

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

227

CWP-13215-2016

Reserved on :30.08.2016

Decided on : 07.09.2016

Simran Dhillon

... Petitioner

Versus

State of Punjab and another

.. Respondents

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

Present : Mr.Vipul Jindal, Advocate
for the petitioner.

Ms.Lavanya Paul, Addl.AG, Punjab
for respondent No.1.

Mr.Gautam Pathania, Advocate
for respondent No.2.

G.S.Sandhawalia, J. (Oral)

Petitioner seeks quashing of the notification dated 10.06.2016 (*Annexure P-11*) issued by respondent No.1 whereby the condition of passing 10+1 examination from State of Punjab has been added being the offending provision. On account of not having the requisite qualification, having studied 10+1 from outside the State of Punjab, the petitioner is not liable to be considered for the 85% reserved Punjab Quota seats in Medical Examination of PMET 2016 in the under-graduate degree course of MBBS/BDS for the session 2016-17.

The pleaded facts of the case is that petitioner was born in the State of Punjab at *Abohar in District Fazilka* on 20.12.1998. She

passed her class 10th examination from *Rose Mary Convent School, Baluana, Bathinda, Punjab* under CBSE Board in the year 2014 (Annexure P-2). Due to unavoidable circumstances, she went to Dehradun for doing her 10+1 from *ECOLE Globle International Girls School*. In the year 2014, there was no such eligibility condition in the State of Punjab of having studied/passed 10+1 examination from the State of Punjab for being considered eligible toward the entrance test in the Medical Stream which was being conducted after 10+2 examination for under-graduate degree courses. She shifted back for further studies to the State of Punjab and passed 10+2 examination in medical stream from the same school i.e. *Rose Mary Convent School, Baluana, Bathinda* with more than 95% marks and the result of Senior School Certificate is appended as **Annexure P/5**, passed in the said year 2016.

The prospectus for PMET 2016 was issued in the month of April, 2016 which provides that both 10+1 and 10+2 examination have to be done from the recognized school situated in the State of Punjab. Though she did not have the requisite qualification of 10+1 class from Punjab, officials told her to apply for the test as keeping in view the previous years, corrigendum was likely to be issued. It was also informed to her that compliance of the said condition was to be taken into consideration only at the time of counselling. There was also a dispute regarding the issue of holding of the National Eligibility Test (NEET) or the PMET examination. Accordingly, she appeared in the

PMET 2106 on 11.6.2016 and secured merit rank 264 (**Annexure P/8**).

The result was declared on 22.06.2016, in which she got total percentile 98.2857926. On her visit to the office of respondent No.2-University where counselling was to be held, she was told that her candidature toward admission/counselling in the Punjab Quota seats would not be considered at all, since she had not passed the 10+1 examination from the State of Punjab.

Resultantly, she challenged the said notification on the ground that she is resident of State of Punjab, having being born and brought up in the State of Punjab. Her father, a farmer by profession, is having immovable property for more than a decade in the State of Punjab. There was no such condition for the earlier years 2013, 2014 or 2015 and she took admission outside State of Punjab due to unavoidable circumstances at home.

Reliance was placed upon the order passed by this court in case **CWP No.6009 of 2014** titled as "**Annie Singh and others Vs. State of Punjab and others**", alongwith bunch of petitions decided on 02.07.2014, wherein a similar issue had been dealt with by holding that the same amounts to giving retrospective effect since students had taken admission keeping in view the settled position earlier that they were eligible on the strength of having done 10+2 examination from the State of Punjab. Therefore, the State had been given liberty to incorporate the relevant relief keeping in view the observation made

above.

It is further argued by the counsel of the petitioner that in view of that, clause 26 had been incorporated in the notification dated 10.06.2016 that the candidate shall have passed his/her 10th Class examination from the State of Punjab for Sessions 2019-2020. The condition thus imposed, would have retrospective effect. The petitioner secured high rank in merit list, but would be necessarily kept out on this ground itself.

A short reply has been filed on behalf of the State of Punjab through Director Research & Medical Education, Punjab, wherein it has been averred that provision has been incorporated since the year 2000 and the relevant clause 3.1 (i) of the notification dated 20.04.2000 has been attached as **Annexure R-1**. Accordingly, it was mandatory to pass 10+1 and 10+2 examination from the State of Punjab and no student was admitted in the session 2015 who had not done 10+1 examination from the State of Punjab. The provision of having passed 10th examination from the State of Punjab was struck down and the provision which remained was of having passed 10+1 and 10+2 examination from the State of Punjab. Resultantly, clause 16 of the notification has been defended by the State.

Perusal of the notification for the last year dated 30.03.2015 (**Annexure P/13**) would go on to show that the mandatory condition was of having passed 10+2 examination or other equivalent examination. The said clause for the academic year 2015 reads as

“A Candidate should belong to Punjab and should have passed his/her 10+2 examination or other equivalent examination in place of 10+2 examination from a recognized School/Institution situated in the State of Punjab except for the following exemptions wherever applicable. The candidate would be required to submit a certificate to this effect from the Principal/Head of the Institute last attended in the prescribed proforma. The following categories will be exempted from this condition.”

