

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

LPA-770-2016 (O&M)

Date of Decision : 30.07.2018

Jeewan Singh and others

....Appellants

Versus

State of Punjab and others

....Respondents

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

Present: Mr. Puneet Sharma, Advocate
for the appellants.

Mr.Shireesh Gupta, Sr.DAG, Punjab.

Mr.R.Kartikeya, Advocate
for respondent No.4.

Mr.Arun Bansal, Advocate
for respondent No.5.

MAHESH GROVER, J. (Oral)

The appellants are aggrieved of the judgment of the learned Single Judge dated 25.04.2016.

All the appellants before us have passed their 10+2 from an open school and were aspirants for admission to Diploma of Pharmacy/Up-Vaid (Ayurvedic) for the session 2015-16.

Clause 2.1 of the notification dated 29.11.2013 provides the eligibility condition which we extract herebelow :-

“2.1 Qualifying Examination : Candidate must have passed 10+2 examination or its equivalent examination as regular candidate from a recognized institution situated in Punjab. Preference will be given to candidates who have

passed 10+2 Examination or its equivalent examination in the subjects of Physics, Chemistry & Biology/mathematics. If candidate(s) from Punjab are not available then candidate from other States shall also be considered.”

Prior to that since 2008 the minimum educational qualification was Matric and by virtue of notification dated 29.11.2013 the minimum educational qualification was raised from Matric to 10+2 with the other qualifications remaining unchanged. The appellants are aggrieved of the condition of passing 10+2 examination as regular candidate from a recognised institution situated in Punjab. Their argument is that they have done their 10+2 from open school and there is no reason to deny them consideration when they satisfy other condition of having passed their 10+2 examination in the subjects of Physics, Chemistry and Biology/Mathematics.

It is not in dispute that the State itself has discontinued this condition of passing 10+2 as a regular candidate with effect from the session 2016-17. The appellants are concerned with the session 2015-16 and have gained admission but when confronted with the hurdles that would see them out of the course, they have approached this Court by way of writ proceedings resulting in the impugned order which is now a cause of grievance to them in the present appeal.

The learned Single Judge reasoned that the writ petitioners had approached the court after the admission was over and

denied them the necessary relief on the ground that half of the course of the first year was over and the annual examination were likely to take place in the month of August/September 2016. Essentially, it means that a slight delay on the part of the appellants in approaching the writ court became the reason for denial of the relief that they sought. For the purpose of reference, we extract the relevant portion of the paragraphs which form part of the reasoning in declining the prayer made in the writ petition :

“There is no dispute that in the notification dated 03.03.2008, Clause 2 lays down the eligibility criteria, in which Clause 2.1 deals with the eligibility of qualifying examination which was Matric with science subjects as a regular student from the recognized institutions situated in the State of Punjab. By virtue of corrigendum much-less notification dated 29.11.2013, only the eligibility of qualifying examination was raised from Matric to 10+2 and rest of the conditions were kept intact. The petitioners' claim is solely based upon a decision of the Pharmacy Council of India taken in its 97th Central Council meeting held in June 2015, allowing the candidates who have passed their 10+2 examination from open school system as well to take admission in the Diploma in Pharmacy but it is also an admitted fact that all the writ petitions have been filed by the petitioners in the year 2016 even after the admissions were over after holding the 1st and 2nd counsellings and providing the cut off date vide corrigendum dated 06.11.2015 which has also been challenged.

The respondent-State has categorically taken a stand that for the session 2016-2017, the Government has decided to bring change in aforesaid Clause 2.1, allowing the students who have passed their 10+2 examination from open school to be eligible for

seeking admission in the Diploma of Pharmacy/Up-Vaid (Ayurvedic) course, but insofar as the present petitioners are concerned, no relief can be granted to them at this stage because of the reason that half of the course of the first year is over and the annual examination are likely to take place in the month of August/September 2016.

Thus, in view of the aforesaid facts and circumstances, all the three petitions are hereby dismissed. However, the petitioner-candidates are at liberty to apply for admission in the Diploma of Pharmacy/Up-Vaid (Ayurvedic) course for the next session 2016-17 on the basis of their qualification of 10+2 examination acquired from the NOIS as the respondent-State has categorically taken a stand that there would be a change in Clause 2.1, allowing the candidates from NIOS as well to get admission in the Diploma of Pharmacy/Up-Vaid (Ayurvedic) course from the next session 2016-17.”

It is not in dispute that under the orders of the court the appellants have completed their course. Although this would not ipso facto entitle them to any equitable relief but when the facts and the present situation is taken into consideration in entirety, we are of the opinion that the appeal deserves to succeed and the impugned order has to be set aside.

Undeniably, the State has done away with the condition of passing 10+2 as regular candidate from the session 2016-17. We find a reference to the decision of Pharmacy Council of India recommending that candidate from open school be also considered eligible. If that be so, then there does not seem to be any justifiable logic in insisting on the condition of having passed 10+2 as a regular

candidate. Even otherwise, we are of the opinion that this would be an impediment in promoting higher education as the students from open school would be unable to gain access to further their educational prospects. That apart, we find that the respondent-institution has been following the pick and choose method. The appellants have given numerous instances of students who had passed 10+2 from private institutions but were granted admission both in the institute in which they are desirous of admission and other institutions in the State of Punjab. This was specifically pleaded when a rejoinder was filed by the appellants as writ petitioners. There was no denial to this although the learned counsel representing the institute would contend that they were not a party to the writ proceedings but we find that even in the grounds of appeal details of the candidates have been given which has not been denied by the institute or by any of the respondents. If that is so then we are of the opinion that this would be clear discriminatory and the action of the respondents can at best be termed to be arbitrary.

During subsistence of the petition the appellants were allowed to take examination under the orders of the court, provisionally. Along with the Miscellaneous Application their result has been appended indicating successful completion of the course. In view of the above, we find little justification to accept the stand of the respondents and likewise the impugned judgment which does not take into consideration all these facts also deserves to be set aside. By accepting the appeal, we direct that respondents No.2 and 4 shall release the Detailed Marks Cards to the appellants and if all other

parameters are satisfied by the appellants, shall grant recognition to the successful completion of the course.

Appeal stands allowed.

Miscellaneous application(s), if any, appended to the appeal, also stand disposed of.

(MAHESH GROVER)
JUDGE

30.07.2018
dss

(MAHABIR SINGH SINDHU)
JUDGE

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