

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

1) CWP No.8962 of 2018 (O&M)

Dr.Chahat Bhatia

....Petitioner

Versus

Government Medical College & Hospital,
Sector 32, Chandigarh and others

....Respondents

2) CWP No.9461 of 2018 (O&M)

Dr.Samiksha Gupta

....Petitioner

Versus

Government Medical College & Hospital,
Sector 32, Chandigarh and others

....Respondents

3) CWP No.11832 of 2018 (O&M)

Dr.Ankita Garg

....Petitioner

Versus

Government Medical College & Hospital,
Sector 32, Chandigarh and others

....Respondents

4) CWP No.11833 of 2018 (O&M)

Dr.Dipanshu Vasesi and another

....Petitioners

Versus

Government Medical College & Hospital,
Sector 32, Chandigarh and others

....Respondents

5) CWP No.12134 of 2018 (O&M)

Dr.Tanvi Behl

....Petitioner

Versus

Government Medical College & Hospital,

Sector 32, Chandigarh and others

....Respondents

6) CWP No.12164 of 2018 (O&M)

Dr.Manvi Talwar

....Petitioner

Versus

Government Medical College & Hospital,
Sector 32, Chandigarh and others

....Respondents

7) CWP No.12178 of 2018 (O&M)

Jaideep Singh Brar

....Petitioner

Versus

Government Medical College & Hospital,
Sector 32, Chandigarh and others

....Respondents

8) CWP No.12241 of 2018 (O&M)

Gunjan Gupta

....Petitioner

Versus

Government Medical College & Hospital,
Sector 32, Chandigarh and others

....Respondents

9) CWP No.12242 of 2018 (O&M)

Jyoti Aggarwal

....Petitioner

Versus

Government Medical College & Hospital,
Sector 32, Chandigarh and others

....Respondents

10) CWP No.12243 of 2018 (O&M)

Nitika Johar

....Petitioner

Versus

Government Medical College & Hospital,

Sector 32, Chandigarh and others

....Respondents

11) CWP No.11821 of 2018 (O&M)

Arshia Bhardwaj

....Petitioner

Versus

Government Medical College & Hospital,
Sector 32, Chandigarh and others

....Respondents

12) CWP No.12257 of 2018 (O&M)

Dr. Arshdeep Kaur and others

....Petitioners

Versus

Government Medical College and Hospital,
Sector 32, Chandigarh and others

....Respondents

13) CWP No.12262 of 2018 (O&M)

Dr. Birsukhman Singh Bhatia

....Petitioner

Versus

Government Medical College and Hospital,
Sector 32, Chandigarh and others

....Respondents

14) CWP No.12277 of 2018 (O&M)

Dr. Karanjot Kaur

....Petitioner

Versus

Government Medical College and Hospital,
Sector 32, Chandigarh and others

....Respondents

Date of Decision : 15.05.2018

**CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR.JUSTICE RAJBIR SEHRAWAT**

**Present: Mr.Girish Agnihotri, Sr. Advocate with
Mr.Arvind Seth, Advocate**

for the petitioner (in CWP-8962 &12178-2018).

Mr.Jai Vir Yadav, Advocate
for the petitioner (in CWP-9461-2018).

Mr.Harmanjit Singh Sethi, Advocate
for the petitioner (in CWP-12164,11832 &11833-2018).

Mr.Rahul Sharma-I, Advocate
for the petitioner (in CWP-12134 & 12257-2018).

Mr.J.S.Mehndiratta, Advocate
for the petitioner (in CWP-12277-2018).

Mr. Gaurav Singla, Advocate
for the petitioner (in CWP-12262-2018).

Ms.Sangita Dhanda, Advocate
for the petitioner(s) (in CWP-12241,12242, 11821
&12243-2018).

Mr.Suvir Sehgal, Senior Standing Counsel with
Mr.Suman Jain, Advocate & Mr.Ashish Rawal,Advocate
for UT, Chandigarh.

Mr. Gurminder Singh, Sr.Advocate with
Ms.Harpriya Khaneka, Advocate

MAHESH GROVER, J. (Oral)

CM-7047-CWP-2018 in
CWP-8962-2018

C.M.is allowed. Amended Memo of Parties is taken on
record.

CM-7164-CWP-2018 in
CWP-8962-2018

C.M.is allowed. Counter affidavit is taken on record.

Main cases

Notice of motion in CWP-12257, 12262 and 12277 of
2018.

