

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

CWP No.4036 of 2016

Date of Order: 31.3.2016

Dr. Bal Jaskaran Singh and Ors.

....Petitioners

Versus

State of Punjab and Ors.

....Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr. Gurminder Singh, Sr. Advocate with
Mr. R.P.S Bara, Advocate for the petitioners.

Mr. R.S. Pathania, DAG, Punjab.

Mr. Gautam Pathania, Advocate for respondent No.3.

Mr. Sehajbir Singh, Advocate for respondent No.4.

RAKESH KUMAR JAIN,J (ORAL)

The petitioners are M.B.B.S Doctors from the Medical Colleges situated in the State of Punjab, who have challenged Clause/Para 20 (1) of the Notification dated 30.12.2015, incorporated in Part-B of the Prospectus dated 05.1.2016 issued by respondent No.3-Baba Farid University of Health Sciences (for short “the University”) whereby the entire 40% of State quota seats have been reserved for students having Punjab Resident Status/Domicile.

It is submitted that the said Clause had earlier been under challenge before this Court in the case reported as **Dr. Mitthat and Others Vs. State of Punjab and Others, 2015 (2) SCT 734** and has been held to

be illegal.

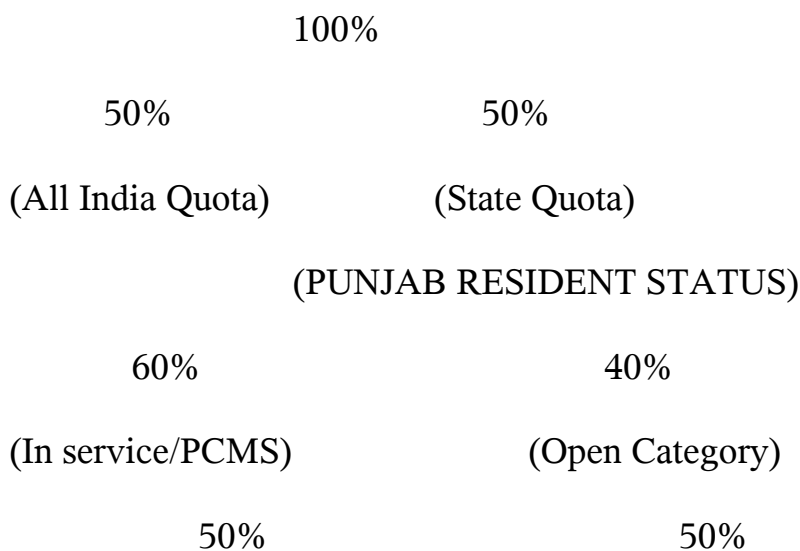
In brief, the State of Punjab issued Notification No.5/33/2013-3HB-III/3053 dated 30.12.2013 for admission to the Post Graduate Degree/Diploma Courses in the State of Punjab for the Session 2016, which authorized the University to conduct Punjab Post Graduate Entrance Test 2016 (PGET 2016) for 50% State Quota Seats and all seats in Private Colleges. It also authorized the University to conduct centralized counselling for admissions on the basis of PGET 2016 as per procedure laid down by MCI/DCI and notified under The Punjab Private Health Sciences Educational Institutions (Regulation of Admission, Fixation of Fee and Making of Reservation) Act, 2006. The University issued prospectus on 05.1.2016 incorporating the Notification as Part-B. The seats were distributed as per Clause/Para 20 (1), which reads thus:

“Distribution of Seats in Govt. Institutions (Govt. Medical/Dental College, Amritsar & Patiala, GGS Medical/Dental College, Faridkot).

I. In the Govt. Institutions, 50% of the total seats shall be filled by the Government of India at all India level through All India Test-2016. The remaining seats shall be filled through PGET-2016 at the state level from amongst the candidates having Punjab Resident Status. Out of State Quota seats 60% seats shall be filled up from amongst the eligible PCMS (Medical/Dental) in service doctors & 40% seats shall be open to all eligible Medical/Dental graduates. Out of these 40% seats the Governor of Punjab is further pleased to reserve, by way of institutional preference upto 50% available seats for general category candidates who have passed their qualifying examination from Baba Farid University of Health Sciences, Faridkot/Guru Nanak Dev University Amritsar, Punjabi University Patiala, except Christian

Medical/Dental College, Ludhiana. There shall be separate merit list for in-service 60% quota candidates for Medical/Dental Colleges and a separate merit list for those who are not covered under the category of in-service candidates. In 40% quota, after exhausting all Punjab resident candidates, seats remaining vacant shall be offered to the other state residents”.