The clause in question for the present academic session which is part of the notification dated 10.06.2016, has been issued superseding the earlier notification dated 18.03.2016 reads as under:-

“16. The candidate should be a bona fide resident of Punjab. The resident status of Punjab state shall be taken in terms of Punjab Government Department of Personnel and Administrative reforms (PP-II Branch) letter No.1/3/95-3 PP II/9619, dated 6th June, 1996, ID No.1/2/96-3 PP-2/8976, dated 7th July, 1998 and ID No.1/3/95-3PP/II/81, dated 1st January, 1999 and any further instructions issued by the Department of Personnel, if any, and the same shall be adhered. Candidate must have passed 10+1 and 10+2 examination from Punjab. Candidate must have passed 10+1 and 10+2 examination from Punjab. Candidate who passed his/her 10+1 and 10+2 examinations or other equivalent examination from a recognized School/Institution situated in Chandigarh (Union Territory), who is bonafide residents of Punjab shall also be eligible.”

From the reading of the aforesaid two clauses, it would be clear that there was no such requirement of having passed 10+1 examination from the State of Punjab for the Academic Session 2015. Further, it was introduced by the Punjab Government in the year 2016, firstly in the notification dated 18.03.2016 which was superseded by the notification dated 10.06.2016. It is not disputed that the petitioner had

studied her 10+1 class in the year 2015 from Dehradun which would be clear from ***Annexure P/4***. At that point, she was not required to have done her 10+1 from Punjab and thus was not aware that having studied her eleventh would make her ineligible by the State, by retrospective effect. The action of the respondent No.1 as such by introducing the requirement of 10+1 class at this stage, amounts to giving retrospective effect and making persons ineligible retrospectively as they had already studied their 10+1 class earlier.

The subject matter of retrospectivity was also considered and dealt with by this Court in case ***CWP No.6009 of 2014*** tiled as ***“Annie Singh and others Vs. State of Punjab”*** along with bunch of writ petitions, decided on 02.07.2014 (Annexure P-12). There an issue of having passed 10th Class from the State of Punjab which was introduced for the first time arose and whether it amounted to giving retrospective effect. Keeping in view the interim orders passed by this Court, the State had informed that the said clause would not be enforced in the year 2014. The State was thus given liberty to follow the due procedure and ensure that the rights of the parties would not be effected adversely by any retrospective effect which has been noticed above in the present case. However, liberty was given to incorporate the relevant clauses for the subsequent year keeping in view the observations made below. The relevant portion reads as under:-

“Counsel for the State has, thus, not opposed the writ petition, and the relief claimed in view of the subsequent developments but only submitted that the

*controversy is likely to arise in the forthcoming year also if any such proposal/clause is enforced. Be that as it may, it is open to the State to follow the due procedure and ensure that the rights of the parties are not affected adversely by any retrospective effect which has been noticed above in the present case. The State in its wisdom, can follow the appropriate procedure so that there is no violation of settled rights of the parties. The Hon'ble Apex Court in **Raminder Singh Nagra Vs. Jagjit Singh Puri & others (2) SCT 554** has already observed that Chandigarh being the Union Territory and being the capital of the State of Punjab, is to be treated as part of State of Punjab. The said view has been followed by Division Bench of this Court in Harleen Cheema (supra) and keeping in view the above principles of law and the fact that the eligible criteria had been changed during the process of admission which had already been started, the said action is not justified.*

In view of the stand of the State which has seriously not opposed the interim order's passed by this Court are confirmed and the observation made earlier shall apply during this academic year and the candidates shall be free to apply in pursuance to the directions of this Court. It is, however, clarified that the State will be at liberty to incorporate the relevant provisions for the subsequent academic years keeping in view the observations made above. It is also clarified that these observations do not mean that the State will claim that there is any such direction issued by this Court to carry out any such exercise necessarily.

Disposed of accordingly”.

It is matter of fact as relied upon by learned counsel for the petitioner itself that keeping in view the said judgment, the criteria of passing 10th, 10+1 and 10+2 has been put in force from the academic Session 2019-20. This would be clear from clause 16 of the notification which reads as under :-

“26. In view of the judgment dated 02.07.2014 in CWP No.6009 of 2014 and connected cases by the Hon'ble Punjab and Haryana High Court, the

eligibility criteria from academic session 2019-2020 onwards shall be as under

“The candidate shall have passed his/her 10th Class Examination and also 10+1 and 10+2 from the State of Punjab”

Once the State itself has taken a decision of having requirement of 10+1 for the year 2019-20 onwards in view of the orders passed by this Court, the requirement of having passed 10+1 for the session 2016-17 absolutely suffers from the same ailment which has been noticed by this Court in **Annie Singh's case** (supra) of retrospective effect. The students who are applying for admission in Medical streams would be adversely effected by the requirement of having passed 10+1 from the State of Punjab.

Resultantly, the said condition is liable to be struck down and accordingly, the present petition is allowed. The criteria of having done the class 10+1 as provided in clause 16 of the notification dated 10.06.2016 (Annexure P-11) from the State of Punjab is struck down for the present academic session. The petitioner shall be accordingly, eligible to be considered for admission on the strength of having studied 10+2 examination subject to fulfillment of other requirements.

[G.S.Sandhawalia]
Judge

07.09.2016
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Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No