

RA-CW-344-2019 (O&M) in CWP-18989-2019 (O&M) and

RA-CW-345-2019 (O&M) in CWP-18298-2019 (O&M)

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

**RA-CW-344-2019 in
CWP-18989-2019 (O&M)
Date of decision : 06.09.2019**

Rimnaaz

..... Applicant

VERSUS

State of Punjab and others

..... Respondents

**RA-CW-345-2019 in
CWP-18298-2019 (O&M)**

Janvi

..... Applicant

VERSUS

State of Punjab and others

..... Respondents

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

Present: Mr. Gurminder Singh, Sr. Advocate with
Ms. Harpriya Khaneka, Advocate, for the applicants.

Mr. Ayush Sarna, AAG, Punjab.

Mr. B.S. Patwalia, Advocate, for the non-applicant-petitioners.

Mr. Nitin Kaushal, Advocate, for respondent No.5.

SUDHIR MITTAL, J.

Vide order dated 26.7.2019, certain directions were issued as follows:-

“(a) The State is directed to issue a fresh notification providing for 1% reservation/quota for children/grand children of terrorists affected persons/Sikh riots affected persons in all private unaided non-minority Medical/Dental

institutions in the State of Punjab. This reservation/quota shall apply to management quota seats as well.

(b) The notification shall also provide for a sports quota of 3% in Government Medical/Dental colleges.

(c) While determining inter se merit of candidates possessing the same sports gradation, only the NEET score shall be considered.

(d) Implementation of the 10% quota for economically weaker sections and the calculation thereof by the State of Punjab, is upheld.”

2. Detailed judgment dated 8.8.2019, was issued thereafter. Part of the judgment, relevant to the present controversy, is reproduced below:-

“33. An allied grievance of the petitioner is that while deciding the inter se merit of the students with the same sports gradation, merit is being ignored and the number of medals obtained is being relied upon.

34. According to the notification issued by the State of Punjab, inter se merit of sports persons has to be determined on the basis of their gradation i.e. category A/B/C. There is no indication as to how the inter se merit of candidates in the same sports gradation is to be determined. In the absence of any guidance in this regard in the notification of the State Government, it has to be held that inter se merit of candidates within same sports gradation category has to be determined on the basis of merit.”

3. The State of Punjab sought Special Leave to Appeal vide SLP (C) Nos.19396 of 2019 and 19540 of 2019 (IV-B). Vide order dated

19.8.2019, notice was issued by the Supreme Court of India and stay of operation and implementation of the judgment was ordered. Thereafter, parties were heard on 27.8.2019 and blanket stay order was vacated. However, enhancement of sports quota from 1% to 3% was stayed. Regarding implementation of the judgment impugned, the following direction was issued:-

“Counseling to take place by 7th September, 2019. Only 1% reservation be implemented with respect to sports quota. Counseling be held as per order passed by the High Court with other aspects.”

4. On 29.8.2019, a revised merit list of the sports category candidates was uploaded and the applicants found that their merit position had come down. Accordingly, they have approached this Court for review of part of the judgment dated 8.8.2019, pertaining to the manner in which inter se merit of candidates possessing the same sports gradation was to be determined.

5. Upon notice being issued, the State of Punjab has filed a short reply by way of an affidavit of Deputy Director, Sports, Punjab. It has been stated that admission to MBBS course in the sports category is governed by the sports gradation policy dated 10.12.1997. Clause 6 of the said policy lays down the manner of determination of inter se merit of candidates possessing the same sports gradation.

6. The review applicants seek impleadment as party respondents in the writ petition and seek review of that part of the impugned judgment

which relates to the manner in which inter se merit within the same sports gradation, is to be determined. The relevant part of the judgment has been reproduced hereinabove. Their precise submission is that the direction regarding the manner of determination of inter se merit within the same sports gradation has been issued in ignorance of policy dated 10.12.1997, which was deliberately not brought to the notice of the Court by the writ petitioners. The State of Punjab was remiss in its duty as it also failed to inform the Court that a policy governing the subject is in existence. According to the said policy, the inter se merit of candidates possessing the same sports gradation is to be determined in accordance with the achievements of the candidate and only in case, the achievements are identical, the NEET marks would be taken into consideration. The original merit list of the sports category, dated 8.7.2019, was drawn in accordance with the Policy and the applicants were very high in the order of merit, but after the directions issued by this Court, the merit list has been revised on 29.8.2019 and the applicants have come down in the order of merit. Since the applicants were not party respondents before this Court, they have no other option, but to seek review of the judgment dated 8.8.2019.

