary reasons, should the cut-off date be permitted to operate as a bar to admission to such students particularly when it would result in complete ruining of the professional career of a meritorious candidate, is the question we have to answer.

31. Having recorded that the appellant is not at fault and she pursued her rights and remedies as expeditiously as possible, we are of the considered view that the cut-off date cannot be used as a technical instrument or tool to deny admission to a meritorious students. The rule of merit stands completely defeated in the facts of the present case. The appellant was a candidate placed higher in the merit list. It cannot be disputed that candidates having merit much lower to her have already been given admission in the MBBS course. The appellant had attained 832 marks while the students who had attained 821, 792, 752, 740 and 731 marks have already been given admission in the ESM category in the MBBS course. It is not only unfortunate but apparently unfair that the appellant be denied admission.

32. *Though there can be rarest of rare cases or exceptional circumstances where the courts may have to mould the relief and make exception to the cut-off date of 30th September, but in those cases, the Court must first return a finding that no fault is attributable to the candidate, the candidate has pursued her rights and legal remedies expeditiously without any delay and that there is fault on the part of the authorities and apparent breach of some rules, regulations and principles in the process of selection and grant of admission. Where denial of admission violates the right to equality and equal treatment of the candidate, it would be completely unjust and unfair to deny such exceptional relief to the candidate. [Refer Arti Sapru and Others v. State of J & K and Others [(1981) 2 SCC 484]; Chavi Mehrotra v. Director General Health Services [(1994) 2 SCC 370]; and Aravind Kumar Kankane v. State of UP and Others [(2001) 8 SCC 355].*

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38.2. *Question (b) 30th September is undoubtedly the last date by which the admitted students should report to their respective colleges without fail. In the normal course, the admissions must close by holding of second counseling by 15th September of the relevant academic year [in terms of the decision of this Court in Priya Gupta (supra)]. Thereafter, only in very rare and exceptional cases of unequivocal discrimination or arbitrariness or pressing emergency, admission may be permissible but such power may preferably be exercised by the courts. Further, it will be in the rarest of rare cases and where the ends of justice would be subverted or the process of law would stand frustrated that the courts would exercise their extra-ordinary jurisdiction of admitting candidates to the courses after the deadline of 30th September of the current academic year. This, however, can only be done if the conditions stated by this Court in the case of Priya*

Gupta (supra) and this judgment are found to be unexceptionally satisfied and the reasons therefor are recorded by the court of competent jurisdiction.”

The judgment has also taken into consideration the earlier judgments of the Apex Court in '**Mridul Dhar Vs. Union of India**' 2005 (2) SCC 65 and in '**Priya Gupta Vs. State of Chhattisgarh and others**' 2012 (3) RSJ 340 and, therefore this Court gets the strength from the said observations which has been reproduced above to ensure that infrastructure is well utilized and and the students who are agitating for their rights are granted the benefit of admission. The petitioner has immediately approached this Court within the first week itself of October, on coming to know that candidates lower in merit have been admitted and therefore no fault cannot be found with her.

Resultantly, the present writ petition is allowed. The respondent-University is directed to give admission to the petitioner, immediately, on the deposit of requisite fees, within one week from today. Due to the shortage of lectures, respondent No.2 shall ensure that extra classes of the petitioner are held to make up for the shortage of lectures so that the petitioner also gets the practical experience. However, the petitioner shall not be burdened with the cost of the extra classes.

NOVEMBER 17, 2015
sailesh

(G.S. SANDHAWALIA)
JUDGE