

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

**CWP No.12930 of 2011 (O&M)
Date of decision: September 08, 2017**

Lalit Sachdeva

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. P.K. Ganga, Advocate
for the petitioner.

Mr. H.S. Sitta, AAG, Punjab.

Ms. Savi, Advocate
for respondents No.2 and 3.

Mr. Sukhdeep Singh Brar, Advocate
for respondent No.4.

AJAY TEWARI, J. (ORAL)

By this petition the petitioner had claimed that he was entitled to be considered for admission under the quota of Punjab domicile.

Brief facts of the case are that as per the State of Punjab 85% Government quota seats for medical have to be filled up by students who have done their 10+1 and 10+2 from the State of Punjab. There are certain other categories of people also who are entitled to be considered for admission even though they may not have done their 10+1 and 10+2 from schools within State of Punjab. One such example is those Punjab Government employees who have been posted outside the State of Punjab and in the public interest the Government has permitted them to be considered in the Punjab quota even though their child have done 10+1 and 10+2 from outside the State of Punjab. The father of the petitioner is a

Punjab Government employee who is posted in Punjab yet the petitioner did his 10+1 and 10+2 from the State of Haryana. He filed this writ petition in 2011 claiming that he was entitled to be considered in the Punjab government quota. Vide interim order dated 9th September, 2011, this Court passed an interim order in his favour directing respondents to consider him for admission under the Punjab quota. Thereafter, at different times different interim orders were passed and it is not disputed that as on date he has cleared the MBBS examination and his result has been declared under different interim orders passed by this Court. It is also necessary to mention here that however, the interim order passed in favour of the petitioner specifically recorded that the same would not create any equity in his favour. The argument raised is that sub-clause (viii) of Clause 4-A of the prospectus (Annexure P-1) is a stand alone Clause and can independently confer rights of the students of persons covered to seek admission under the Punjab quota. On the other hand, the arguments of the University and the State of Punjab are that the different sub-clauses of Clause 4-A are all inter-linked. At this stage and it would be apposite to reproduce the provisions:-

“ 4. ELIGIBILITY CRITERIA FOR PMET:

A. For PMET (Common Criteria for all Courses).

- i) The candidate should have passed 10+2 or its equivalent examination and the qualifying examination as a candidate from the recognized institution/ university. The 10+2 or equivalent examination will be as per details given below –
Para amended vide Corrigendum No. 5/3/08-3HBIII/3389 dated 30.05.2008.*

(a) *The higher secondary examination or the Indian School Certificate Examination which is equivalent to 10+2 Higher Secondary Examination after a period of 12 years study, the last two years of study comprising of Physics, Chemistry and Biology after the introduction of the 10+2+3 years education structure as recommended by the National Committee on Education:*

OR

(b) *The intermediate examination in Science of an Indian University/Board of other recognized examining body with Physics, Chemistry and Biology which shall include a practical test in these subjects and also English as a compulsory subject;*

OR

(c) *The Pre-professional/pre-medical examination with Physics, Chemistry and Biology, after passing either the higher secondary school examination of the pre- university or an equivalent examination. The pre-professional/ premedical examination shall include a practical test in Physics, Chemistry and Biology and also English as compulsory subject;*

OR

(d) *The first year of the three years degree course of a recognized university with Physics, Chemistry and Biology including a practical test in these subjects provided the examination is a “ University Examination” and candidate has passed 10+2 with the English at a level not less than a core course;*

OR

(e) *B.Sc examination of an Indian University, provided that the candidate has passed the B.Sc. Examination with not less than two of the following subjects- Physics, Chemistry and Biology (Botany, Zoology) and further that the candidate has passed the earlier qualifying examination with the following subjects –Physics, Chemistry and biology and English;*