7. Learned counsel for the non-applicant-writ petitioner has argued that the review application is not maintainable as petitions seeking Special Leave to Appeal are pending before the Supreme Court and interim orders have been issued therein. Moreover, the manner in which counseling is to be conducted has been specified in the interim order

dated 27.8.2019 passed by the Supreme Court and in case the judgment is partially reviewed, it would amount to violating the direction of the Supreme Court. Thus, the review applicants only have the remedy of approaching the Supreme Court itself for seeking clarification/modification of order dated 27.8.2019. It is also submitted that one of the applicants, namely, Dillpuneet Singh son of Manmohan Singh is a party respondent in the pending petition seeking Special Leave to Appeal and therefore, there is no hinderance in seeking a clarification from the Supreme Court.

8. Learned senior counsel for the review applicants however, states that the review applicants only have the remedy of seeking review as their rights have been adversely affected by the judgment dated 8.8.2019. Pendency of a petition seeking Special Leave to Appeal does not bar this Court from exercising its review jurisdiction especially because the subject matter of the review application is not the subject matter of the petitions seeking Special Leave to appeal. The review applicants are not entitled to challenge the direction issued in judgment dated 8.8.2019, which adversely affects their interest as they were not party respondents in the writ petition and great injustice would be caused to them in case the said finding is not reviewed.

9. As stated hereinabove, the State of Punjab has filed an affidavit stating that the policy dated 10.11.1997 governs the issue in question, but even though, the said policy was on record in the writ petition, as Annexure P-3, the attention of the Court was not drawn to the

same. As a result, directions reproduced hereinabove have been issued. It is, thus, obvious that the State of Punjab has acted in a most irresponsible manner and the present situation has been created by its apathetic attitude. In our view, the State of Punjab deserves to be burdened with exemplary costs.

10. We are conscious of the law governing review jurisdiction during pendency of a petition seeking Special Leave to Appeal. The pendency of such a petition in the Supreme Court does not attract the doctrine of merger. Even if, the Special Leave Petition is dismissed by passing a speaking order, the doctrine of merger is not attracted. Thus, a High Court can exercise review jurisdiction during the pendency of a Special Leave Petition and also after its dismissal whether the same is by a speaking or non-speaking order. Reference can be made to **‘Khoday Distilleries Ltd. (known as Khoday India Ltd.) and others Vs. Sri Mahadeshwara Sahakara Sakkare Karkhane Ltd. Kollegal, represented by the Liquidator, 2019 (4) SCC 376’** as well as **‘Kapoor Chand Vs. Ganesh Dutt, 1993 (supplementary 4) SCC 432’.**

However, we also cannot lose sight of direction given by the Supreme Court of India in its order dated 27.8.2019, wherein it has been directed that counseling is to be held by 7.9.2019 by maintaining the sports quota at 1% and otherwise in accordance with the orders by the High Court. Judicial discipline demands that even though, the issue in question is not directly being considered by Supreme Court, we should not pass any orders which may run contrary to the directions issued by the said Court.

In this regard, reference can be made to **‘Abbai Maligal Partnership Firm and Another Vs. K. Santhakumaran and others, 1998 (2) RCR (Rent) 483’**, wherein the Supreme Court came down heavily on the High Court, even though review jurisdiction was exercised by the High Court after dismissal of petition seeking Special Leave to Appeal. Thus, even though, it is clear that a wrong order has been passed by us due to lack of assistance, it would be more appropriate for the applicants to seek a clarification/modification from the Supreme Court of India. Since we are not inclined to pass any orders in these review applications, we also refrain from imposing costs upon the State of Punjab, in accordance with determination made earlier. One of the review applicants, is a party respondent before the Supreme Court and thus, there should be no difficulty in seeking the necessary clarification/modification.

11. The review applications are thus, dismissed.

A photocopy of this order be placed in the file of other connected case.

(DAYA CHAUDHARY)
JUDGE

(SUDHIR MITTAL)
JUDGE

6.9.2019

Ramandeep Singh

Whether speaking / reasoned

Yes / No

Whether Reportable

Yes/ No