

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CWP No. 9395 of 2017

Date of Decision: 21.06.2017

Harkirat Singh and others

....Petitioners

VERSUS

Panjab University and others

....Respondents

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. S.S. Rangi, Advocate
for Mr. J.S. Ghuman, Advocate
for the petitioners.

Mr. Subhash Ahuja, Advocate
for respondents no. 1 and 2.

SURINDER GUPTA, J.(Oral)

This is petition filed by Harkirat Singh, Diljot Singh and Pawandeep Singh, students of LLB Three Years Degree Course in Panjab University Regional Center Sri Muktsar Sahib. Petitioners have alleged that they applied for migration to Panjab University and on the basis of their performance, they were placed in merit list at serial nos. 87, 89 and 90 respectively. Respondents no. 3 to 6, who were placed in merit list at serial nos. 123, 134, 118 and 126 respectively, were allowed migration on the basis of classification and quota system. Aggrieved against action of respondent-University, they made representation (Annexure P-4) but the same was not considered and petitioners kept on waiting for action by the respondent-authorities. A week before filing of this petition, they came to know that their claim for migration was not considered, therefore, they approached this Court by way of present writ petition dated 30.04.2017.

2. Learned counsel for petitioners while referring to judgment of

coordinate Bench of this Court on similar matter in CWP No. 5017 of 2017 decided on 01.05.2017, has argued that it is a covered case as petitioners in that case, who were placed at serial no. 100, 105, 106 and 117 i.e. much lower in merit position than petitioners in this petition, were allowed to be migrated to Panjab University as the persons placed lower to them in the merit list were allowed migration. Panjab University filed LPA No. 747 of 2017, which was dismissed on 16.05.2017 with the observations as follows:-

“Alongside the aforesaid, learned counsel for the appellants also drew our attention to the provisions of Panjab University Calendar, in particular, clause 29.1 which appears under the heading of Chapter “Admission and Migration of Students and Tuition Fees.

Clause 29.1 is extracted herebelow:-

“29.1 In making admissions all University Teaching Departments and the Affiliated Colleges will reserve seats in each class as under:-

(A) Affiliated Colleges of Punjab State shall follow reservation policy of the Punjab Government.

(B) Affiliated Colleges of Chandigarh (U.T) shall follow the reservation policy of Union Territory Administration.

(C) All University Teaching Departments shall follow the reservation policy of the Central Government i.e

(a) 15% for members of Scheduled Castes;

(b) 7.5% for members of Scheduled Tribes;

(c) 5% for members of Backward Classes

as defined by the Government from time to time.”

Learned counsel for the appellants wants us to conclude from reading of clause 29.1 that it applies to migration.

We are afraid we cannot place any such interpretation as bare reading of 29.1 indicates its relevance only to

admissions and thus the criteria of reservation applied is easy to comprehend. But in so far as migration is concerned there is absolutely no provision for reservation that has been brought to our notice. During the course of hearing of the writ petition, the Registrar of University was summoned and he candidly conceded to the same and also stated that there is no such practice and reservation had been resorted to for the first time.

If that be so, then we are afraid then we cannot find any fault with the reasoning of the learned Single Judge where the criteria of reservation applied to migration has been deprecated and negated. We would re-affirm the findings in the absence of any provision to the contrary.

Learned counsel for the appellants then contends that direction has been issued by the Court to admit the students to the 4th semester which is impermissible in view of the afore-extracted clauses of migration policy which permits migration to 3rd and 5th semester. We are afraid we cannot accept this plea for the reason that writ petitioners had applied well in time for the 3rd semester and it is dilly dallying by the University which has resulted in such a piquant situation. Present problem is the creation of the University itself which did not decide the matter of the writ petitioners for an inordinate period despite several representations to remedy the situation.”

3. Learned counsel for respondents no. 1 and 2 while conceding that the matter declaring the action of respondents allowing migration by way of reservation to persons lower in merit list has since been held not in accordance with law and rules of Panjab University but he has vehemently opposed this writ petition on the ground that at this stage the University does not have required number of seats for petitioners and this writ petition is hit by the principle of delay and latches. In support of his contention, he has relied on observations of Apex Court in case of **Dr. Pramod Kumar**

Joshi vs. Medical Council of India and others, 1991 (2) Services Law Reporter 58 and **Anil Kumar vs. State of Haryana and others, 2001 (1) RSJ 196.**

4. Learned counsel for petitioners has argued that point of delay and laches has also been discussed in CWP No. 5017 of 2017 and was also raised by respondent-University in LPA No. 747 of 2017 but was repelled by this Court. Petitioners have been running from pillar to post and were making representations, which were not considered. The University cannot justify its wrong only on the ground that it has already allowed admission to some other students and semester is going to be over. Even in this writ petition, learned counsel for respondent-University had been taking adjournments on the ground that LPA No. 747 of 2017 was fixed for arguments. That LPA was decided on 16.05.2017 and only thereafter, this writ petition is being argued. On any score there is no delay or laches on the part of petitioners. Even petitioners in case CWP No. 5017 of 2017 have been allowed to be taken by way of migration in 5th Semester and similar order can be passed even for petitioners in this writ petition.

5. In case of ***Dr. Pramod (supra)***, claim of petitioner was declined despite having force on the ground that session, in which petitioner was seeking admission, was almost complete. In the case of ***Anil Kumar (supra)***, petitioner approached the Court after more than seven months of admission.

6. Both the above citations are not applicable to the facts of the case in hand. Petitioners are not seeking fresh admission to a class or course. They are already studying in Regional Centre of Panjab University. They had sought migration as per rules of University and the persons lower

in merit to them were allowed migration while their claim was ignored. Action of respondent-University has already been declared illegal in CWP No. 5017 of 2017 and LPA No. 747 of 2017.

7. While taking note of delay, the coordinate Bench of this Court while deciding CWP No. 5017 of 2017 has observed as follows:-

“Thus, the result of the aforesaid discussion is that the respondent university has committed a patent error of law in granting admission by creating imaginary and artificial categories and has violated the rules which says that the migration would only be on the basis of inter se merit. The first question is thus, deciding accordingly holding that in the Punjab University there is no provision of reservation in admission by way of migration. The second question, is about the rights of the present petitioners as to whether they are entitled to any relief or not at this stage. To my mind, the petitioners have been running after the authorities of the University right from 04.01.2017 and at one point of time on 27.01.2017 their case was referred to the DUI but except for false assurance nothing was given to them till the time they decided to approach this Court in the month of March, 2017. Thus, the petitioners were, well in time before this Court for the redressal of their grievance and since the migration have not taken place and the semester has not closed, therefore, they still can be migrated at this stage. Hence, the second question is also decided in favour of the petitioners and the University ordered to pass the order of migration of all the petitioners forthwith in the 3rd semester. With these observations, the present petition is allowed.”

8. The issue of delay was also raised before Hon'ble Division Bench of this Court. Even while dismissing LPA No. 747 of 2017, it was observed that writ petitioners had applied for migration well in time for 3rd

Semester. It was dilly dallying by the University, which has resulted in such

a piquant situation and present problem is a creation of University itself. The migration is permissible in the University in 3rd and 5th semesters. Petitioners, who were not permitted migration in 3rd semester can be adjusted in 5th semester, which will start this year.

9. In view of above discussion, argument of learned counsel for respondent-University seeking dismissal of this writ petition on the ground of delay and laches has no merit and is rejected.

10. As a sequel of my above discussion, the instant petition is allowed and respondent-University is directed to pass order on migration of all the petitioners forthwith in 5th Semester.

June 21, 2017
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No