Learned counsel appearing for the UT, Chandigarh

accepts notice.

By this order we will dispose of CWP Nos.8962, 9461, 11832, 11833, 12134, 12164, 12178, 12241, 12242, 12243, 11821, 12257, 12262, 12277 of 2018.

The facts we are culling out from CWP-8962-2018.

In fact, there may not be a necessity to even refer to the facts in detail. Suffice it to say that all the petitioners before us are MBBS graduate and aspirants for postgraduate course in medicine. They have been ousted from consideration in Government Medical College and Hospital, Sector 32, Chandigarh on account of the conditions prescribed in the prospectus and which we had referred to in detail while passing the interim order on 07.05.2018. For the purpose of reference the same are extracted herebelow :-

“The brief facts have been taken from C.W.P. No.8962 of 2018.

The petitioner is an M.B.B.S. Graduate from Gian Sagar Medical College & Hospital, Banur (Punjab) and successfully appeared for the NEET Post Graduate Entrance Test, 2018. She aspires to do her postgraduation from the Medical College at Chandigarh, but was declared ineligible for the reason that she has not done her M.B.B.S. Course from Government Medical College in Chandigarh. She thus, questions this decision in the present writ petition and contends that as per the prevailing policy, 50% seats have to be filled up from the All India quota and the remanning 50% revert to the State to be filled in accordance with the prevailing instructions issued by the State Government in this regard.

The total number of seats for admission in the year 2018 are 125 which after deducting 50% for All India quota, would leave 62 seats for the Chandigarh pool. For the purpose of reference, Clause-I of the prospectus is extracted here below :-

“PG-I : General Information and Number of Seats

The Govt. Medical College & Hospital, Sector 32, Chandigarh invites application for admission to three year Postgraduate Degree Courses (MD/MS) for the year-2018.

The total number of seats for admission in the year 2018 are 125 which are divided into All India Quota (AIQ) and UT Chandigarh Pool as below :-

- I. All India Quota (AIQ) : 63 Seats. In compliance of the Supreme Court decision, 50% of total number of seats are reserved for All India Quota.
- II. UT Chandigarh Pool : 62 seats. The 50% of total number of seats are reserved for students who have passed their MBBS examination from Medical Institutions of Union Territory, Chandigarh. Out of this, 15% seats are reserved for Scheduled Castes (SC). The following table shows the detailed distribution of seats.”

The aforesaid factual position is not disputed.

The Information Booklet further goes on to state as follows :-

“PG-7 : Admission for State Quota (UT Chandigarh Pool)

Seats (62 seats) :

1. Under this category, only those candidates are eligible to apply who have passed their MBBS examination from Medical Institutions located within the territorial boundary of Union Territory of Chandigarh.

2. However, for MS in Anatomy, candidates who have passed their MBBS examination from Medical Institutions located outside the territorial boundary of Union Territory of Chandigarh but have worked as Demonstrator in the Department of Anatomy, Govt. Medical College & Hospital, Sector 32, Chandigarh, for one year or more, are also eligible to apply for MS Anatomy in UT Chandigarh Pool Seats as General Category departmental candidates. However, they should have appeared in NEET-PG 2018 and fulfill all applicable eligible criteria.

3. 15 % seats are reserved for Scheduled Castes (SC) candidates.

4. Admission will be made strictly on the basis of rank secured in NEET-PG 2018.”

It is evident from the above that 15% seats are reserved for Scheduled Caste candidates and the remaining would go to those who have passed their M.B.B.S. examination from the medical institutions located within the territorial boundary of U.T.Chandigarh.

The grievance stems from the fact that there is only one medical institution located within the territorial boundary of Chandigarh which would imply that all the seats after deducting the ones reserved for Scheduled Castes would necessarily be filled up from the incumbents who have passed their M.B.B.S. examination from the medical institutions at Chandigarh depriving all other incumbents from the region of an opportunity to admission in the postgraduate course at

Chandigarh.

It is contended that this would amount to 100% reservation on account of the institutional preference which would be impermissible in view of the orders of the Hon'ble Supreme Court limiting the institutional preference to the extent of 25% only with no weightage of marks.

The learned Senior Standing Counsel for U.T.Chandigarh states that interests of the incumbents from the region have been adequately safeguarded if one is to see the clause at PG-8 in the prospectus which is extracted here below :-

“PG-8 Procedure to fill Leftover Seats, if any

1. If seat(s) remain unfilled after second counseling for UT Chandigarh Pool candidates for any reason whatsoever, applications will be invited from candidates not belonging to UT Chandigarh Pool. They will be hereby called **“Other than UT Chandigarh Pool”** candidates.

