

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

CWP No. 20658 of 2016
Reserved on: 08.12.2016
Date of decision: 14.12.2016

Ms. Aneesha Sharma

....Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

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

Present: Ms. Alka Sarin, Advocate,
for the petitioner.

Mr. S.S. Chandumajra, Addl. A.G., Punjab.

Mr. Gautam Pathania, Advocate,
for respondent no. 4.

G.S.SANDHAWALIA, J.

The petitioner seeks quashing of the action of respondent no. 4- university in reducing the number of seats in the MBBS course in the sports category from 5 to 4. Further direction is accordingly prayed to grant admission to the petitioner who is at Sr. No. 5 in the merit list of the sports category.

It is the case of the petitioner that she is a National Level Lawn Tennis Player and has done her 10+2 examination from DAV Public School, Lawrence Road, Amritsar. As per the prospectus for PMET-2016, 1% of the total seats for the MBBS course were reserved for sports persons. The 5 reserved seats were accordingly distributed in the Government Medical Colleges for the session 2016 as uploaded by the respondent- University on its website and divided as 2 seats each at Government

Medical College, Patiala and Amritsar and 1 seat at Faridkot as per Annexure P-2. The petitioner had secured total percentile of 93.9385628 and as per the gradation certificate (Annexure P-3), she had been put in grade “B” having played in 59th National School Games (U-19) and having obtained 2nd place. As per the grading and merit, the petitioner had been placed at Sr. No. 4. Some other candidate namely one Raghav Sood had come to this Court on account of the fact that his certificate of the international level was not being considered, which would entitle him to “A” gradation and resultantly in view of the directions issued by this Court on 09.08.2016, the merit list had been re-prepared. The said person was accordingly shown at Sr. No. 1 in the merit list and the petitioner was moved down to Sr. No. 5. While reporting for counseling on 28.09.2016, the petitioner was informed that 5 sports seats notified had been reduced to 4 and, therefore, she could not be granted admission. Resultantly, this Court was approached on 30.09.2016 on the ground that the prospectus had been published and released and the University was bound by the same.

The defence of the State in its reply was that the seats against 1% state quota seats worked out to be 4 against 425 and not 5 seats. The University, in its affidavit, admitted the factum that 5 seats had been distributed and notified vide communication dated 27.06.2016 (Annexure R-1). It was admitted that respondent no.5-the Principal, Government Medical College, Patiala had submitted the seat matrix vide letter dated 27.06.2016 for the session 2016. It was not disputed that as per the said communication, there were 2 seats reserved for the sports person in the said college. Accordingly, reliance was placed upon the conditions of the prospectus that the seats may increase or decrease subject to the orders of

the Hon'ble Courts, MCI/DCI/Governments. It is accordingly pointed out that vide letter dated 14.09.2016 (Annexure R-3), the said respondent had submitted the revised distribution of seats. The final distribution had been done on 15.09.2016 and there was only 1 seat at Patiala for sports persons. Resultantly, there were only 4 seats for the sports quota. The reservation was to be calculated at 1% on the State quota seats which were 170 at Patiala and Amritsar each.

The petitioner in her additional affidavit, submitted that the action of respondent no. 5 was in violation of the notification dated 10.06.2016 (Annexure P-7) issued by the State Government. The details were given as to how the reservation had been reduced and the seats in the general category had been increased to the extent of 7. The action was alleged to be to the detriment of the students. It was averred that the total number of seats in the college at Amritsar and the Government Medical College were 200 and only respondent no. 5 had undertaken an illegal exercise of reducing the seats of below the percentage fixed by the State Government in its notification dated 10.06.2016. The seat distribution had already stood finalized much earlier and, therefore, the subsequent action on 14/15.09.2016 was against the reservation/percentage fixed. The so called revised distribution of seats (Annexures R-4 and R-5) had never been uploaded or publicized. Accordingly, it was submitted that even on 170 seats, rounding off principle had to be applied which would come to 2 seats and not 1 seat as had been reduced by respondent no. 5.

It is to be noticed that as mentioned above, the petitioner had approached this Court on 30.09.2016, before the cut off date and it had been ordered while issuing notice of motion that it would not preclude her right

as such to seek admission on account of the fact that the said date was the last date. It is also not disputed inter se the parties that the petitioner thereafter has been admitted in the BDS course in the college at Amritsar in the subsequent counseling which was held till 07.10.2016 in view of the extension granted by the Apex Court.

From the pleadings, one aspect is clear that there is an admission to the extent that it was held out by the respondent-university also on its website that there were 5 seats reserved for sports persons in the Government Medical Colleges in the State of Punjab as per the website on 11.09.2016. Respondent no. 5 itself had vide letter dated 27.06.2016 intimated to the University the break up of the seats in which the vacancy position for the session 2016 was shown as under:-

“Subject:- Distribution of seats for admission to MBBS course Session 2016 as per 200 seats.

