

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

1. CWP No. 22572 of 2018

Dr. Aashima

...Petitioner

versus

State of Haryana and another

..Respondents

2. CWP No. 22815 of 2018

Dr. Pratibha Dalal

...Petitioner

versus

State of Haryana and others

..Respondents

Date of decision : 01.03.2019

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. P.S. Poonia, Advocate
for the petitioner in CWP No. 22815-2018

Mr. Shvetanshu Goel, Advocate
for the petitioner in CWP No. 22715-2018

Mr. Hitesh Pandit, Addl.A.G Haryana

Mr. H.N. Mehtani, Advocate
for respondent-Commission

RITU BAHRI, J. (Oral)

The above mentioned two petitions, are being disposed of by this common judgment, as common questions of law and facts are involved therein. However, for the facility of reference, the facts are being taken from CWP No. 22815-2018.

Prayer in the present writ petition is for issuance of writ in the nature of certiorari for quashing the action of respondent No. 3 in rejecting the candidature of the petitioner under Outstanding Sports Category for the post of Dental Surgeon Class II.

The fact in brief are that pursuant to advertisement/corrigendum dated 27.11.2017 (Annexure P-1), petitioner participated in the written examination for 2 posts of Dental Surgeon Class II under the category of Outstanding Sport Persons (OSP) and qualified the same, vide result dated 27.07.2018 (P-3). The scrutiny of her documents/certificates has already been done. Later on, she was informed vide letter dated 27.08.2018 (P-4) by respondent No.3 that she was not possessing the requisite eligibility for Outstanding Sports Person (OSP) as per Haryana Government Instructions dated 25.05.2018 (P-6) and as such, she is not eligible for the said post. As per Haryana Government Instructions dated 25.05.2018 (Annexure P-6), the term Outstanding Sports Person (OSP) has been replaced with Eligible Sports Person (ESP).

The grievance of the petitioner before this Court now is that rejecting her candidature under the category of Outstanding Sports Person (OSP) is illegal on the ground that Haryana Government Instructions dated 25.05.2018 (P-6) cannot be applied in the present case and during process of selection, eligibility criteria cannot not be changed.

Learned counsel submits that petitioner is outstanding sports person with "B" Two' grade under clause IV (b) of instruction dated 30.11.1993 (Annexure P- 8) and is fully eligible to be considered under the category of Outstanding Sports Persons (OSP) but after applying new notification, she has been made ineligible for the said post. Clause 4 (III) and IV (b) and of instruction dated 30.11.1993 (P-8) reads as under:-

4 GRADING OF CERTIFICATES

(iii) Winners of the 1st three positions in Sr. National,

Jr. National Inter State Championships, Inter State

Championships, Inter-Zonal Championships, Federation Cups, All India inter-varsity championships and National School Games would be graded as B-1.

IV (b) Participates in the competition mentioned in the sub clause (iii) of clause 4 above would be graded as B-II.”

Pursuant to order passed by this Court on 07.09.2018, the petitioner was provisionally interviewed.

On notice of the petition, a reply has been filed by respondent No. 3-Commission taking a stand that the petitioner has not attached the Sports Gradation Certificate as per format at Schedule-I attached with notification dated 25.05.2018 (P-6) for Eligible Sports Persons (ESP) for job under Sports quota and other purposes issued by the Sports and Youth Affairs and as per Rule 7 of the notification, the application is not entitled to any benefit including appointment under Sports Quota unless supported by Sports Gradation Certificate as per format at Schedule-I. As per notification dated 25.05.2018 (P-6), the category OSP has been deleted and new category i.e ESP has been introduced and a Group B certificate can be issued only when the applicant has participated in the tournament of category 7 or above and in the case of medal winner in a tournament of the category 9 or above in accordance with rule 5 of notification which deals with International Games. In the present case, as per certificate, the petitioner has participated in Junior National Basket Ball Championship held at Chittor (AP) from 6th to 13th June, 2004. Whereas as per Rule 5 of notification, category 9 or above deals with only international games.

Learned counsel for the Commission has produced the result of the advertisement (P-1) in the Court today in a sealed cover which has been

opened by the Reader of this Court. The result is reproduced below.