2. UT Chandigarh Pool candidates, who are already in the original list of eligible UT Chandigarh Pool candidates, need not apply afresh. they will continue to remain eligible for participation in the counseling for these leftover seats (preference).

3. Provisional number of leftover seats available, their discipline and category-wise distribution i.e. General Category or Scheduled Castes Category will be notified on GMCH website www.gmch.gov.in after the second counseling.

PG-8.1 : Categories of 'Other than UT Chandigarh Pool; candidates

1. Other than UT Chandigarh Pool Candidates will be divided into two categories as below :

A. Category-I : This category will include candidates with background of Chandigarh. To be eligible for this category candidates should fulfill any of the following criteria :

- i. Studied for a period of 5 years in Union Territory of Chandigarh.
- ii. Children of persons who have resided in Union Territory of Chandigarh for a period of at least 5 years at any time prior to the last dated of the submission of the application either in pursuit of a profession or holding of a job.
- iii. Children of persons who have held/hold immovable property in Union Territory of Chandigarh for a period of five years at any time prior to the last date of the submission of the application. The property should be in the name of the parents or the candidates himself/herself.”

We have heard the learned counsel for the parties and are prima facie of the opinion that one Medical College in Chandigarh has introduced an element of arbitrariness in the process. There is only one Medical College in the City of Chandigarh and with the allocation of 62 seats out of which 15% have to be deducted for Scheduled Castes, the remaining would be filled up from the incumbents who have passed M.B.B.S. examination from this very Institute resulting in 100% institutional preference. This would essentially mean that all other incumbents even though from the region would be discarded from the process altogether. The plea of the respondents that leftover seats would go to the aspirants can be described as a mere fig-leaf intended to camouflage the illegality

of 100% institutional preference.

However, this issue needs to be looked into with greater circumspection for which we post the matter to 16.5.2018, but considering that the counseling is underway, and is bound to a time schedule, we would permit the petitioners to participate in the counseling without creating any equitable right in their favour.

Office is directed to place a photo copy of this order on the file of the other connected case mentioned above.”

The petitioners contend that the insistence on an incumbent having MBBS degree from the medical institute of Sector 32 to give preference to the postgraduate course while excluding incumbents from other colleges amounts to 100 per cent reservation which is impermissible in law.

It has been urged before us that out of total of 125 seats, 50% seats would be consumed in the All India quota on the basis of merit obtained in the common entrance test going by the name of 'NEET' and 50% would go to the UT pool i.e. 62 out of which 15% are reserved for SC candidates and the remaining to the incumbents who have passed their MBBS from medical institutions located in the territorial boundary of UT Chandigarh.

Incidentally, there is one medical institute in the territorial boundary of Chandigarh.

It is this coupled with the clause in the prospectus giving preference to incumbents from the college that has resulted in this piquant situation which we had noticed in our interim order on 07.05.2018. We had permitted the petitioners to participate in the

counselling without creating any equitable right in their favour. This order was challenged before the Hon'ble Supreme Court resulting in a request to us to dispose of the matter on 15.05.2018. Consequently, by our order dated 14.05.2018 we had posted the matter from 16.05.2018 to 15.05.2018 and have heard the parties at sufficient length.

Applications have been filed by the candidates who participated in the counselling successfully. We have allowed those applications and have heard the learned Senior Standing Counsel for UT, Chandigarh and Mr. Gurminder Singh, learned Senior Counsel, who addressed arguments espousing the common cause of all those who were successful in gaining admission to the institute.

Similarly, all present in the Court and alive to the controversy have been afforded a hearing.

The controversy narrows down to settling questions in principle which we may set out as below :-

- i) Whether in the wake of the condition imposed in the prospectus coupled with the fact of a singular institute in the territorial boundary of UT Chandigarh preference contemplated in the prospectus would tantamount to 100% reservation in favour of the incumbents having completed their MBBS course from Government Medical College and Hospital, Sector 32, Chandigarh or not.
- ii) Whether the candidates who have done their schooling in Chandigarh or are connected to the City of Chandigarh would need to be treated preferentially or not.

In so far as the second issue is concerned, it need not

engage our attention for a longer period considering it has been settled by the various pronouncements of the Hon'ble Supreme Court deprecating preference or weightage on the basis of residence alone. So, the surviving issue is the one that we have set out at (i) above.

