

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

**Civil Writ Petition No. 19940 of 2020 (O&M)
Date of Decision: 24.11.2020**

Harpreet Singh, Amritsar, Punjab

..... Petitioner

Versus

State of Punjab and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE SANT PARKASH**

Present: Ms. Sangita Dhanda, Advocate
for the petitioner.

*[The aforesaid presence is being recorded through video conferencing
since the proceedings are being conducted in virtual court]*

JASWANT SINGH, J.

The petitioner through instant petition under Article 226 and 227 of the Constitution of India is seeking writ of certiorari quashing Clause (viii) of Para 15 of the Notification No. 5/9/2020-5HB-III/5234 dated 02.09.2020 (**Annexure P-3**) issued by Department of Medial Education & Research (Health-III Branch), Government of Punjab on the ground that it is arbitrary, discriminatory, thus violative of Article 14, 15 & 16 of the Constitution of India.

2. The facts emerging from petition are that the Petitioner is grandson of a Punjab Police Person who was killed in action. The Petitioner after passing higher secondary examination (10+2) applied for National Eligibility-cum-Entrance Test-2020 (for short 'NEET') for securing admission to M.B.B.S / B.D.S. courses in State of Punjab for session 2020-21 in Government and private medical institutions in Punjab. The

Respondent-University declared result and asked the Petitioner to submit

documents. In the document verification notice dated 03.11.2020, the Petitioner's name was shown under all the categories under which he had originally applied i.e. Category No. 12 (for schedule castes), 18.2 (for grandchildren of persons killed in terrorist action in Punjab) and 31 (for wards of Punjab Police Personal, Punjab Armed Police, Punjab Home Guards and Paramilitary Forces killed in action). The Petitioner appeared before Authorities and got his documents verified. The Respondent in the provisional merit list of candidates dated 12.11.2020 deleted name of petitioner due to lesser merit in all categories applied.

Since the petitioner on the basis of his secured merit is hopeful of securing admission against seats reserved under category-31 provided reservation under category-31 is also extended to grand-children of Police Personnel killed in action, as granted to grand-children of terrorist affected persons. Hence, the writ petition.

3. The petitioner in the backdrop of above sequel of events is assailing vires of Clause (viii) of Para 15 of Notification dated 02.09.2020 (P-3). The sole ground of challenge to validity of impugned Clause (viii) is that it is discriminatory and manifestly arbitrary thus violative of article 14 of the Constitution on the ground that in case of terrorist affected person under clause (vi) grandchildren are eligible whereas grandchildren of police personnel killed in action under clause (viii) are not eligible. There is no reasonable basis to make difference between both the categories, hence discriminatory. Wards of police personnel should be treated at par with general public.

4. As the petitioner has challenged clause (viii) of Para 15 of the Notification dated 02.09.2020 (P-3), it would be appropriate to reproduce Para 15 of the Notification:

“ 15. Reservation in Government Medical/Dental Colleges :

The reservation for the State quota seats in Government Institutes in various categories for admission to the Undergraduates courses in Government Medical/Dental Institutes shall be as under:

(i)	<i>Scheduled Castes</i>	<i>25%</i>
(ii)	<i>Backward Classes</i>	<i>10%</i>
(iii)	<i>Backward Area/Border Area (1% each)</i>	<i>2%</i>
(iv)	<i>Physically handicapped/ orthopedically handicapped only</i>	<i>5%</i>
(v)	<i>Sports Persons</i>	<i>1%</i>

Credit shall be given only for the sports achievements made during class XI and XII. The admission shall be made on the basis of inter-se merit of the candidates determined on the basis of graduation (Category A/B/C) issued by the Director of Sports, Punjab. However, for exempted categories under para 11 of this Notification, the competent authority will be Director, Sports of that State of U.T. from where the candidate has passed his class XI and XII examinations.

(vi) Children/Grandchildren of terrorist affected persons *1%*

Children/Grandchildren of Sikh riot affected persons *1%*

*(In order of preference to the exclusion of next category)
(Preference shall be given to a candidate whose parent or guardian is killed in such situation – Guardian to be considered only in case neither parent was alive at the relevant time)*

a. Persons killed in terrorist actions in Punjab/ riots outside Punjab.

b. Terrorist/ Riot affected /displaced persons

(vii) Wards of Defence Personnel

In order of preference to the exclusion of next category as per letter No. 6(1)/2017/D(Res.II) dated 21.05.2018 of Ministry of Defence, Department of Ex-serviceman Welfare, Government of India.