Learned counsel for the petitioner has depicted the distribution of the seats by way of diagram, which is reproduced as under:



The issue is with regard to 40% open category seats, which are reserved for the candidates having Punjab residents status only. It is submitted by learned counsel for the petitioners that earlier also, for the Session 2015-2016, similar provision was made in the Notification in regard to distribution of seats in Government Institutions. Said clause, which was in para No.27 at that time, read as under:

“27. Seat distribution in Govt. Institutions (Govt. Medical/Dental College, Amritsar & Patiala, GGS Medical/Dental College, Faridkot).

1. In the Govt. Institutions, 50% of the total seats shall be filled by the Government of India at all India level through All India Test-2015. The remaining seats shall be filled through AIPGMEE/AIPGDEE 2015 at the state level from amongst the candidates having Punjab

Resident Status. Out of State Quota seats 60% seats shall be filled up from amongst the eligible PCMS (Medical/Dental) in service doctors & 40% seats shall be open to all eligible Medical/Dental graduates. Out of these 40% seats the Governor of Punjab is further pleased to reserve, by way of institutional preference upto 50% available seats for general category candidate who have passed their qualifying examination from Baba Farid University of Health Sciences, Faridkot except Christian Medical College, Ludhiana. There shall be separate merit list for in-service 60% quota candidates for Medical/Dental Colleges and a separate merit list for those who are not covered under the category of in-service candidates. In 40% quota, after exhausting all Punjab resident candidates, seats remaining vacant will be offered to the other state resident.”

It is submitted that the said clause was challenged in **Dr.**

Mitthat 's case (supra) in which this Court framed the following question:

“Whether there can be reservation for admission in the Postgraduate medical course to the State quota seats on the basis of “residence” or “institutional preference”?

After discussing various judgments, the question was answered

as under:

“47. Thus, I hold that the reservation on basis of residence in the postgraduate medical courses, provided in the notification dated 25.02.2015 and the prospectus issued by the University, is illegal.

48. As regards the institutional preference, again the judgments in Dr. Pradeep Jain's case (supra), Magan Mehrotra's case (supra), Nikhil Himthani's case (supra) and Saurabh Chaudri's case (supra) would be a guiding factor for this Court because in para 67 (iv) of the judgment in Saurabh Chaudri's case (supra), it has been

held that the criterion for institutional preference has been working satisfactorily in most of the States for the last about two decades and would stay.

49. Thus, it is held that the reservation on the basis of institutional preference provided in the notifications dated 25.02.2015 and 25.03.2015 and in the prospectus issued by the University is legal and justified. It is also held that in view of the judgment in Vishal Goyal's case (supra), the admissions to the seats allotted to the State quota in postgraduate medical courses even in the private colleges on the basis of institutional preference would continue.”

It is submitted that the present case is squarely covered by **Dr. Mitthat 's case (supra)**, therefore, the present writ petition may be allowed and clause 20(1) of the Notification may be set aside.

Learned counsel for the respondents has argued that the judgment in **Dr. Mitthat 's case (supra)** is under challenge in LPA No.595 of 2015 titled as Varun Khullar and Others Vs. State of Punjab and Others, which is fixed for 26.4.2016.

It is submitted by Sh. Gurminder Singh, learned Senior counsel that the judgment in **Dr. Mitthat 's case (supra)** is still operating as there is no stay against it and admissions were made in accordance with the same in the last Session.

I have heard learned counsel for the parties and after examining the entire record, am of the considered opinion that the issue involved is no more *res integra* as the said dispute has already been decided by this Court in **Dr. Mitthat 's case (supra)** holding that the clause “Punjab Residents Status” is illegal and institutional preference has been upheld.

Learned counsel for the petitioner has submitted that although

he has also challenged the quota of 60% seats of PCMS in service Doctors as excessive but at present he is not pressing the same and has prayed that it may be kept open.

Ordered accordingly.

In view of the aforesaid discussion, the present petition is allowed. Impugned clause in para 20(1) of the Notification dated 30.12.2015 incorporated as part B in the Prospectus dated 05.1.2016 is held illegal and the reservation of 40% seats in open category for Punjab Residents is hereby set aside.

A copy of this order be given dasti on payment of usual charges.

March 31, 2016
manoj

(RAKESH KUMAR JAIN)
JUDGE