

CWP No.6449 of 2016

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

**CWP No.6449 of 2016
Date of decision:25.05.2016**

Ajay Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. V.S.Punia, Advocate,
for the petitioner.

Mr. R.S.Doon, AAG, Haryana.

Mr. D.K.Khanna, Advocate,
for respondent No.2.

Mr. Ashok Kumar Sharma, Advocate,
for respondent No.3.

Rakesh Kumar Jain, J.

The prayer made in this petition is for the issuance of a writ in the nature of *certiorari* for quashing the minutes of the meeting of the Ph.D. Ordinance Committee 2015-2016 held on 18.11.2015 and for the issuance of a writ in the nature of *mandamus* for seeking a direction to the respondents to apply exchange method for converting one reserved category seat which is lying vacant under the head of Economically Backward Person (EBP) into General category seat and that may be filled up on the basis of merit and further direction to the respondents to admit the petitioner to Ph.D. (Biotechnology) during the pendency of the writ petition as per the merit

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list.

In short, the grievance of the petitioner is that he was provisionally admitted in Ph.D. (Biotechnology) under the reserved category of Haryana Special Backward Classes [Haryana-SBC(1)] but was allowed to deposit the fee with a rider that "*fee will be deposited subject to decision of Govt. of Haryana*". The petitioner was at Sr. No.2 in the waiting list, whereas the person at Sr. No.1 in the waiting list was Shivangi. The petitioner applied for conversion of vacant seat of reserved category into open/general category but in the meeting of the Ph.D. Ordinance Committee which was held on 18.11.2015, the prayer of the petitioner was turned down. The petitioner, thus, filed CWP No.546 of 2016, which was dismissed on 13.01.2016 and intra-court appeal filed by the petitioner bearing LPA No.170 of 2016 was withdrawn on 01.02.2016 in order to file review application in the order dated 13.01.2016. The petitioner accordingly filed review application which was allowed and the order dated 13.01.2016 was recalled. The writ petition bearing CWP No.546 of 2016 was, however, withdrawn by the petitioner because the minutes of the meeting of the Ph.D. Ordinance Committee 2015-2016 held on 18.11.2015 were accepted by the Academic Committee in its meeting held on 15.12.2015 and the issue regarding conversion of reserved category seat into general category seat was closed. Therefore, the petitioner withdrew CWP No.546 of 2016 in order to challenge the decision of the Academic Committee and the present petition has been filed in which again, surprisingly, the petitioner has not challenged the decision of the Academic Committee dated 15.12.2015 and

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has confined his challenge only to the minutes of the meeting of the Ph.D. Ordinance Committee 2015-2016 which was held on 18.11.2015, as has already been mentioned while referring to various prayers made by the petitioner in the writ petition.

Be that as it may, the petitioner's case is based upon Clause 11 of Chapter 7 of the Handbook of Information 2015-16 as per which he has contended that the seats remaining vacant in any reserved category shall have to be filled from Haryana Open category at the time of physical presence.

In the reply, it is averred that the University has issued Ph.D. Ordinance-cum-Information Brochure Session 2015-2016 for admission to Doctor of Philosophy (Ph.D.) in various faculties of the University. The last date for admission from the waiting list was 13.08.2015 and the classes were to be commenced from 14.08.2015. However, their classes had actually started on 17.09.2015 and as per Clause 28 of Chapter 12 of the Ph.D. Ordinance related to pre-Ph.D. course work, it is provided that the "*the candidate (other than those who are exempted from pre-Ph.D. course work, as per clause 37) enrolled in pre-Ph.D. course work shall have to undergo a Semester-long course as notified by the University*". The pre-Ph.D. course work started on 17.09.2015 as a six months course and it is mandatory for all selected students under pre-Ph.D. course work to attend the classes of six months. After the course work of six months, exam was conducted and thereafter students have started their studies. When the reply was filed, by that time, 7 months have been passed and students are expected to complete

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their research work within two to four years but the Pre-Ph.D. course work cannot be now again scheduled for one student i.e. the petitioner. It is further alleged that the Handbook of Information, relied upon by the petitioner, relates to admission in Under-Graduate and Post Graduate Courses in the University like M.A., M.Sc., LL.B., M.Phil etc. and insofar as the admission in Ph.D. is concerned, the said Handbook of Information has no application on it and it is exclusively governed by the provisions contained in Ph.D. Ordinance-cum-Information Brochure for the Session 2015-2016, in which there is no provision for conversion of vacant seat from one category to another in Ph.D. course. It is further submitted that the last date for admission, as mentioned in the brochure, from the waiting list was 13.08.2015 and the classes had started from 17.09.2015. The petitioner applied for admission under the Haryana SBC(1) category, for which one seat was reserved but he was asked not to deposit the fee till the decision of the Haryana Government, which was taken on 27.09.2015 in which it has been provided that *“now the matter regarding admission in educational institutions has been reconsidered and it has been decided by the State Government that for the current academic session 10% seats reserved for Special Backward Classes shall be filled up from General Category students”*. Since one seat was reserved for the SBC(1) category, therefore, it was given to General category candidate as per the Government decision and accordingly allotted to Shivangi, who was at Sr. No.1 in the waiting list and one seat reserved for EBP category and 2 seats of SC and 01 seat of BC(A) category remained vacant. The Chairperson, Department of

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Biotechnology, on 09.09.2015, submitted a proposal regarding filling of vacant seats from the waiting list but since there was no provision in the Ph.D. Ordinance 2015-16 for converting the seat from one category to another, the matter was referred to the Committee, which was earlier constituted for framing Ph.D. Information Brochure 2015-16 by changing the reserved category seats into general category seats and the matter was referred to the Ph.D. Ordinance Committee, in which the Committee had taken a decision on 18.11.2015 to the following effect:-

“Discussed the matter of conversion of vacant seats of various reserved categories into open/general category. The committee is of the opinion that there is no provision for converting vacant seats of one category into other category in the Ph.D. Ordinance 2015-16. Further, the committee observed that the admission process for the Ph.D. course is way over and the classes of pre-Ph.D. course work has already started in mid-September. In light of the foregoing, the committee recommends that requests/proposals to this effect may not be considered at this stage. However, the matter of inter-conversion of vacant seats may be discussed by the Ph.D. Ordinance Committee for future changes/amendments in the Ph.D. Ordinance.”

It is also alleged that the said recommendation of the Ordinance Committee was placed before the Academic Committee held in its meeting dated 15.12.2015 in which the recommendation of the Ph.D. Ordinance Committee has been approved and the issue regarding conversion of seat meant for reserved categories to general category was closed.

The respondents have, thus, submitted that firstly the Handbook

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of Information 2015-16, relied upon by the petitioner, is not applicable insofar as the course of Ph.D. is concerned because it is governed by the Ph.D. Ordinance 2015-16, secondly the minutes of the meeting of the Ph.D. Ordinance dated 18.11.2015 have already been approved by the Academic Committee on 15.12.2015 which has not been challenged by the petitioner despite the opportunity having been granted to the petitioner to assail its validity, thirdly the course had started long back on 17.09.2015 and the pre-Ph.D. course work of 6 months has already been over which cannot be started again only for the petitioner and the petitioner has not lost the seat because of the fraud on the part of the respondent-University rather on account of a notification issued by the Government of Haryana issued on 27.09.2015 as per which the reservation under the SBC(1) category was taken away and it was ordered that the seat offered to them will be offered to the candidate of the general category, which in the present case has already been given to Shivangi who was at Sr. No.1 in the waiting list.

I have heard learned counsel for the parties and examined the available record with their able assistance.

Ironically, the petitioner was specifically given an opportunity by this Court to challenge the decision taken by the Academic Committee when CWP No.546 of 2016 was withdrawn on 31.03.2016 but still the said decision has not been challenged and only the minutes of the meeting dated 18.11.2015 is under challenge by way of a writ in the nature of *certiorari*. Besides that, it is not disputed that the course had already started long back on 17.09.2015 and 6 months pre-Ph.D. course work, which was mandatory

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for all the selected candidates, is already over and cannot be recouped at this stage only for the petitioner. Moreover, the petitioner has failed to show that the Handbook of Information relating to the admission to the Undergraduate and Postgraduate courses in the University is also applicable to the Ph.D. Ordinance for the session 2015-2016 in which there is no provision for conversion of vacant/unfilled reserved category seat into general category seat.

Thus, keeping in view the totality of the facts and circumstances emerging from the record, I am of the considered opinion that no relief can be granted to the petitioner at this stage.

Consequently, the present writ petition is hereby dismissed being denuded of any merit.

May 25, 2016
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(Rakesh Kumar Jain)
Judge