Note:- Certificate to the effect must be issued by Army/Navy/Air Force Headquarters or the Commanding Officer of the Unit, countersigned by the Director, Defence Services Welfare, Punjab in case of the Serving Defence Personnel. In case of Ex-Servicemen certificate should be signed by the concerned District Defence Services Welfare Officer, countersigned by the Director, Defence Services Welfare, Punjab.

(viii) Wards of Punjab Police Personnel, Punjab Armed Police, Punjab Home Guards and Para-Military Forces (in order of preference to the exclusion of next category) 1%

Certificate to this effect issued by Inspector General of Police (HQ), Punjab Police shall have to be produced while submitting other documents. In case of Paramilitary Forces this certificate shall be countersigned by IG Police (HQ) Punjab.

(a) Killed in action

(b) Disabled in action to the extent of 50%

(c) Winners of President's Police Medal for Gallantry or Police Medal for Gallantry. ”

5. The petitioner has challenged clause (viii) of Para 15 of the Notification which is a piece of delegated legislation, thus scope of interference at the hands of this Court is little wider than principal legislation. In *T.N. Versus P. Krishnamurthy 2006 (4) SCC 517*, while dealing with validity and scope of Rule 38A of the Tamil Nadu Minor Mineral Concession Rules, 1959, Supreme Court laid down grounds to challenge subordinate legislation:

“ Whether the Rule is valid in entirety?

12. There is a presumption in favour of constitutionality or validity of a sub-ordinate Legislation and the burden is upon him who attacks it to show that it is invalid. It is also well recognised that a sub-ordinate legislation can be challenged under any of the following grounds:-

a) Lack of legislative competence to make the sub-ordinate legislation.

- b) *Violation of Fundamental Rights guaranteed under the Constitution of India.*
- c) *Violation of any provision of the Constitution of India.*
- d) *Failure to conform to the Statute under which it is made or exceeding the limits of authority conferred by the enabling Act.*
- e) *Repugnancy to the laws of the land, that is, any enactment.*
- f) *Manifest arbitrariness/unreasonableness (to an extent where court might well say that Legislature never intended to give authority to make such Rules).*

The court considering the validity of a subordinate Legislation, will have to consider the nature, object and scheme of the enabling Act, and also the area over which power has been delegated under the Act and then decide whether the subordinate Legislation conforms to the parent Statute. Where a Rule is directly inconsistent with a mandatory provision of the Statute, then, of course, the task of the court is simple and easy. But where the contention is that the inconsistency or non-conformity of the Rule is not with reference to any specific provision of the enabling Act, but with the object and scheme of the Parent Act, the court should proceed with caution before declaring invalidity. ”

In *Cellular Operators Association of India Versus Telecom Regulatory Authority of India (2016) 7 SCC 703*, Supreme Court while declaring Regulation framed under Telecom Regulatory Authority of India Act, 1997 as ultra vires the Act referred its earlier precedents which are extracted as below:

“ ***Violation of fundamental rights***

42. *We have already seen that one of the tests for challenging the constitutionality of subordinate legislation is that subordinate legislation should not be manifestly arbitrary. Also, it is settled law that subordinate legislation can be challenged on any of*

*the grounds available for challenge against plenary legislation. (See **Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India (1985) 1 SCC 641**, SCC at p. 689, para 75.*

43. *The test of "manifest arbitrariness" is well explained in two judgments of this Court. In **Khoday Distilleries Ltd. v. State of Karnataka (1996) 10 SCC 304**, this Court held: (SCC p. 314, para 13)*