The vacancy position of M.B.B.S course for the session 2016 is as under:-

<i>Sr. No.</i>	<i>Category</i>	<i>Seats</i>
<i>1</i>	<i>CBSE</i>	<i>30</i>
<i>2</i>	<i>SC</i>	<i>43</i>
<i>3</i>	<i>BC</i>	<i>9</i>
<i>4</i>	<i>HC</i>	<i>5</i>
<i>5</i>	<i>BA</i>	<i>2</i>
<i>6</i>	<i>BR.A</i>	<i>2</i>
<i>7</i>	<i>Sports</i>	<i>2</i>
<i>8</i>	<i>TA/RA</i>	<i>3</i>
<i>9</i>	<i>Defence</i>	<i>2</i>
<i>10</i>	<i>PP/PM</i>	<i>2</i>
<i>11</i>	<i>FF</i>	<i>2</i>
<i>12</i>	<i>NRI</i>	<i>13</i>
<i>13</i>	<i>GEN</i>	<i>85</i>
	<i>TOTAL</i>	<i>200</i>

This is for your information and necessary action.

*Principal,
Govt. Medical College, Patiala.*

It is not disputed that as per the prospectus, the number of seats could be reduced or increased. The relevant clause of the prospectus reads thus:-

“Note:(a) Distribution of seats will be as per Punjab Government Notification

(b) The list of eligible colleges/seats may increase/decrease subject to the orders of Hon'ble Courts/MCI/DCI/Governments. The final list will be displayed at the time of online counselling.”

A perusal of the above would go on to show that the distribution of seats was to be as per the Punjab Government notifications and they could only be reduced subject to the orders of Courts, MCI/DCI/Governments. The subsequent notification dated 10.06.2016 (Annexure P-7) also provides that the details of the institutions and the category wise seats which were to be available were to be shown on the official website of the respondent-university. Clause 15 of the notification reads thus:-

“15. The details of the institutions and category wise seats shall be available on the official website of Baba Farid University of Health Sciences, Faridkot i.e. www.bfuhs.ac.in.”

Thus, it is apparent that once the university had, on its website, put up the number of seats for the sports category at 5 as per Annexure P-2, the same could not then have been varied to the detriment of the applicants by respondent no. 5 in view of the above clauses of the notification. If the

same had to be done, it could be at the level of the State. Even otherwise, as noticed, the Medical College at Amritsar has also 170 seats of the State quota and has two seats reserved against the 1% provided. Similarly, if the same policy is to be followed of the break up of the reserved quota, respondent no. 5-college was also to have the same number of reserved seats and, therefore, the subsequent reduction to 1 has led to the petitioner being deprived of the right of admission once the process of admission had started.

Nothing has been brought on record to show that the State Government, which was competent, had made the necessary changes and resultantly it can be safely held that respondent no. 5 was not justified in tinkering with the break up of the reserved seats once the process of admission had started. It is to be noticed that on 22.10.2016, while hearing the matter, it had been pointed out that the admission process had been completed and all seats had been duly filled and, therefore, at that stage there was no such vacancy available, apart from one student whose candidature had been cancelled on account of not fulfilling the eligibility criteria of belonging to the reserved category. The matter was thereafter adjourned to be heard alongwith the said case namely CWP No. 21752 of 2016, Yudhanshu Angural vs. Baba Farid University of Health Sciences, Faridkot. The said writ petition has been dismissed qua the relief of cancellation of admission vide order of even date.

Resultantly, it is apparent that one seat remains vacant for admission with the respondent-authorities and cannot be filled up by them at this stage because of the cut off date of 30.09.2016. Keeping in view the above discussion and the fact that the seats have been reduced after having

been duly notified on the website without authority by respondent no. 5, this Court is of the opinion that the petitioner is, thus, entitled for admission against the said vacant seat. As noticed, the petitioner has already been admitted in the BDS course in the first week of October and had been denied the admission only on account of the fact of the fault of the respondent. The principles laid down by the Apex Court in the case of ***Asha vs. Pt. B.D. Sharma University of Health Sciences and others, 2012 (7) SCC 389*** would squarely apply to the petitioner since there was no fault of hers that she was denied admission by reduction of the sports quota seats and, therefore, a special case is made out as such to grant her the relief beyond the cut off date. The relevant portion in *Asha's case (supra)* reads thus:-

“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 cutoff 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 extraordinary 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 therefore are recorded by the court of competent jurisdiction.”

The additional reasons, as noticed above, are that she had

approached the Court in time on 30.09.2016 itself and thereafter has also

been studying in the BDS course. Another additional ground for grant of admission is also that since the admission stands cancelled of Yudhanshu Angural on account of his ineligibility and the same is liable to go waste for the present academic session. Therefore, there are sufficient and valid reasons which would entitle the petitioner for admission at this stage.

Resultantly, the respondents will admit her against the vacancy caused by the cancellation of the admission of the student in CWP No. 21752 of 2016. The fees of the petitioner which she has paid in the BDS course shall also be liable to be adjusted against the fees which is now to be paid. The needful be done within a period of one week from today.

The writ petition stands allowed accordingly.

14.12.2016
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No

