

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

[1] Civil Writ petition No.23379 of 2018

RakhiPetitioner

versus

State of Haryana and others `Respondents

[2] Civil Writ petition No.23366 of 2018

Vineeta YadavPetitioner

versus

The Secretary, Medical Council of India and othersRespondents

Date of Decision: November 21, 2018

**CORAM: HON'BLE MR.JUSTICE MAHESH GROVER.
HON'BLE MR.JUSTICE LALIT BATRA.**

Present: Mr.Rajiv Sidhu, Advocate and
Mr.Aditya Yadav, Advocate, for the petitioner(s)
Mr.M.S.Longia, Advocate, for respondent No.1.
Mr.Surender Garg, Advocate,
Mr.Ramesh Hooda, Advocate,
Mr.P.C.Goyal, Advocate,
Mr.Rose Gupta, Advocate, for the respondents.

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Mahesh Grover, J. (Oral)

Vide this order, we are disposing of two writ petitions bearing
CWP Nos.23379 and 23366 of 2018.

Both the petitioners passed the NEET examination and are
aspiring for admission to MBBS/BDS course. The Government of Haryana
issued a notification dated 15.06.2018 prescribing procedure for admission
to MBBS/MDS course in Government/Government Aided, Private Medical
and Dental Educational Institutions including the University/College in
question. Both the petitioners applied for MBBS/BDS course for the
academic sessions 2018-19. The petitioner in CWP No.23379 applied in
BC-A category and the petitioner in CWP No.23366 of 2018 applied in BC-

B category. They submitted the requisite documents but the admission was denied to them as the petitioners were unable to submit the income certificates.

On 22.08.2018, a provisional merit list of the candidates was released. The petitioner in CWP No.23379 of 2018 got 92 rank in BC-A category whereas the petitioner in CWP No.23366 of 2018 got rank No.143 in BC-B category. Counselling was held on 29.08.2018.

The petitioner in CWP No.23379 of 2018 was asked to submit income certificate. As this Court on 07.08.2018 had passed an order with regard to income procedure prescribed by the State, the petitioner informed the respondents that her father has applied for the same and in fact it was issued on 30.08.2018 itself. The petitioner in the meantime furnished an affidavit of income of her father as Rs.3,50,000/- per annum. The only requirement which remained was verification of that undertaking which was borne out from the certificate dated 30.08.2018.

In CWP No.23366 of 2018, the petitioner furnished an income certificate in Form-16 as her father was a Government employee.

The petitioners realised that the candidates who were lower down in merit got admission in College whereas they were denied the benefit on the ground that they have not submitted the income certificate. In the case of the petitioner in CWP No.23366 of 2018, an objection was raised that it was not issued by the Tehsildar of the concerned area even though the certificate was issued by Head of the Department. Learned counsel for the petitioner in this writ petition refers to Annexure R-3/2 appended with the reply of the respondent No.3. Such objection of certificate being not issued by Tehsildar is incorrect as the notification dated

18.11.2016 itself permits the certificate from Head of the Department in case of a Government employee, the relevant extract of notification is reproduced as below:-

“No.1389-SW(1) 2016-In exercise of the powers conferred by sub-section (1) of Section 8 of Haryana Backward Classes (Reservation in Services and Admission in Educational Institution Act, 2016 (15 of 2016), the Government of Haryana hereby appoints the following officers to be competent authority for the purpose of carrying out the provisions of the said Act, namely,

- (i) Sub Division Officer (Civil) City Magistrate and Tehsildar,
- (ii) Head of Department or Head of Office, in the case of a Government employee or his dependent,
- (iii) Head of the Government education institution (School , industrial training institute, polytechnic or college) in the case of students.....”

Evidently, this objection of respondents has no legs to stand on.

Similarly, in the case of other petitioner in CWP No.23379 of 2018, learned counsel refers to Annexure P-8 whereunder the BC-A category as also in some other cases, opportunity was given to the candidates to make good the deficiency by providing the certificate and admission was granted subject to furnishing it. The candidate at Merit No.96, namely, Tejwall Gogna is shown to be deficient in producing BC-A certificate but still admission was granted to him subject to its production. If that is so, then it is not understandable why the petitioner in CWP No.23379 of 2018 was not granted an opportunity to produce the requisite certificate although it was pleaded by the petitioner that it was in her possession on 30.08.2018 and 31.08.2018 was the date when final list was

the claim of the petitioner on the strength of the certificate issued by the Competent Authority on 30.08.2018 particularly when an undertaking to this effect was already there. If opportunity were to be granted to the petitioner, she would have made the deficiency good.

The approach of the respondents, therefore, is arbitrary. Similarly in the case of petitioner in CWP No.23366 of 2018, the stand of the respondents is totally arbitrary. As father of the petitioner is a Government employee and furnished the certificate issued by Head of the Department in Form-16, it would have been sufficient to satisfy the requirement and even if further verification was required by the respondents, opportunity should have been given to the petitioner for the same.

The respondents stand is clearly arbitrary and has resulted in denial of admission to the petitioners.

We are now confronted with the situation where admission certainly has been denied to the petitioners erroneously though on merit while granting it to the less meritorious candidates, and thus have to consider what relief can be granted to them.

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 petitioners 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 in each case to be paid to the petitioners by the University. The petitioners be considered for admission for the next year in case law permits.

The writ petitions stand disposed of.

[MAHESH GROVER]
JUDGE

November 21, 2018
mohinder

(LALIT BATRA)
JUDGE

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