

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

CWP No.22628 of 2018

Date of Decision : 06.09.2018

Federation of Self Financing Colleges of
Education, Punjab

....Petitioner

Versus

State of Punjab and others

....Respondents

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

Present: Mr. Rajiv Atma Ram, Sr. Advocate with
Mr.Abhishek Arora, Advocate
for the petitioner.

MAHESH GROVER, J. (Oral)

The petitioner prays for issuance of a writ in the nature of mandamus directing the State of Punjab to allocate sufficient number of students and also permit them alternatively to fill up the vacant seats after absorbing the candidates who have successfully qualified in the Common Entrance Test for B.Ed.Course.

We notice that on an earlier occasion while dealing with CWP-20329-2017 we had intervened. Thereafter the State came up with a solution and a road map to absorb the vacant seats. We had in turn while accepting the recommendations disposed of the writ petition as infructuous but clarified that any exercise to limit or enhance the seats of B.Ed. Colleges pursuant to the queries raised by the Court in related petitions would evidently be applicable from the next academic session.

It may not be out of place to mention here that this is a problem that has erupted year after year and even in this session when the petitioner approached this Court by way of CWP-13930-2018. We had directed the State to consider their grievance and pass an order on the representation

preferred by the petitioner, which now finds an expression in the order impugned in the present petition. While declining the prayer of the petitioner reliance has been placed on a decision rendered in LPA-1267-2010, where the Court framed the following questions for itself to answer :-

“5. The question that arises for consideration is whether the members of the respondent-Association, who claim to be Self-Financed/Unaided B.Ed.Colleges have an absolute right to remain out of the CET conducted by the State for the admission to the B.Ed. Examinations and any legal right accrues in their favour to hold an independent CET for admission, in view of the NCYTE Act and Regulations.

6. Another issue which requires deliberation is whether by holding such a CET, Article 19(1)(g) of the Constitution of India is violated resulting in the state having an absolute authority or control on the admission process of the unaided institutes.”

It then went on to answer the questions as below :-

“33. Having analysed the legal position, it is to be noticed that the State cannot be permitted to take a vacillating stand and deny the institutes admission on account of not holding the CET and by not having a specific policy in place.

34. Accordingly, in our opinion, a direction is liable to be issued to the State of Punjab that the State should hold a Common Entrance Test as per its policy for the B.Ed. Course before the start of every academic year for admission to the College of Educations situated in the State which are recognized and affiliated. The admission shall be made upon the merit obtained in the test conducted in accordance with the laid down norms and to the extent of the intake capacity prescribed by the Council. The said exercise should be carried out two months in advance before the start of the academic session so that the students are not left in suspense and can apply for admission on the basis of the result so declared.

35. Consequently, the issues arising in these appeals are answered against the association and it is held that they do not have any

absolute right to remain out of the CET to be conducted by the State even though they are unaided and recognized institutes, in the absence of any challenge to the regulations issued under NCTE Act.

36. It is also held that by holding CET, Article 19(1)(g) of the Constitution of India is not violated as the paramount consideration being merit and the State having the authority under the Statute can hold the test and it only amounts to a regulatory measure on the admission process and does not impinge on the autonomy of the unaided institutes to run and administer the same.

37. As a upshot of the above discussion, the present appeals are allowed. The judgment of the Learned Single Judge dated 01.07.2010 passed in CWP No. 10091 of 2009 is set aside and the writ petitions are dismissed. However, the State shall remain bound by directions hereinbefore made and shall comply with the same for the next academic session, i.e., 2016 onwards as the admission for the year 2015-16 is under process. It is further clarified that any admissions, made in pursuance of the judgment of the Learned Single Judge and in view of the examinations conducted by the Association, will not stand affected by the present judgment, directions of which are to operate from the academic session 2016-17.”

Evidently, the mode of Common Entrance Test was approved.

If that is so, then the process of filling up the seats becomes restricted to the process adopted i.e. of Common Entrance Test. We cannot, therefore, issue a positive mandate that the remaining seats be filled up by a procedure beyond the one that has been adopted by the State and approved by the Court. If we notice the orders passed by this Court in CWP-20329-2017, it was largely a result of deliberations inter se between the stakeholders i.e. the State and the Colleges and in view of the satisfactory resolution of the issues the court had disposed of the petition as infructuous. When the situation as offered in the petition is not distinct than the one existing earlier, we would not offer any further observation but leave it entirely to the State and the Colleges to

resolve such an issue.

To our mind such a situation is likely to occur every year as there has neither been any assessment made by the State of its ability to absorb the trained human resources likely to exit the colleges after completion of the course and neither is there any assessment of the available and desirous human resources willing to undertake the courses offered by the colleges so that the situation does not emerge where the seats go abegging. This is entirely upto the State to formulate a policy in this regard. But we can certainly express a sentiment that seats in educational institutes of higher learning should not be wasted as has been observed by the Hon'ble Supreme Court as well in numerous pronouncements. We have already said so that the State should formulate a policy for the future and if the mandate has not been complied with evidently the petitioner would have remedies in law to enforce it.

With the above observations, the petition stands disposed of.

(MAHESH GROVER)
JUDGE

06.09.2018
dss

(MAHABIR SINGH SINDHU)
JUDGE

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