Institutional preference, conceptually has found its approval and placed on a firm pedestal by now, right from the pronouncement of *Dr.Jagdish Saran v. Union of India*, **1980(2), SCC 768**, *Dr.Pardeep Jain v. Union of India*, **1984(3) SCC 654**, *Dr.Dinesh Kumar v. Motilal Nehru Medical College, Allahabad*, **1985(3) SCC 22** and *Saurabh Chaudri and Ors. v. Union of India and Ors*, **2004 AIR (SC) 361**.

In para 72 of *Saurabh Chaudri's case* (Supra) it has been observed as under :

“Having regard to the facts and circumstances of the case, we are of the opinion that the original scheme as framed in Dr.Pradeep Jain case should be reiterated in preference to Dr.Dinesh Kumar (II) case. Reservation by way of institutional preference, therefore, should be confined to 50% of the seats since it is in public interest.”

It would be relevant to refer to para 74 of this very judgment as under :-

“AIIMS is an institution of excellence. It is a clause by itself and pride. We are, therefore, of the opinion that in AIIMS and the medical colleges of the Central university, merit should have primacy subject of course to

institutional preference to the extent of 50% of the total seats in the MBBS course. In all other respects, the decision of this Court in AIIMS Students' Union case shall operate.”

Before this, in para 67 it was observed as follows :-

“This Court may therefore notice the following :

- (i) The State runs the Universities.
- (ii) It has to spend a lot of money in imparting medical education to the students of the State.
- (iii) Those who get admission in Post Graduate Courses are also required to be paid stipends. Reservation of some seats to a reasonable extent, thus, would not violate the equality clause.
- (iv) The criteria for institutional preference has now come to stay. It has worked out satisfactorily in most of the States for the last about two decades.
- (v) Even those States which defied the decision of this Court in Dr. Pradeep Jain's case (supra) had realized the need for institutional preference.
- (vi) No sufficient material has been brought on record for departing from this well-established admission criteria.
- (vii) It goes beyond any cavil of doubt that institutional preference is based on a reasonable and identifiable classification. It may be that while working out the percentage of reservation invariably some local students will have preference having regard to the fact that domicile/residence was one of the criteria for admission in MBBS Course. But together with the local students 15%, students who had competed in all India Entrance Examination would also be getting the same benefit. The percentage of students who were to get the benefit of reservation by way of institutional preference would

further go down if the decision of this Court in Dr. Pradeep Jain's case (supra) is scrupulously followed.

(viii) Giving of such a preference is a matter of State policy which can be invalidated only in the event of being violative of [Article 14](#) of the Constitution of India.

(ix) The students who would get the benefit of institutional preference being on identifiable ground, there is hardly any scope for manipulation.”

It is, therefore, not difficult to conclude that institutional preference would be a valid criteria but what can be irksome and bad in law is the extent thereof.

During the course of these proceedings, we have come across the notifications issued by the States which have approved the institutional preference to 25% (State of Haryana) or 50% (State of Punjab. We may also take notice of Regulation 9(IV) and 9A of the Post Graduate Medical Education Regulations, 2000 prescribed by the Medical Council of India which reads as under :-

“9. Procedure for selection of candidate for Postgraduate courses shall be as follows :-

I to III

IV. The reservation of seats in medical colleges/institutions for respective categories shall be as per applicable laws prevailing in States/Union Territories.

An all India merit list as well as State-wise merit list of the eligible candidates shall be prepared on the basis of the marks obtained in National Eligibility-cum-Entrance Test and candidates shall be admitted to Post-graduate courses

from the said merit lists only :

Provided that in determining the merit of candidates who are in service of Government/public authority, weightage in the marks may be given by the Government/Competent Authority as an incentive at the rate of 10% of the marks obtained for each year of service in remote and/or difficult areas upto the maximum of 30% of the marks obtained in National Eligibility-cum-Entrance Test, the remote and difficult areas shall be as defined by State Government/Competent authority from time to time.”

“9A Common Counselling.-- (i) There shall be a common counselling for admission to all Postgraduate Courses (Diplome/MD/MS/DM/M.Ch.) in all Medical Educational Institutions on the basis of merit list of the National Eligibility-cum-Entrance Test.

