

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

CWP No.20540 of 2015
Date of Decision:30.03.2016

Jashanjot Singh

. . . .Petitioner

Versus

Department of Medical Education & Research & others

. . . . Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.Amit Jaiswal, Advocate,
for the petitioner.

Mr.V. Ramswaroop, Addl. A.G. Punjab.

Mr.Nitin Kaushal, Advocate,
for respondent No.2.

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

RAKESH KUMAR JAIN, J.

The admissions to Under Graduate Degree Courses i.e. MBBS/BDS for the year 2015, in the Medical and Dental Institutes in the State of Punjab including Medical and Dental Institutes affiliated to private universities, were offered by the Department of Medical Education and Research, Government of Punjab on 30.3.2015 in which the Baba Farid University of Health Sciences, Faridkot [for short 'the University'] was authorised to conduct the Punjab Medical Entrance Test-2015 [for short 'PMET-2015']. The University was also authorised to conduct centralized counselling for admissions on the basis of marks obtained in PMET-2015. Accordingly, prospectus was issued by the University for PMET-2015 for all seats including NRI seats in which part-II

contained the Notification dated 30.3.2015 [for short 'the Notification'].

The petitioner appeared in the PMET-2015 under Backward Class category (Category Code 13) and Orthopedically Handicapped category (Category Code 16) on 17.5.2015 under Roll No.507818. He secured 9th rank in Orthopedically Handicapped category and on the basis of online admission form, issued provisional allotment letter, allocated his seat in the Government Medical College, Majitha Road, Amritsar in the Orthopedically Handicapped category. The petitioner had submitted medical certificate issued by the office of Civil Surgeon, Patiala dated 16.2.2015, in which it is mentioned that *"he is permanently disabled being a case of birth asphyxia with monoplegia (L) upper limb. Physical disability is 40% (forty). Permanent in nature."* However, the result of the medical board of the University was not communicated to the petitioner rather he was told that he would be referred to PGIMER, Chandigarh for further opinion. It is alleged by the petitioner that he has restricted movement of the left arm and suffers physical disability to the extent of 40%, therefore, he is fully covered by Clause 20(iv) of the Notification. The said provision read as under: -

"Physically handicapped/orthopedically handicapped only 3%.

The candidate under orthopedic handicap shall be admitted only if he/she has locomotors disability of lower limbs between 50% to 70% and with this disability he/she is otherwise found fit medically to pursue the concerned course by the Medical Board duly constituted by

the Government and consisting of Heads of the respective Departments of three Medical Colleges at Patiala, Amritsar and Faridkot of the specialty concerned. In case the candidates are not available then candidates with 40% to 50% disability may be considered.”

The petitioner has thus, on the aforesaid facts, prayed for a writ in the nature of mandamus, directing the respondents to admit him in the Session 2015-16 and also prayed for reserving one seat for him in the Physically Handicapped/ Orthopedically Handicapped category during the pendency of the writ petition.

Notice of motion was issued in this case on 24.9.2015 and provisional admission was granted to the petitioner. The respondents have thereafter filed their respective replies.

Respondent No.1 has filed a short reply in which it is averred that the State Government is the proforma party as the admissions are to be granted by the University in terms of Notification dated 30.3.2015.

In its reply, filed by respondent No.2 (University), it is averred that provisional admission has been given to the petitioner subject to certain conditions. If after the counseling and medical examination, such handicapped candidate is found eligible only then his/her seat is confirmed. It is averred that vide order dated 11.9.2015, the University asked the Principals of the Government Medical Colleges at Patiala, Amritsar and Faridkot to depute their Head of the Orthopedics Departments for examining the medical certificate of the petitioner in terms of Clause 20(iv) of the

Notification. The petitioner was thereafter examined by the aforesaid medical board in which the following opinion was made:-

“Due to involvement of left upper limb candidate is found unfit for MBBS. However, he should be considered for evaluation of a higher board.”

Thereafter, the PGIMER, Chandigarh was requested to constitute a Board of Members, where the petitioner was asked to appear on 26.9.2015. The Board of Members of the PGIMER opined that *“percentage of handicap is 25% and non-progressive. Fit to carry on studies and able to perform duties”*.

Respondent No.4-MCI, in its reply, has alleged that it is a statutory authority created and constituted under an Act of the Parliament, namely, Indian Medical Council Act, 1956 and that the provisions of the Act and the Notification cannot be compromised. There is also an additional affidavit on record filed by respondent No.1, in which it is averred that since the petitioner does not suffer 40% disability that too of the lower limb, therefore, he cannot be considered in the category of handicapped persons and since he has got 423 marks in PMET-2015, therefore, he cannot even be admitted in the Backward Class category because the last candidate admitted in the BC category has secured 536 marks.

Learned counsel for the petitioner has submitted that the University should not have subjected the petitioner to repeated medical test and the certificate issued by the Medical Board of the State was sufficient. In support of his submission, he has relied upon a decision of the Allahabad High Court in the case of **“Ravindra Kumar Sharma and others Vs. State of U.P. and**

others” 2010(6) All. LJ 437 and also of Delhi High Court in the case of **“Dr. Raman Khanna Vs. University of Delhi and others”** 2003 (106) DLT 97. It is further argued that in the certificate issued by the State, the extent of disability of the petitioner is 40% whereas in the certificate issued by the medical board in terms of Clause 20(iv) of the Notification, no percentage has been mentioned rather his case has been referred to the PGIMER where the disability has been assessed to the extent of 25% and non-progressive in nature but he has been found fit to carry studies and able to perform duties.

On the other hand, learned counsel for the respondents have submitted that the petitioner does not have any right to get admission in the course of MBBS in the category of Orthopedically Handicapped because the certificate of the State was not enough as he has to be found medically fit by the Medical Board consisting of Heads of the respective Departments of three Medical Colleges at Patiala, Amritsar and Faridkot of the specialty concerned. The said Board in its opinion dated 16.9.2015 found that firstly the petitioner due to involvement of the deformity of the upper limb found him unfit for MBBS but still his case was sent to the Higher Medical Board for evaluation in which the PGIMER has found that the percentage of handicap of the petitioner was only 25%. Thus, it is submitted that the petitioner is found ineligible not only on the ground that he is suffering disability of the upper limb but also his disability has been found to be 25%, which is below the minimum of 40%. It is also submitted by counsel for the petitioner that for the purpose of disability, it is not required to be of the lower limb

as the word “lower limb” has been used only in regard to the disability between 60% to 70%. The argument raised by counsel for the petitioner is totally fallacious. It is only the disability of lower limb, which has to be considered for the purpose of locomotor disability, which should be between 60% to 70% and in case, candidates are not available then the said disability can be reduced to 40% to 50% of the lower limb.

Hence, looking from any angle, there is no error in the order of the respondents, holding the petitioner ineligible for the purpose of admission. Consequently, the present petition is hereby dismissed and the admission granted to the petitioner under the order of the Court is hereby cancelled with immediate effect.

30.03.2016

Vivek

**(RAKESH KUMAR JAIN)
JUDGE**