OR

(f) *Any other examination which, in scope and standard is found to be equivalent to the intermediate Science, examination of an Indian University/Board, taking Physics, Chemistry and Biology including a practical test in each of these subjects and English;*

ii) *The candidate should have passed both the 10+2 examination with Physics, Chemistry, Biology and English or equivalent examinations as listed under 4 A(i) a to f, during the Annual Examination held in March / April of the corresponding year, or earlier as a candidate from a recognized institution. Candidates who appeared as candidate but failed/were placed in reappear after studies at & 10+2 in a recognized institution shall also be eligible if they pass such examination during annual examination of the corresponding year of before in case of MBBS/BDS.(Para amended vide Corrigendum No. 5/3/308-3HBIII/3389 dated 30.05.2008).*

iii) *Those candidates who had been placed in compartment in the earlier years should clear the same along with the students of annual examination of the corresponding year. Those who are placed in compartment in the annual examination the corresponding year or who are already in compartment and fail to clear the same in the annual examination the corresponding year shall not be eligible for admission to MBBS/BDS.*

iv) **Result not declared** – *A candidate who may have appeared in the qualifying examination in the annual batch, but whose result has been not declared may be provisionally permitted to appear in PMET the corresponding year. The candidate will be required to produce the evidence of the result having been declared and he/she having passed the annual examination the corresponding year fulfilling the eligibility by the time of first counselling.*

v) **Age:** *Candidate must have completed the age of 17 years on or before 31st Dec the corresponding year.*

vi) *Should have passed his/her 10+2 examination or other qualifying examination in place of 10+2, as listed in 4 (A) (i) (a) to (f) above, as candidate from a recognized institution situated in the State of Punjab only except for the exemptions wherever applicable. The candidate would be required to submit a certificate to this effect from the Principal/Head of the Institute last attended in the prescribed proforma.*

(Para amended vide Corrigendum No. 5/3/308-3HBIII/3389 dated 30.05.2008).

vii) *In case candidate has also taken up Mathematics along with Physics, Chemistry and Biology and English at 10+1 & 10+2 as a candidate, then the marks obtained in Mathematics shall not be considered for admission to MBBS/BDS.*

(Para amended vide Corrigendum No. 5/3/308-3HBIII/3389 dated 16.07.2009).

viii) *The candidate should bonafide resident of Punjab. The Resident status of the Punjab State, will be taken in terms of Punjab Government, Department of Personnel and Administrative Reforms (PP II Branch) letter No. 1/3/95-3 PP 11/9619, dated 6th June, 1996, ID No. 1 /2/96-3PP-2/8976, dated 7th July, 1998 and ID No. letter No. 1/3/95-3PP 11/81, dated 1st January, 1999 and further instructions issued by the Department, if any and the same, shall be adhered to in letter and spirits in PMET.*

B. For MBBS/BDS Courses.

Candidate must have passed in the subjects of Physics, Chemistry, Biology and English individually and must have obtained a minimum of 50% marks (40% for SC/BC and 45% for physically handicap) taken together in PCB and also in Physics, Chemistry and Biology (PCB) in 10+2 examination. (Para modified vide Corrigendum No. b5/3/08-3HBIII/3189 dated 27.04.2010).

C. After second counselling, the seats left vacant in Private Institutes both in Government as well

as Management/Minority quota shall be filled by the Management out of the eligible candidates from the same category who have qualified in PMET. In case of BDS, if the PMET qualified candidates are not available both from the University and on open advertisement in PMET shall be admitted on the basis of their score in 10+2 or equivalent examination. If even such candidates are not available, then those who have not appeared in PMET will be admitted on the basis of 10+2 or equivalent examination. Even if such candidates other than belonging to Punjab shall also be considered subject to the condition that all such admissions are made on merit in a transparent manner after giving proper public notice. (Para modified vide Corrigendum No. 5/3/08-3HBIII/3189 dated 27.04.2010).

D. Exemptions under para 4 A (i) (a) to (f) for 4 A (vi) and 4C (i)

i) *Children/wards/ dependents (whose parents are not alive) of all those regular Punjab Government Employees, members of All India Services borne on Punjab cadre, Serving Judges and the employees of the Punjab and Haryana High Court, employees of Boards/ Corporations / Statutory Bodies established by an act of the State of Punjab who have been holding post outside Punjab on or before 1st January of the year of entrance test and their children/wards/dependants were compelled to do 10+1 and/or 10+2 outside Punjab.*

ii) *Children/wards/dependants (whose parents are not alive) of all those regular Central Government Employees, employees of Boards / Corporations/ Statutory Bodies of the Central Government who have remained posted inside Punjab for at least two years out of the three years preceding the year of PMET but were posted outside Punjab for some time during these three years due to which their children/wards/dependants were compelled to do 10+1 and/or 10+2 or equivalent qualifying examination outside Punjab. However, those*

who remained posted in Punjab continuously for these three years shall not be entitled to be exempted as they are equally placed with other Punjab Government employees posted in Punjab.