Sr.No	Roll No.	Category	Candidate Name	Marks out of 100 in recruitment test calculated on percentile basis	50% of marks obtained in recruitment test (total marks 50)	Marks awarded for personal achievement and interview (total marks 50)	Total
1	13973	Indu Kaushik	OSP-GEN	46.31	23.16	34	57.16
2	16902	Pratibha Dalal	OSP-GEN	43.15	21.58	41	62.58
3	11056	Aashima	OSP-GEN	37.89	18.95	32	50.95
4	12801	Deepak Sharma	OSP-GEN	36.84	18.42	36	54.42

As per the above result, petitioner-Pratibha Dalal has secured highest marks and Indu Kaushik is having 2nd highest marks. But as per Commission, none of the above candidates were found suitable for the above said posts being ineligible.

At this stage, learned counsel for the petitioner has referred to full bench judgment of this Court in case of ***Amardeep Singh Sahota vs. State of Punjab, 1993 (4) SCT 328*** wherein the dispute relating to Sports Quota of the Competitive Entrance Examination for admission to M.B.B.S/B.D.S/B.A.M.S (Ayurvedacharya) Courses in the Government Medical/Dental Colleges of Punjab in the Government/Ayurvedic College has been referred to Full Bench of this Court. The students appeared for test on the basis of policy laid down in prospectus which was subsequently changed and the Full Bench of this Court has held that the prospectus cannot subsequently be changed by State Government to detriment of students to benefit certain other students. In para 10, 22, 23 and 24, it has been observed as under:-

10. By Notification dated May 20, 1992 issued by the Department of Health and Family Welfare, the Governor of Punjab ordered that the selection of the students for admission to the M.B.B.S./B.D.S./B.A.M.S. (Ayurvedacharya) Course

for the session 1992-93 in all the three Medical Colleges was to be made by holding a Competitive Entrance Examination (PMT) which was conducted last year by the Guru Nanak Dev University, Amritsar. Clause III(a) of the Notification lays down the eligibility criteria for admission to the said courses. This clause III(a) was exactly quoted in paragraph 4.2(a)(i) of the Prospectus which we have already quoted in the early part of the judgment. In this paragraph, it was specifically mentioned that the minimum marks required for eligible candidates will be communicated subsequently. The State Government instead of notifying the minimum marks required for eligible candidates issued Notification dated July 13, 1992 in partial modification of the Notification dated May 20, 1992 which reads as follows :-

III(i) The condition of minimum qualifying marks for competitive Entrance Test (PMT) has been waived off and the admission to MBBS/BDS/BAMS will be made strictly in order to relative merit of candidates determined on the result of Entrance Test (PMT). In case of reserved seats relative merit of the candidates will be determined within each category of reservation.

2. The other terms and conditions will remain the same as already notified on 20.5.1992.

The position which emerges therefore is that by Notification dated May 20, 1992, the State of Punjab issued specific condition on the basis of which admissions were to

be under the 2 per cent quota reserved for sportsmen/sportswomen. This condition was subsequently modified by the Notification dated July 13, 1992. The learned counsel for the petitioners have challenged the validity of para 3 of the instructions dated 7/12 June, 1991 as well as the note 1 appended to the said para and they have also challenged the Notification dated July 13, 1992 which waives the condition of laying down minimum qualifying marks for Competitive Entrance Test (PMT). Shri P.S. Patwalia, learned counsel for the petitioners in Civil Writ Petitions No. 12079 of 1992 and 12176 of 1992, which were referred to the Full Bench on December 18, 1992, has not disputed the giving of Grades A, B, C and D under para 2 of the instructions dated 7/12 June, 1991. But his contention is that once a student comes in a particular grade and if in that particular grade selection is made for admission then the admission should be made on the basis of the marks obtained in the Competitive Entrance Examination (P.M.T.) on merit, and the admission made primarily on the basis of sports in the same grade is arbitrary, discriminatory and consequently violative of Article 14 of the Constitution of India, Sh. S.S. Nijjar, Senior Advocate, appearing for the petitioner in Civil Writ Petition No. 15651 of 1992 has further urged that note 1 appended to para 3 of the instructions dated 7/12 June, 1991 giving precedence to seniors over the juniors is void and goes contrary to the main para 3 of the instructions and as such

*Note 1 is void and
liable to be set aside.*

22. It may at this stage further be stated that the Notification dated July 13, 1992 goes contrary to the policy which was laid down for admission in the Notification dated May 20, 1992 on the basis of which the Prospectus had been issued to the students and the students appeared for test on the basis of the policy laid down in the prospectus. The Prospectus cannot subsequently be changed by the State Government to the detriment of the students to benefit certain other students. In Ravdeep Kaur v. State of Punjab and others, ILR (1985) 1 Punjab and Haryana 343, a Division Bench of this Court had an occasion to consider the value of a Prospectus issued for admission to an entrance examination. It was held that the eligibility for admission to a course has to be seen according to the prospectus issued before the entrance examination and that the admission has to be made on the basis of instructions given in the prospectus as the instructions issued have the force of law. We agree with the view taken by the Division Bench. Since the Prospectus issued for admission to the 1992-93 course in the medical college has the force of law and the students appeared in the examination on the basis of the instructions laid down in the said Prospectus, it was not open to the State Government to issue contrary instructions and as such also the Notification dated July 13, 1992 issued

by the State Government is invalid in law.

23. *There is another aspect of the matter if condition of acquiring minimum qualifying marks in an admission examination is waived then the examination itself would become a farce. A sportsman may just enter the hall not answer any question and come back get zero and yet because of his sports*

category. He would get admission in a medical college. In this way, the very purpose and spirit of the competitive examination will be given a go-by. If an examination is held, it must be given its due importance.

24. *In view of the above, we cannot accept the extreme contention raised by Shri P.S. Patwalia that in the case of reservation in the sports quota merit in the examination should be the sole criteria for admission otherwise the relevance of sports excellence will cease to have any importance which is the basis of the quota in question. There will be no incentive left for a sportsman/sportswomen to excel in sports and very good sportsmen who have devoted their maximum time in playing games would never be able to get admission in the medical colleges. If this is accepted then the very purpose for which reservation in sports quota is made would become nugatory. We, therefore, do not agree with the contention of Shri Patwalia that even in the same grade admissions should be made on the basis of merit in the admission examination.*

In the above judgment, the matter was relating to the 2 % Sports Quota reserved for the Competitive Entrance Examination for admission to M.B.B.S/B.A.M.S (Ayurveachara) Courses in the Government Medical/Dental Colleges of Punjab, as per prospectus. Thereafter, vide notification dated 20.05.1992, the State of Punjab issued specific condition on the basis of which admissions were to be under the 2 per cent quota reserved for sportsman/sportswoman. However, vide notification dated 13.07.1992, this condition was modified. Hon'ble the Supreme Court disposed of the writ petition and held that the State Government should not change the policy every year and in one year change it many a times as has done in the present case.

The ration of the above judgment is directly applicable to the facts of the present case.

Learned counsel for the Commission has further referred to letter dated 14.09.2018 issued by Principal Secretary of Government of Haryana, Sports and Youth Affairs Department wherein it has been intimated that the ESP posts will be governed as per Government notification dated 25.05.2018 (P-6) issued by Sports and Youth Affairs Department. The competent authority is to issue the Sports Gradation Certificate as specified in para No. 2 of the said notification. Further liberty was granted to the Commission to re-advertise the ESP posts in case the number of candidates is found to be less.

In the present case, the advertisement was issued on 27.11.2017 and the Commission had the liberty to readvertise these posts, as per above letter dated 14.09.2018 but they decided not to do so and declared the result.

The petitioners were duly eligible as per policy dated 30.11.1993 (P-8) and

they cannot be rejected on the ground that they do not possess the Sports Gradation Certificate as per format at Schedule I with notification dated 25.05.2018 (P-6) for ESP for jobs under Sports Quota and other purposes issued by Sports and Youth Affairs Department, Haryana. The instruction dated 25.05.2018 (P-6) cannot be applied in the present case, as during process of selection, criteria cannot be changed. The petitioner-Dr. Pratibha Dalal is outstanding sports person with “B Two” Grade Certificate under Clause (b) of instruction dated 30.11.1993 (P-8) and is fully eligible to be considered under the category of OSP.

In view of the discussion made above, CWP No. 22572-2018 stands dismissed, as the petitioner in that case secured less marks than the last candidate i.e 50.95 marks. However, CWP No. 22815-2018 stands allowed, as the petitioner has secured highest marks i.e 62.58 marks. The respondent-Commission is directed to consider Ms. Pratibha Dalal under the zone of consideration and her case be recommended for appointment to the above post within a period of fifteen days to respondent No. 2, as per merit list and respondent No. 2 shall issue appointment letter thereafter to the petitioner-Dr. Pratibha Dalal.

The result in original has been returned back to learned counsel appearing for the Commission.

(RITU BAHRI)
JUDGE

01.03.2019
G Arora

Whether speaking/reasoned
Whether reportable

Yes
No