

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 21299 of 2019

Date of Decision: September 27, 2019

Vishal

.....Petitioner

versus

Union of India and others

.....Respondents

**CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY.
HON'BLE MR. JUSTICE SUDHIR MITTAL.**

Present: Mr. S.S. Majithia, Advocate for the petitioner

Mr. Anil Chawla, Advocate for respondent No. 1 - UOI

Mr. Rajesh K. Sheoran, Addl. A.G. Haryana

Mr. Karan Bhardwaj, Advocate for

Mr. Nilesh Bhardwaj, Advocate for respondents No. 3 to 5

Sudhir Mittal, J.

The State of Haryana issued notification dated 21.06.2019 notifying admissions to MBBS and BDS

3. A short written statement has been filed on behalf of Director Medical Education & Research, Haryana (respondent No. 2). The defence taken is that according to the amended Graduate Medical Education Regulation, 1997 (hereinafter referred to as 'the 1997 Regulations'), the petitioner is ineligible for the PWBD category as a candidate whose hands are not intact, can not be granted admission. The said Regulations have been made by the Medical Council of India in exercise of powers conferred on it by Section 33 of the Indian Medical Council Act, 1956. Thus, they are binding upon the answering respondent and in view thereof, the petitioner cannot be considered in the PWBD category. Certificate dated 27.07.2019 issued by the Board of Doctors of Pt. B.D. Sharma University of Health Sciences, Rohtak has also been relied upon.

4. The 1997 Regulations were amended vide Notification dated 13.05.2019 issued by the Board of Governor in super-session of Medical Council of India. The amendment has been notified as the Graduate Medical Education Regulations (Amendment) 2019. Appendix H to 1997 Regulations containing the guidelines regarding admission of students with 'Specified Disabilities' under the Rights of Persons with Disabilities Act, 2016 with respect to admission in MBBS has been substituted by Appendix 'H-1'. The relevant part of the said Appendix is reproduced below:-

Appendix “H-1”

Guidelines regarding admission of students with “Specified Disabilities” under the Right of Persons with Disabilities Act, 2016 with respect to admission in MBBS Course.

- Note :
1. The “Certificate of Disability” shall be issued in accordance with the Rights of Persons with Disabilities Rules, 2017 notified in the Gazette of India by the Ministry of Social Justice and Empowerment [Department of Empowerment of Persons with Disabilities (Divyangjan)] on 15th June 2017.
 2. The extent of “specified disability” in a person shall be

assessed in accordance with the “Guidelines for the purpose of assessing the extent of specified disability in a person included under the Rights of Persons with Disabilities Act, 2016 (49 of 2016)” notified in the Gazette of India by the Ministry of Social Justice and Empowerment [Department of Empowerment of Persons with Disabilities (Divyangjan)] on 4th January2018.

3. The minimum degree of disability should be 40% (Benchmark Disability) in order to be eligible for availing reservation for persons with specified disability.

4. The term 'Persons with Disabilities' (PwD) is to be used instead of the term 'Physically Handicapped (PH).

S. No.	Disability Type	Types of Disabilities	Specified Disability	Disability Range		
				Eligible for Medical Course, Not Eligible for PwD Quota	Eligible for Medical Course, Eligible for PwD Quota	Not Eligible for Medical Course
1.	Physical Disability	A. Locomotor Disability, including Specified Disabilities (a to f)	a. Leprosy cured person* b. Cerebral Palsy** c. Dwarfism d. Muscular Dystrophy e. Acid attack victims f. Others*** such as Amputation, Poliomyelitis, etc.	Less than 40% disability	40-80% disability Person with more than 80% disability may also be allowed on case to case basis and their functional competency will be determined with the aid of assistive devices, if it is being used, to see if it is brought below 80% and whether they possess sufficient motor ability as required to pursue and complete the course satisfactorily	More than 80%

5. Certificate of disability dated 27.07.2019 is as follows:-

Certificate of Disability

Certificate No. _____ Dated 27.07.2019

This is to certify that Dr./Mr./Ms. VISHAL aged _____

Years 17 Son/Daughter JITENDER KUMAR

R/o H.No. 502, KACHA KABRI FATAK HARI NAGAR, RAM SHAVROOP

CHOWK, KABRI, PANIPAT 132103

Rank No. PH-1760 is suffering for Congenital Absence of Distal ® hand

(Name of the Disease) and has been Permanent Physical Impairment (PPI)/

He/She is Locomotors disable and has the percentage of FORTY PERCENT (in word) 40% (in figure)

He/She is NOT eligible for admission in Medical/Dental Course as per the MCI/DCI guidelines subject to his being otherwise medically fit.

Not eligible as both hands not intact.

use his right hand, we referred him to the PGIMER, Chandigarh for fresh examination by Board of Doctors to opine upon whether the petitioner would be able to undergo MBBS course? Vide letter dated 26.09.2019, a report of the medical Board has been received. The Medical Board comprised a Professor of Orthopedics, an Additional Professor Orthopedics, Additional Professor Plastic Surgery and Senior Resident Hospital Administration. It has found that the petitioner has disability of 40.13 % and that he can undergo the MBBS course and perform duties as Medical Professional. The relevant part of the report is reproduced below for ready reference :-

“The meeting of the Medical Board was held on 26.09.2019 at 9.00 AM in committee room of MS Office, PGIMER. Master Vishal presented himself before the medical board. The board examined Master Vishal vide CR No. 201905757784 and X-ray hand was done. The Disability assessment was carried out by the board members and found it to be 40.13%. The board is of the opinion that he can undergo the MBBS course and perform duties as medical professional, however, he will not be able to carry out the surgical procedures independently.

7. The 1997 Regulations have been framed for the purpose of regulating medical education. Appendix H-I has substituted Appendix 'H' w.e.f. 13.05.2019 and the said Appendix provides guidelines for admission of students with specified disabilities to the MBBS course. The purpose of framing guidelines is to provide guidance to the admission authorities who are making admissions of persons with specified disability to the MBBS course. The aim of such guidance is to ensure that persons with specified disabilities granted admission are such as are able to successfully undergoing the MBBS course. Keeping this aim in mind, we had directed the medical examination of the petitioner by the Board of Directors of PGIMER Chandigarh and the said Board has opined that the petitioner is capable

of undergoing the MBBS course. Thus, the phrase “both hands intact” occurring against locomotor disability shall not operate to declare the petitioner ineligible. The admission authorities must examine the issue on a case to case basis and should not go blindly by the words used in the guidelines. If such an approach is adopted, candidates with Benchmark Disability and capable of undergoing the MBBS course, would not be deprived of their rights. The expression “both hands intact” is, thus, read keeping in view the purpose for which the 1997 regulations have been framed. The left hand of the petitioner is intact and the right hand with partial thumb and index finger is in existence. Since the petitioner is capable of undergoing the MBBS course, the expression “both hands intact” still covers the case of the petitioner.

8. The writ petition is, accordingly, allowed. The respondents are directed to consider the candidature of the petitioner against the reserved MBBS seat as admittedly, persons possessing lower merit than the petitioner have been admitted against PWBD category.

(DAYA CHAUDHARY)
JUDGE

(SUDHIR MITTAL)
JUDGE

September 27, 2019

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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No