*"13. It is next submitted before us that the amended Rules are arbitrary, unreasonable and cause undue hardship and, therefore, violate Article 14 of the Constitution. Although the protection of Article 19(1)(g) may not be available to the appellants, the Rules must, undoubtedly, satisfy the test of Article 14, which is a guarantee against arbitrary action. However, one must bear in mind that what is being challenged here under Article 14 is not executive action but delegated legislation. The tests of arbitrary action which apply to executive actions do not necessarily apply to delegated legislation. In order that delegated legislation can be struck down, such legislation must be manifestly arbitrary; a law which could not be reasonably expected to emanate from an authority delegated with the law-making power. In **Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India (1985) 1 SCC 641**, this Court said that a piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature. A subordinate legislation may be questioned under Article 14 on the ground that it is unreasonable; 'unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary'. Drawing a comparison between the law in England and in India, the Court further observed that in England the Judges would say, 'Parliament never intended the authority to make such Rules; they are*

unreasonable and ultra vires'. In India, arbitrariness is not a separate ground since it will come within the embargo of Article 14 of the Constitution. But subordinate legislation must be so arbitrary that it could not be said to be in conformity with the statute or that it offends Article 14 of the Constitution."

44. Also, in **Sharma Transport v. State of A.P. [(2002) 2 SCC 188]**, this Court held: (SCC pp. 203-04, para 25)

*"25. ... The tests of arbitrary action applicable to executive action do not necessarily apply to delegated legislation. In order to strike down a delegated legislation as arbitrary it has to be established that there is manifest arbitrariness. In order to be described as arbitrary, it must be shown that it was not reasonable and manifestly arbitrary. **The expression "arbitrarily" means: in an unreasonable manner, as fixed or done capriciously or at pleasure, without adequate determining principle, not founded in the nature of things, non-rational, not done or acting according to reason or judgment, depending on the will alone.**"*

(Emphasis Supplied)

6. In the case in hand, the petitioner has challenged validity on the ground that impugned clause is discriminatory and arbitrary as grandchildren of terrorist affected persons under clause (vi) are eligible whereas in case of Police Personnel under clause (viii) only children are eligible for reservation. Article 14 permits reasonable classification based upon intelligible differentia. Hon'ble Supreme Court in a couple of judgments including recent judgment in **Shayara Bano Versus Union of India, (2017) 9 SCC 1** has held that any subordinate or plenary legislation may be declared *ultra vires* if it is manifestly arbitrary. The scope and

Maneka Gandhi Versus UOI (1978) 1 SCC 248.

7. In the present case, the respondent has extended benefit of reservation to grandchildren of terrorist affected persons under clause (vi) whereas confined to children in case of Defence Personnel under clause (vii) and Punjab Police Personnel under clause (viii). The officials of Armed Forces / Police Personnel are always at risk of loss of life in action. Combating with terrorist activities is not the only risk to which they are exposed, instead Officials of Armed Forces / Police Personnel have to put their life on risk at all times because of inherent nature of duty. Every year so many police officials or member of other armed forces lose their life while performing their duty because there is no end of crime and criminal activities which directly affect life of Armed Forces/ / Police Personnel. In the State of Punjab, general public was affected by militancy more or less upto 1995. Such affected families were victims of terrorist activities or Sikh riots (in 1984). The wards of such victims would not be available / eligible for admission as on today. Thus to effectively ameliorate the hardships of such families, grandchildren have been provided the benefit to make reservation meaningful for such families of the public. The object thus is not only fair and reasonable but laudable. The family members of officials of Armed Forces / Police Personnel killed while in service get various benefits like pension, compensation etc., whereas family members of general public victim of terrorist activity may or may not get such benefits, thus general public constitutes a separate class from members of Armed Forces / Police Personnel who are protected by one or another way. There is intelligible differentia between general public and Armed Forces / Police

Personnel for different treatment. The reservation granted to grandchildren of terrorist affected persons cannot be compared with reservation granted to members of Armed Forces / Police Personnel. Thus, we do **NOT** find that impugned clause is arbitrary, deserving to be declared invalid. There is no infirmity in the impugned clause and deserves to be declared valid and accordingly declared *intra vires* the Constitution of India. Accordingly, **petition** being bereft of merits is **dismissed**.

Before parting with this order, we make it clear that petitioner would be at liberty to claim reservation under any other category if eligible as per law.

(JASWANT SINGH)
JUDGE

November 24, 2020
'dk kamra'

(SANT PARKASH)
JUDGE

Whether Speaking/reasoned	Yes
Whether Reportable	Yes