iii) Children/wards/dependants (whose parents are not alive) of all those Punjab Government pensioners who have retired on or before 1st January of the year of entrance test and have I settled outside Punjab on or before 1st January of the year of entranced test and their children/wards/dependants were compelled to do 10+1 and/or 10+2 outside Punjab.

iv) Children/wards/dependants (whose parents are not alive) of those military/para military forces personnel who were born in territory of Punjab as per their service record at the time of entry into service.

v) Children/wards/dependants (whose parents are not alive) of those Ex-employees of military/para military forces who were born in the territory of Punjab as per their service record at the time of entry into the service and have retired on or after 1st January of the year preceding two years of the year of entrance test.

vi) Candidates getting admission on all India basis in BAMS, BHMS courses in case the Punjab Candidates are not available.

vii) Candidates belonging to minority community who are competing for the minority quota in the minority institutions.

viii) Candidates seeking admission under NRI category.

ix) Candidates under J & K migrant.

x) Tsunami Victim Category.

xi) Wards of defence personnel posted in Punjab who has passed only for the qualifying examination i.e. 10+2 exam mandatory for the admission to MBBS/BDS COURSES – IN MEDICAL and DENTAL shall be considered eligible for admission in professional colleges and institutions in State. Para amended vide

Corrigendum No. 5/3/08-3HBIII/4363 dated 25.08.2009).

Note 1. *Fore those candidates who are repeaters in categories (i) to (v) the year of entrance for the purpose of all these clauses shall be taken as the year of passing 10+2 examination by the Candidates in place of year of PMET.*

Note 2. *The dependency certificate in case of those whose parents are not alive shall have also to be taken from the Deputy Commissioner of the District where the candidate resides.”*

Counsel for the petitioner has relied upon the judgment of a Single Bench of this Court titled as Surbhi Vs. The State of Punjab and others, 2009 (4) SCT 844. In that case, the father of the petitioner who was otherwise a permanent resident of the State of Punjab was working in the Armed Forces Head Quarter Civil Services and therefore, the petitioner in that case was constrained to undergo her school education from outside Punjab. She had claimed that she should be considered in the Punjab quota since there was an exemption granted to members of All India Services and Central Government Employees in Clause 4-D 1(i) (ii). It was further claimed that if the case of the petitioner was not covered by these clauses then she should be deemed to fall under the category 4-D (iv) being the Ward of Military Forces Personnel born in the territory of the State of Punjab. This Court held firstly that the petitioner fell within the exemption clause and consequently, upheld her right to be considered in the Punjab quota. It was however, also held that Clauses vi and viii are independent of each others.

Counsel for respondents No.2 and 3 has however argued that in the first place the determinant in the case of Surbhi was the fact that the

Court had held the petitioner entitled to exemptions under Clause 4-D. Her second argument is that the attention of this Court was not drawn to an earlier decision in Daman Deep Singh Makkar and others Vs. State of Punjab through its Secretary to Govt. of Punjab and others, reported as 2000(3) RSJ 241, wherein this Court had held that sub-Clause (vi) of Clause 4 is the dominant clause for granting eligibility to be considered in the Punjab quota. I find myself in respectful agreement with the proposition of law laid down in Daman Deep Singh Makkar (supra) and consequently, hold that the petitioner could not be entitled to be considered for admission in 85% Punjab quota and, to that extent, hold that sub-Clause (viii) is not independent of sub-Clause (vi).

Counsel for respondents No.2 and 3 has further relied upon the judgment of Anant Madaan Vs. State of Haryana and others reported as (1995) 2 SCC 135 and submits that in that case originally the requirement was that a candidate should be a resident/domicile in the State of Haryana. Thereafter in 1994, the eligibility conditions were changed and the following conditions were prescribed:-

- (i) *The candidate who have studied 10th, 10+1 and 10+2 classes as regular candidates in recognized institutions in Haryana.*
- (ii) *The children/wards of the employees appointed on regular basis of Haryana State Government/Members of All India Services borne on Haryana cadre/statutory bodies/corporations established by or under an Act of the State of Haryana whether posted in Haryana or outside.*
- (iii) *The children/wards of the employees of Indian Defence Services/Paramilitary Forces belonging to Haryana State at the time of entry into service as per their service records.*

Challenge was made to these conditions in the case above, the details of which are mentioned as follows in Para 5:-

“Out of a large number of petitioners whose petitions were decided by the Punjab and Haryana High Court by its judgment dated 30-8-1994 (being the judgment of the third learned Judge to whom the matter was referred because of the difference of opinion between the two teamed Judges), only four petitioners are before us as appellants. These are: Anant Madaan in appeal arising from SLP (C) No. 16093 of 1994, Bharat B. Dua in appeal arising from SLP (C) No. 16149 of 1994; Nandita Kalra in appeal arising from SLP (C) No. 18871 of 1994 and Shalini Jain in appeal arising from SLP (C) No. 20602 of 1994. Anant Madaan has passed his 10+1 and 10+2 examinations from New Delhi. According to him, his parents are residents of Haryana. Bharat Dua passed his ICSE (10th standard) examination as well as 10+1 and 10+2 examinations from Bishop Cotton School, Shimla in Himachal Pradesh. According to this appellant, his parents are residents of Haryana. Nandita Kalra has passed her 10th, 10+1 and 10+2 class examinations from New Delhi. Both her parents are also residing in New Delhi. Her father is in the Department of Science and Technology while her mother is a Professor. According to her, though her parents reside in New Delhi on account of their work, they are domiciled in Haryana. Shalini Jain has passed her 10th, 10+1 and 10+2 class examinations from New Delhi. Her parents, according to her, are residents in Haryana. According to all these appellants the condition which requires the candidates to have passed their 10th, 10+1 and 10+2 class examinations from recognised institutions in Haryana is arbitrary and discriminatory because it excludes children of parents who may be residents of or who may be domiciled in Haryana but who may have sent their children to schools or colleges outside Haryana for a variety of reasons. They have also challenged this requirement on the

ground of hardship. All these candidates wanted to appear for the entrance test conducted by the Maharshi Dayanand University, Rohtak, Haryana”.

Having considered the facts the Hon'ble Supreme Court had held as follows:-

“In the present case, the reservation which has been made on the basis of candidates having studied for the preceding three years in recognised schools/colleges in Haryana is in respect of these 85% of seats. It excludes 15% seats which have to be filled in on an all-India basis. This eligibility criterion, therefore, is in conformity with the decisions of this Court referred to above. It cannot, therefore, be considered as arbitrary or unreasonable or violative of Article 14 of the Constitution”.

In view of this, it is clear that the judgment in Surbhi (supra) cannot hold water.

That, however, is not the end of the matter. The issue before me now is whether I should go so far as to render the entire medical course undertaken by the petitioner to have been cancelled. Counsel for respondents No.2 and 3 has further argued that that various interim orders passed in the favour of the party would not create any equity and once this Court has held that condition, sub-clause (viii) is not an independent stand alone provision and is inter-linked with sub-clause (vi), the petition must fail.

Counsel for the petitioner has, however, relied upon the judgment of the Supreme Court in the case of State of Maharashtra and others Vs. D. Y. Patil Vidyapeeth and others, reported as 2016 (9) SCC 401, to contend that in that case the High Court had allowed certain institutions

to make admissions on their own by way of an interim order and that was challenged by the State of Maharashtra and it was held that admissions could be made only by way of centralized counselling. The Supreme Court also vacated those interim orders but specifically held that this would not disturb the admissions already made since they were done under the directions of the High Court. As per the learned counsel, in the present case also the petitioner was granted interim order after hearing all the parties and there is no allegation of any mis-statement or any other attempt to over-reach the Court and in the circumstances, the petitioner should not be now put in a position where the entire six years of his life are wiped out and he is divested of the decree of MBBS. There is another angle to this. It cannot be lost sight of that there is a great shortage of doctors; the petitioner has now cleared the MBBS course and the interim orders were passed after hearing the parties. Consequently, even though the claim set up by the petitioner has to be rejected in law yet the degree obtained by him shall continue to be operative and he would not be divested of the benefit of education he had received in the past six years.

In the circumstances, the respondent-university is directed to finally declare the result of the petitioner and issue the final DMC to him.

Disposed of.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

September 08, 2017

m. sharma

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No