(2) The designated authority for counselling for the 50% All India Quota seats of the contributing States shall be conducted by the Directorate General of health Services. Such counselling as per the existing scheme shall be only for Diploma and MD/MS courses.

(3) The counselling for all Postgraduate Courses (Diploma/MD/MS/DM/M.Ch.) in all Medical Educational Institutions in a State/Union Territory, including Medical Educational Institutions established by the Central

Government, State Government University, Deemed University, Trust, Society or a Company/Minority Institutions/Corporations shall be conducted by the State Government. Such common counselling shall be under the over-all superintendence, direction and control of the State Government.”

A perusal of the above would establish that the State Governments would be at liberty to prescribe the extent of institutional preference as also any other schemes of incentivisation to the in service candidates. The logic thereof flows from the conclusion in *Saurabh Chaudri's case* where in para 67 (extracted above) the State's responsibilities have been set out, of running the university, spending lot of money in imparting education to the students of the State and to pay stipend to those admitted in post graduate courses etc. Institutional preference is thus a question of State policy which can be invalidated only in case of violation of Article 14 of the Constitution of India. Therefore, it is this test that has to be applied to the present cause raised in the various petitions.

To our mind, if we see the break-up of seats, 63 out of 125 seats, being 50% would be consumed in the All India Quota leaving the residue of 62, which, if the prescribed criteria of the prospectus is applied, would leave no seat for any other aspirant.

The learned Senior Standing Counsel for UT, Chandigarh would be quick to respond to refer to clauses PG-8 and PG-8.1 to contend that there is a procedure prescribed to fill the left over seats

where the candidates who have studied in Chandigarh for a period of 5 years or the children of persons who have resided in Union Territory of Chandigarh for a period of at least 5 years or the children of persons who have held immovable property in UT Chandigarh for a period of 5 years at any time prior to the last date of the submission of the application, would be considered.

This in itself would make no significant impact to the primary question that we are dealing with i.e. there being 100% institutional preference. In fact, the mischief seems to have been done not in prescribing the conditions of preference but by placing an interpretation on the calculation for institutional preference by taking into account the seats. The prospectus states that 50% of total number of seats have been reserved for institutional preference for students of medical institution of UT Chandigarh. "Total number of seats" taken for this determination of institutional preference seats is 125, which according to us, would be erroneous for the simple reason that out of 125 seats allocated to the UT pool 50% i.e. 63 seats would be propelled out of orbit of the UT Chandigarh pool the moment they are consumed in the All India Quota leaving only 62 seats for the College to be filled up. Therefore, total number of seats for the institutional preference are the residual ones that fall to the institution after All India Quota is consumed. Thus the interpretation placed by the Chandigarh Administration would virtually discard from the process of consideration other aspirants who may, being from the region be higher up in merit but would stand excluded.

To avoid merit being a casualty it would be in the fairness of things that 50% institutional preference be restricted to 62 seats falling to the share of the institution after the remaining 50% have been consumed in the All India quota.

Nobody has raised any question to Clauses PG-8 or PG-8.1 where the candidates having linkage to Chandigarh either through education or placement of their parents or property, and therefore, it need not invite any comment from us. Suffice it to say that the interpretation of institutional preference with its applicability of total number of seats which are 125 has resulted in a situation that reeks of arbitrariness and a resultant violation of Article 14 of the Constitution of India. We would thus hold the stand of the UT Chandigarh erroneous in this regard. While upholding the principal of institutional preference we would direct that it would relate to 50% of the seats available to the institution after 50% of All India Quota has been consumed and upon such calculation throw open the seats to other deserving aspirants.

Issues have been raised about individual candidates and their eligibility, but we are of the opinion that these are matters to be left to the Committee in-charge of Counselling to examine.

In view of the above, we direct the Government Medical College and Hospital, Sector 32, Chandigarh to conduct the counselling afresh by keeping in view the above.

Mr. Gurminder Singh, learned Senior Counsel states that first counselling was over and those students be protected who have

already undertaken their classes.

However, we are of the opinion that the classes probably have not traversed to such an extent given the period of time that has elapsed and, therefore, we would still lean in favour of the complete overall in view of what has been stated above. However, the candidates who have given up their seats after All India Counselling would be saved considering the observations of the Hon'ble Supreme Court.

All the petitions stand disposed of.

Copy of the order be given *Dasti* to the learned counsel appearing for UT, Chandigarh under the signature of the Bench Secretary.

(MAHESH GROVER)
JUDGE

15.05.2018
dss

(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes