

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No.23083 of 2018

Date of Decision: November 21, 2018

Sushma Kumari

.....Petitioner

versus

State of Haryana and others `

.....Respondents

CORAM: HON'BLE MR.JUSTICE MAHESH GROVER.

HON'BLE MR.JUSTICE LALIT BATRA.

Present: Mr.B.S.Rathee, Advocate, for the petitioner.
Mr.Surinder Garg, Advocate, for the University.
Ms.Pritibha Yadav, Advocate, for respondent Nos.4 & 6.
Mr.Sudhir Hooda, Advocate, for respondent No.5.
Mr.Surinder Dagar, Advocate, for respondent No.7.

-.-

Mahesh Grover, J. (Oral)

The respondents have produced a CD of videography footage in Court which is taken on record.

This writ petition has been filed by the petitioner who has been denied admission to MBBS/BDS course for the session 2018-19. The eligibility of the petitioner who belongs to dependent of ex-serviceman category is not in dispute. She has successfully competed in the NEET examination and obtained all India rank of 95850.

\ Government of Haryana issued a Policy dated 10.08.2017 wherein priority for reservation or preference to the wards of Armed Forces personnel in the matter of admission was prescribed. According to the policy, the petitioner fell in Priority-IV- Wards of disabled in service and boarded out with disability attributable to military service. Priority-VI pertains to Wards of Ex-servicemen. As observed earlier, the petitioner's eligibility is not in dispute. She passed the NEET examination and she falls under Category-IV is also not in dispute.

candidates have been granted admission.

Mop up round counselling was held on 3.9.2018. The petitioner asserts in the writ petition that she was present on the date of counselling i.e., 3.9.2018 and was informed that only those candidates whose net score is 400 and above would be considered in the said category, although when final list was declared, the candidates much lower in merits find mention in final list. The petitioner's NEET score was 377, whereas, one Jyoti and Smarti Dalal whose NEET score was 241 and 153, respectively, got admission in Priority-IV. No satisfactory reason was given by the respondents except that the petitioner was not present on the date in question although this would raise an issue of disputed facts but the attending circumstances do suggest that the petitioner was present and vigilant in pursuing her case.

The respondents have stated in their reply that all the seats were filled up by 2.35 p.m. although petitioner refers to the material on record to contend that time is not indicated against each and every candidate. It is admitted by learned counsel for the respondents that time was indicated against the candidates who have been admitted and not all the candidates who were present and considered.

Be that as it may, it is disturbing that the respondents have not been fair in conducting the process. They prescribed the date of mop-up round of counselling but no time schedule was prescribed to indicate within what period the process would commence and conclude. It is not their case that admissions would be made on first come first serve basis. Then how could they conclude that all seats have been filled up by 2.35 p.m.

Possibly, some candidates coming from far away places may have reached later than 2.30 p.m. It would not be justified to deny admission to such a candidate. The logical course should have been to wait till the time when whole process be declared closed and that they could have done by prescribing the time schedule, for the process.

We thus are of the opinion that the respondents have arbitrarily closed the admission at 2.35 p.m. They have raised a question that the petitioner was not present to cover up the mischief of giving admission to less meritorious candidates than the petitioner. The respondents have been unable to justify why the admissions for this category were closed at noon time and why they could not wait till evening particularly when the process continued till beyond 8 p.m. for this category as disclosed to us in Court. We thus hold the action of respondents to be wholly arbitrary and are unable to accept the plea of the petitioner not being present at the time of counselling. We have now to see what relief can be granted to the petitioner.

Hon'ble the Supreme Court in a recent pronouncement in **Chandigarh Administration versus Jasmine Kaur and others (2014) 10 Supreme Court Cases 521** has held the last date of admission as sacrosanct not to be violated by the Court by passing orders even though there is gross arbitrariness. The relevant extract of the said pronouncement is reproduced as below:

“33.2 Under exceptional circumstances, if the Court finds that there is no fault attributable to the candidate, i.e, the candidate has pursued his or her legal right expeditiously without any delay and that there is fault only on the part of the authorities or there is an apparent breach of rules and regulations as well as related principles in the process of grant of admission which would violate the right to equality

and equal treatment to the competing candidates and the relief of admission can be directed within the time schedule prescribed, it would be completely just and fair to provide exceptional reliefs to the candidate under such circumstances alone.

33.3 If a candidate is not selected during a particular academic year due to the fault of the institution/authorities and in this process if the seats are filled up and the scope for granting admission is lost due to eclipse of time schedule, then under such circumstances, the candidate should not be victimised for no fault of his/her and the court may consider grant of appropriate compensation to offset the loss caused, if any.

33.8. There cannot be telescoping off unfilled seats of one year with permitted seats of the subsequent year i.e. carry forward of seats cannot be permitted how much ever meritorious a candidate is and deserved admission. In such circumstances, the courts cannot grant any relief to the candidate but it is up to the candidate to reapply in the next academic year...”

Learned counsel for the petitioner further refers to an order passed by the Hon'ble Supreme Court in Writ Petition (Civil) No.1136 of 2018 (**Akumsenla Jamir versus Union of India and others**) decided on 22.10.2018 where admission had been granted beyond the last date prescribed for admission was i.e. 31.08.2018. A perusal of the said order shows that it was in different set of circumstances whereas in the case of Chandigarh Administration a different principle has been set-out. We thus follow the dictum in Chandigarh Administration case. Since we have already held the action of the respondents arbitrary, we determine the compensation of Rs.1.00 lacs to be paid to the petitioner by the University.

The petitioner be considered for admission for the next year in case law

The writ petition stands disposed of.

[MAHESH GROVER]
JUDGE

November 21, 2018
mohinder

(LALIT BATRA)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No