

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No.1818 of 2016 (O&M)

Date of Decision: 20.09.2016

Ravneet Kaur

... Appellant

VS.

Baba Farid University of Health Sciences & Ors.

... Respondents

LPA No.1824 of 2016 (O&M)

Purva Sood & Ors.

... Appellants

VS.

State of Punjab & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT

HON'BLE MR.JUSTICE SUDIP AHLUWALIA

1. Whether Speaking?

Yes / No

2. Whether Reportable?

Yes / No

3. Whether Reporters of local papers may be allowed to see the judgment?

Yes / No

4. To be referred to the Reporters or not?

Yes / No

5. Whether the judgment should be reported in the Digest?

Yes / No

Present: Mr. Ashok Sharma Nabhwala, Advocate;
Prof. R.D. Anand, Advocate
for the appellant(s)

SURYA KANT, J.

(1) This order shall dispose of two Letters Patent Appeals bearing No.1818 & 1824 of 2016 as both are directed against the order dated 09.09.2016 whereby learned Single Judge, after an exhaustive exercise and by way of a self-explanatory order running into more than 129 pages with 110 paragraphs, has elaborately dealt with every possible contention raised on behalf of writ-petitioners, and has partly accepted their claim in the following terms:-

“109. Resultantly, CWP-12963, 13239, 13624, 14090, 16682 & 16906-2016, are partly allowed. The resort to percentile system is upheld, keeping in view the changing circumstances, as noticed above and since the same

principle has been applied to one and all and the relative merit is not disturbed. The respondents are entitled for the correction of the answer keys, as mentioned above and benefits of which will be given by not declaring questions No.161, 169 & 190 of Zoology and 133 of Botany of Set-2, invalid whereas questions No.51 & 62 of Chemistry Set-1 is to be declared invalid. The result be put on the website after necessary corrections, by showing the relative percentile of all the candidates.”

(2) Three other writ petitions filed by reserved category candidates who failed to make the cut of fifty percentile have been dismissed vide the same order.

(3) State of Punjab on 18.03.2016 issued notification for Punjab Medical Entrance Test-2016 (PMET) and authorized the respondent-University to conduct the same. In the light of the decision of Hon'ble Supreme Court dated 28.04.2016 in favour of National Eligibility-cum-Entrance Test (in short, 'NEET') followed by the Government of India Ordinance dated 20.05.2016, State of Punjab issued another notification dated 10.06.2016 (P2) notifying that all admissions of Government quota seats in Government and private institutions shall be based on merit of PMET-2016 and all admissions in private/minority institutions on Management Quota Seats including NRI and Minority Quota Seats shall be based on merit of NEET.

(4) Clause 6 of the Notification dated 10.06.2016 stipulates that the candidate seeking admission to MBBS/BDS must have passed in the subjects of Physics, Chemistry, Biology/Bio-technology and English

individually and must have obtained a minimum of 50% marks (45% for Persons with Locomotor Disability of Lower Limbs and 40% for SC/BC) taken together in Physics, Chemistry and Biology/Bio-technology in 10+2 examination or equivalent. Clause 8 of the notification further provides that:-

“In order to be eligible for admission to Govt. Quota Seats in MBBS/BDS course, it shall be necessary for the candidate to obtain minimum of 50% marks (45% for candidates with Locomotor Disability of Lower Limbs and 40% for SC/BC categories) in PMET-2016.

The inter-se-merit of candidates for the tie-breaking in PMET-2016 shall be determined in the following manner:

- a. Candidates obtaining higher marks in Biology (Botany & Zoology) in the PMET-2016.*
- b. Candidates obtaining higher marks in Chemistry in the PMET-2016.*
- c. Candidates older in age.”*

(emphasis applied)

(5) Clause 28 of the notification declares all previous notifications to have been superseded. The University conducted PMET-2016 online with the help of Tata Consultancy Ltd. on 11.06.2016. The examination was conducted in two shifts, in morning and evening, at various Centres. The answer-keys were uploaded on the website. Out of total 400 questions, the University received 598 objections. The University constituted three Committees to examine the objections so as to avoid any mistake and issued a public notice to this effect (P6). It also issued a corrigendum dated

for score normalization as was being followed and applied by the All India Institute of Medical Sciences, New Delhi in the Computer Based Test (Online Entrance Examination) and which was being followed by various other institutions as well, namely, the percentile methodology.

(6) After the declaration of result also, the University informed the students and their parents that in online PMET-2016, result has been made on percentile basis. *“It is assured that in addition to Total Percentile of a candidate, the percentile of each subject i.e. percentile of Physics, Percentile of Chemistry and Percentile of Biology has been calculated and can be calculated. The merit no. (rank no.) is on the basis of Total Percentile which means on the basis of Total Marks in Physics, Chemistry and Biology”.*

(7) The appellants and some other writ petitioners challenged the result of PMET-2016 as according to them, the percentile method had jeopardized the career of candidates and upset their merit inter-se of Paper Set-I (morning) and Paper Set-II (evening). They questioned the equality between the candidates who appeared in two separate papers and claimed disparity between them, besides alleging the award of marks for number of wrong questions.

(8) The foremost challenge on behalf of the appellants was against the adoption of ‘percentile method’ instead ‘percentage system’, as according to them such a recourse adopted by the University runs counter to the mandatory Clause-8 of the State Government notification dated 10.06.2016 as reproduced in para-4 above. The appellants urged that the University was not competent to violate the terms of the Prospectus which carries the force of law.

(9) The respondent-University contested the appellants' claim and maintained that the percentile system had been applied with a view to normalize the difficulty, for the examination was held in two shifts, morning and evening. The percentile system was stated to be the most objective method of normalization and was being followed by all premier institutes in the country. The University denied that its action defied Clause-8 of the Government Notification, rather it was claimed to be consistent and in conformity with such provisions.

(10) In this backdrop, learned Single Judge formulated the following three questions for determination:-

- (i) Whether adoption of percentile system is violative of terms and conditions of the Prospectus and the State Government Notification dated 10.06.2016? If so, what was the effect in law and whether result of PMET-2016 was liable to be quashed on this account?
- (ii) Whether resorting to the 'percentile method' had disturbed the relative merit and had caused advantage to the students who appeared in the second shift and whether the opinion of subject experts to whom questions were referred to was wrongly ignored by the University?
- (iii) Whether the action of the University in not displaying the composite result of the students of both the Tests showing their percentile amounted to lack of transparency and fairness and whether the relative performance should be put in public domain?

(11) Learned Single Judge has answered question No.(i) holding that the University was justified to adopt the 'percentile system' in the ever-changing situations. He drew strength in this regard from the fact that in the second test of NEET held on separate dates also such a methodology was followed. It has been further held as a matter of fact that no merit list was drawn up on the 'percentage system' and the decision to draw the merit list as per 'percentile system' was taken and applied to one and all on uniform basis. No accrued right of any candidate has been adversely affected.

(12) On question No.(ii), learned Single Judge held that merit has not been disturbed by resorting to 'percentile method' which has been applied as a common principle to all the candidates. The claim of writ petitioners regarding correction of the answer-keys etc. to some extent has been accepted by learned Single Judge as may be seen from the operative part of the order reproduced in para-1 above.

(13) So far as question No.(iii) is concerned, learned Single has issued directions that the composite result of both the tests showing the percentile of the students be put on the website within three days after necessary corrections are made.

(14) In these two intra-court appeals arising out of the order of learned Single Judge, the appellant in LPA No.1818 of 2016 has pre-eminently argued against the adoption of 'percentile method' by the University and the order under appeal has been mainly assailed on this count. In the second appeal, some factual issues are raised which would be adverted to in the later part of this order.

(15) The primary thrust of the appellant(s) thus is whether the University was competent to resort to 'percentile system' and whether it has

caused disparity amongst the two sets of candidates who appeared in the morning and evening Tests and how has it affected their merit?

(16) We have heard Sarvshri Ashok Sharma Nabhwala and Prof. R.D. Anand, Advocates at a considerable length and gone through the record with their assistance.

(17) The quest for a perfect answer to the principal issue necessarily requires a brief recapitulation of the material facts which continued to intervene one after the other posing a challenge of time line before the University and the authorities.

(18) State of Punjab had issued the PMET-2016 notification on 18.03.2016 and the Test was slated to be held on 15.05.2016. Meanwhile, Hon'ble Supreme Court on 11.04.2016 recalled its earlier decision in **Christian Medical College Vellore & Ors. vs. Union of India & Ors (2014) 2 SCC 305**. The Apex Court was assured on 27.04.2016 that NEET for the academic year 2017-18 would be held and the very next day the proposed time schedule was to be submitted. Meanwhile applications for modification of the order(s) dated 11.04.2016/28.04.2016 were filed which were dismissed on 02.05.2016. The Government of India on 20.05.2016 decided to bring an Ordinance on NEET and eventually brought it into force with the Presidential assent accorded on 24.05.2016. Under the Ordinance, the State Governments were allowed to opt out of NEET in respect of State Government Seats for the academic year in question. This prompted the State of Punjab to issue the second notification dated 10.06.2016, Clause-2 whereof unequivocally recites that "all admission of Government Quota Seats in Government and private institutions shall be based on merit of Punjab Medical Entrance Test-2016...".

(19) The sole criteria for admitting the students thus is their 'merit' in PMET-2016. The 'percentile system' followed by the respondent-University has only combined the merit of morning and evening tests of PMET-2016. The purpose of resorting to percentile method was only an equalizer so that a Joint Combined Merit List could be prepared. Learned Single Judge has rightly observed that the percentile formula is merely a measure to tell what per cent of the total frequency which is scored at or below the said measure and which of the candidates could not make to the 50% cut. In other words, the percentile system is a statistical device which has been applied by fixing the cut off at 50th percentile in conformity with the eligibility clauses laid down in the prospectus and by calculating the cut off at 78.8080088. The candidates who had secured the above-stated minimum cut off were thus the last one to make the cut, amongst the whole lot of candidates who appeared in the two sets of examinations. Learned Single Judge on a minute study of the 'percentile system' has further observed and rightly so that:-

“A percentile rank is the percentage of scores that fall at or below a given score. Thus, percentile is usually used to determine the relative standing of an individual in an population or a rank position of an individual. It is usually used for test scores for graduation standings and is a easy way to convey the rank of an individual relative to the other individual. A percentile is a measure which tells the percent of the total frequency scored at or below that measure. A percentile rank is thus, the percentage of scores that fall at or below the given score. The said

*candidate had only had 50% more individuals above him
and similarly, 50% below him.”*

(20) The object of the percentile system therefore is to reach the merit of each candidate and determine it through a micro-system so as to ensure that merit alone, more-so when there is hair thin difference amongst hundreds of candidates, gets precedence. We are unable to agree with learned counsel for the appellants that the percentile system offends the merit, for no comparative instance has been demonstrated to substantiate such claim.

(21) The contention that the Prospectus talks of ‘percentage’ and not the ‘percentile’ and thus the impugned action runs contrary to the Binding Book looks attractive but has no inner strength to sustain. True it is that ordinarily the Prospectus carry the force of law. However, the terms and conditions of a Prospectus cannot be so static that every procedural deviation, even if meant to achieve the very object of the Prospectus, will fall flat due to visible inconsistency. A practical and pragmatic approach ought to be adopted so that the procedural technicalities do not cause hindrance in achieving the avowed object of a Prospectus.

(22) Learned Single Judge after referring to the case-law and applying its *ratio decidendi* has very aptly held that a Prospectus of an examination is neither a scripture nor a Statute for the purpose of applying those very standards which govern the ‘modification’ or ‘amendments’ in a piece of Legislation.

(23) As observed earlier, unless the appellants can demonstrate some serious prejudice or adverse impact on the actual merit of a meritorious candidate, the procedural innovation made by the University for improved

accuracy and that too following the foot-steps of other premier institutes of the country, cannot be lightly interfered with by a writ court.

(24) The other contentions like non-publication of complete result on website to enable the candidates to see their comparative merit etc. have already been adequately redressed by the learned Single Judge by way of time bound uploading of the complete result on website.

(25) In the light of the above discussion, we do not find any merit in LPA No.1818 of 2016 which is accordingly dismissed.

(26) So far as LPA No.1824 of 2016 is concerned, learned counsel for the appellants has raised various factual issues which were statedly raised before the learned Single Judge also but have not been dealt with specifically. He reiterated that:-

- (i) the morning test was to commence at 10.00 a.m. but some candidates were allowed to enter after 10.30 a.m. thereby disturbing the tranquility of the examinees already present in the examination hall;
- (ii) some of the candidates who were originally allotted the morning session were encouraged to appear in the evening session and vice versa;
- (iii) there was power supply failure due to which some candidates remained struck up for considerable time i.e. more than half an hour or so;
- (iv) there were grave printing errors i.e. wrong questions and wrong answers;
- (v) the identity of the students on entering the examination hall was not compared or confirmed, etc. etc.

(27) We have given our thoughtful consideration to these submissions and have also minutely gone through the order under appeal. It appears that none of these contentions were raised and/or brought to the notice of the learned Single Judge. Similarly, whether there was any actual prejudice caused to any of the appellant due to these factors, is also debatable. It would thus not be expedient for us to express any views on merits, rather we grant liberty to the appellants to move an appropriate application before the learned Single Judge provided that they had specifically urged these contentions before the learned Single Judge.

(28) The LPA No.1824 of 2016 is thus dismissed with liberty aforementioned.

(Surya Kant)
Judge

20.09.2016
vishal shonkar

(Sudip Ahluwalia)
Judge