

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP no.15586 of 2018 (O&M)
Date of Decision : 24.07.2018

Sabhya Kamal

....Petitioner(s)

Versus

Union Territory, Chandigarh and others

...Respondent(s)

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR JUSTICE MAHABIR SINGH SINDHU

Present : Mr.Girish Agnihotri, Sr. Advocate with
Mr. Abhinav Gupta,
Mr. Arvind Seth,
Ms. Roja Agnihotri, Advocate for the petitioner

Mr. Suman Jain, Advocate for respondent no.1 and 2

Mr. Harsh Aggarwal, Advocate for CBSE

Mr.Manbir S Basra, Advocate for UT, Chandigarh

Dr. Anmol Rattan Sidhu, Sr. Advocate with
Mr. J.S.Rattu and
Mr. H.S.Saini, Advocates for respondents
no. 5 to 10, 12 to 14, 16 and 17

Mr. Lalit Sood, Advocate for respondent no.15.

MAHESH GROVER, J.(ORAL)

CM no. 10299-CWP of 2018

Allowed as prayed for.

Main case

The petitioner, an aspirant for the M.B.B.S course has questioned the selection made by the Government Medical College and Hospital, Sector 32, Chandigarh. Since the petitioner herself belongs to the Scheduled Caste category she has confined her challenge to this section of the selection.

Although other issues have also been urged before us with regard to the eligibility criteria intended for the U.T. Chandigarh, the challenge has been largely confined to the benefit of reservation made admissible to the aspirants from other States.

The brief argument is that candidates who have been issued certificates of Scheduled Caste/ Scheduled Tribe and Backward Classes in the neighbouring States such as Punjab, Haryana, Himachal Pradesh and Rajasthan would be entitled to the benefit of reservation in their States and not in U.T, Chandigarh. With regard to this learned counsel for the petitioner has relied upon the observations made by Hon'ble Supreme Court in case titled as 'Sanjeev Kumar and others vs. State of Bihar and others' reported as 2016 (13) SCC 105. The relevant observations are reproduced herebelow:-

“2. It is, in our opinion, unnecessary to set out in detail the factual matrix in which the controversy arises, partly because the order passed by the High Court has already done so and partly because the question that essentially falls for our determination stands concluded by the judgments of this Court in *Marri Chandra Shekhar Rao v. Dean, Seth G.S. Medical College and others – (1990) 3 SCC 130* and *Action Committee on*

issue of Caste certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra and Another v. Union of India and Another – (1994) 5 SCC 244. The effect of both these judgments which happen to be Constitution Bench pronouncements, was considered by a Division Bench of this Court in **Melwin Chiras Kujur v. State of Maharashtra and others, disposed of on 14th September, 2015**, by a Two-judge Bench of which one of us (Thakur,J.) was a member. The question in Melwin's case (supra) as in the case before us was whether a person belonging to any Scheduled Caste/Scheduled Tribe in the State of his/her origin can claim the benefit of reservation upon his/her migration to another state. In Marri Chandra Shekhar Rao and Action Committee's cases(supra) this Court has answered the said question in the negative. In Melwin's case (supra) also while referring to the Constitution Bench pronouncements of this Court, this Court has reiterated that the benefit of reservation for Scheduled Caste and Scheduled Tribe candidates, does not enure to candidates upon their migration to another State even in cases where the caste of those migrating from one State to the other is recognized as a Scheduled Caste/Tribe in both the States. In Melwin's case (supra) this Court observed:

“The legal position as rightly pointed

out by learned counsel for the appellant has been

firmly settled by two decisions of the Constitution Bench referred to by us in the earlier paragraphs. Benefits of reservation are not available to those migrating from one State to the other even if such candidates belong to the same caste. That part of the controversy therefore stands concluded and does not require any further elaboration.”

3. In the case at hand the High Court has held and in our opinion rightly so that the appellants who are originally from the State of Uttar Pradesh were not entitled to the benefit of reservation as Scheduled Caste candidates in the State of Bihar even when the caste to which they belong was found and recognized as a Schedule Caste in both the states. To that extent, therefore, the judgment of the High Court is legally unexceptionable and does not in our opinion call for any interference.”

Learned counsel for the petitioner also refers to the list given out by the Central Board of Secondary Education (hereinafter referred to as the 'CBSE') wherein it has been stated that when candidates apply to their States they shall mention their category as per State category list and the State counselling authorities will thereafter make their merit list. This is reflected from the following:-

“Responsibility of CBSE is to conduct the examination and declare the result based on eligibility criteria provided by MCI. Candidates were desired to submit category as per National Category List. Based on

the same result has been declared. CBSE has provided All India Rank to the candidates. Admitting Authorities will draw merit list based on All India Rank for the seats of MBBS/BDS falling under their jurisdiction. When candidates will apply to their State, they will mention their category as per State Category List. State counselling Authorities will accordingly make their Merit list. The same is the case with the domicile. CBSE has no role in it and no change in any data will be made by the CBSE.”

Further information given out by the CBSE indicates that 1344 candidates were registered with Chandigarh, 1309 appeared out of which 940 qualified.

The whole emphasis of the argument is that if a person has claimed a particular State and placed in merit in the concerned State, he or she would be enabled to get admission in that State but he/she cannot apply and avail a dual benefit in neighbouring State or for that purposes U.T. Chandigarh. It is contended that whole scheme is intended to operate in this manner. Rather the whole scheme of selection in continuation of the guidelines given by the CBSE would indicate a state quota to be filled up from those who opt, merit wise, and this is the reason why a separate option has to be exercised by a candidate. This is evident from the information regarding the State quota seats given out by the CBSE extracted herebelow:-

Information regarding State Quota Seats:

“For State quota and other seats falling under the ambit of State, candidates may apply to their domicile states and a

merit list as per State rules and based on All India Rank will be prepared by concerned Counselling Authorities. The counselling for Private Medical Colleges will also be conducted by the concerned State Counselling Authority.”

It is next contended that the eligibility condition enabling candidates who have only done their 10+2 from Chandigarh to get the benefit of U.T pool is also arbitrary. We would for the purposes of reference extract the eligibility criteria for the 77 allocated seats to the Chandigarh.

A-3 Eligibility Criteria and admission procedure for 77 UT Chandigarh pool

1. xxx
2. The candidates should have passed 12th standard examination (qualifying examination) from schools/colleges recognized by the Chandigarh Administration and situated in the Union Territory of Chandigarh, as regular student of the said school/college. This condition is waived off in respect of wards of serving defence personnel/ex-servicemen vide letter no. 19/1/3-IH(3)-2007/18322 dated 14.9.2007.

A-4 : Eligibility criteria for UT Chandigarh Pool seats reserved for Scheduled Castes

1. The candidates must fulfill relevant General Eligibility Criteria (Page 7-8)
2. The candidates must fulfill relevant Eligibility Criteria for UT Chandigarh Pool seats.
3. The candidates belonging to Scheduled Castes have to submit a certificate to this effect issued by the Tehsildar/ Magistrate 1st Class/ Deputy Commissioner of their area of residence and bearing the seal of the issuing authority. (Specimen copy of the certificate is appended as

Appendix C).

Annexure P-11 details the select list from where the petitioner has demonstrated multiple benefits obtained by the candidates in more than one State. We may for the purposes of understanding set out the particulars of the respondents who have obtained this dual benefit of reservation in the U.T. Chandigarh, and other State while possessing a certificate from different States.

Respo ndent no. in present petitio n	Name of candidate	Father's name	NEET Roll no.	NEET score/ Rank	Catego ry	Course	State by which SC certificate was issued	College/ Institute allotted in State other than UT, Chandigarh after opting for a State of their choice
R-9	Ritul	Tejpal Singh	501809 496	492	SC	MBBS	Haryana	Pt.B.D.Sharma PGIMS, Rohtak
R-12	Harsh Kumar	Ramesh Kumar	501818 706	483	SC	MBBS	Haryana	Pt. B.D.Sharma PGIMS, Rohtak
R-16	Kuldeep Verma	Pyare Lal Verma	501814 169	431	SC	MBBS	Haryana	SHKM Govt. Medical College Nalhar, Mewat
R-18	Manisha Kumari	Satya Pal Singh	504007 371	428	SC	Dental	Haryana	Pt. B.D.Sharma PGIMS, Rohtak
R-8	Ankit Alria	Surpana nd Alria	501801 883	21193	SC	MBBS	Rajasthan	SP MC, Bikaner
R-15	Sonal Singh	Badri Prasad Jatav	502603 769	55065	SC	BDS	Rajasthan	RUHS College of Dental Sciences (GDC), Jaipur

The short point therefore that arises for our consideration is whether a person who has possessed a certificate of a Scheduled Caste/ Scheduled Tribe from a particular State is enabled to get a benefit of the said reservation in any other State to which he does not belong. The answer has already been provided by the Hon'ble Supreme Court in Sanjeev Kumar's case (supra).

When confronted with this situation, learned counsel for the U.T, Chandigarh has no plausible explanation, or even an apologetic justification, except to say that merit has not been violated. Similarly, the private respondents have only pleaded equity but are unable to justify the course adopted by the U.T in enabling them to admission to the course. It has, however, been highlighted by the respondents that petitioner herself had applied similarly in other States and she was granted the benefit of reservation in another States, the same has been denied by the petitioner to contend that the benefit was not granted to her in any other State though she had applied for admission in an other State.

Be that as it may, we notice that the course adopted by the U.T., Chandigarh to be in conflict with the observations of the Hon'ble Supreme Court and to make the matter worse the stand of the U.T in the written statement on affidavit also justifies the plea of the petitioner. It has been stated in para 12 “ in fact no candidate can take benefit of residence proof of two States” implying a State wise inviolable merit list.

The admission has been granted to the private respondents only on the strength of their having done their 10+2 from U.T, Chandigarh.

We would for the present not comment on the issue of the eligibility as this issue pales into insignificance but suffice it to say that even if we construe them as eligible having done their 10+2 from U.T. Chandigarh, they will not be entitled to the benefit of reservation in the absence of any certificate from the U.T and also in view of their certificate from other State to which they have opted.

We, therefore, quash the admissions made by the Government

a fresh round of counselling.

In case some of the aspirants are displaced in the fresh process to be undertaken, their fees etc. would be refunded by the Government Medical College and Hospital, Sector 32, Chandigarh forthwith.

In view of above, petition stands disposed of.

(Mahesh Grover)
Judge

24.07.2018
rekha

(Mahabir Singh Sindhu)
Judge

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