

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP No.22317 of 2020
Date of decision:23.12.2020

Bhavishh Malik

... Petitioner

Vs.

State of Haryana and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE SUVIR SEHGAL**

Present:- Mr. C.L.Sharma, Advocate, for the petitioner.

SUVIR SEHGAL, J. (ORAL)

The hearing of this petition has been taken up through video conferencing on account of outbreak of Covid-19 pandemic.

The present petition has been filed under Article 226 of the Constitution of India for issuance of a writ in the nature of certiorari for setting aside the order/memo dated 08.12.2020 (Annexure P-11) issued by PGIMS, Rohtak and for directing the respondents to grant admission to the petitioner in MBBS Course 2020-21, preferably in the Maharaja Agrasen Medical College, Agroha, Hisar where a seat has already been provisionally allotted to the petitioner, vide Annexure P-9.

Facts, in brief, are that in pursuance to prospectus issued for National Eligibility-cum-Entrance Test (UG) 2020 [for short "NEET(UG) 2020"], the petitioner appeared in the examination for admission to the MBBS Course in the category reserved for persons with disability. He qualified the examination with NEET score of 145 out of 720 marks and his NEET All India Rank is 687065. He appeared before the PGIMS, Rohtak-

respondent No.3 for his medical check-up for issuance of a disability certificate but respondent No.3 did not issue any certificate to him. He appeared before the Admission Committee on 01.12.2020 but he was asked to appear on 02.12.2020 before the Medical Board constituted by respondent No.3. On the next day when he appeared before the Medical Board of respondent No.3, he was not given the disability certificate and he was told that the certificate will be sent directly to the Admission Committee. This resulted in exchange of hot words between the father of the petitioner and the concerned doctors. Even a complaint was given to the Head of the Department, but to no avail. Apprehending mischief, the petitioner got himself medically examined from the Govt. Medical College and Hospital, Chandigarh from where certificate dated 04.12.2020 (Annexure P-8) was issued mentioning his disability to be 40% and holding him eligible for admission in persons with disability category. Provisional merit list, Annexure P-9 was issued by the Govt. of Haryana allocating provisional seat to the petitioner in Maharaja Agrasen Medical College, Agroha, Hisar and his name figured at serial no.5632 in the said list. The petitioner again appeared before the Admission Committee on 04.12.2020 with the medical certificate issued by the GMCH, Chandigarh. Since the certificate of PGIMS, Rohtak was at variance with the medical certificate, Annexure P-8, by letter dated 04.12.2020 (Annexure P-10), both the medical certificates were sent for revaluation to the PGIMS Rohtak for submission of a report after re-examination. In pursuance thereto, PGIMS, Rohtak-respondent No.3 issued the impugned memo dated 08.12.2020 whereby after re-examination, it has been found that the permanent

disability of the petitioner is 20% and he was ineligible for admission in the medical course.

Advance copy of the petition has been served to the respondents. Mr. Ankur Mittal, Additional Advocate General, Haryana has appeared on behalf of the respondent-State and Mr.Nilesh Bhardwaj, Advocate has put in appearance on behalf of Pandit B.D. Sharma University of Health Sciences, Rohtak-respondent No.5.

Counsel have been heard and the record has been perused with their able assistance.

Clause 52 of the prospectus (Annexure P-1) mentions the reservation policy for persons with disability. Appendix H-1 provides the guidelines regarding admission of students with (Specified Disability) under the Right of Persons with Disability Act, 2016, with respect to admission in MBBS Course. Relevant extract of Appendix H-1 is reproduced as under:-

“Guidelines regarding the admission of students with “Specified Disability” under the Rights of Persons with Disability 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 January 2018.

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).*

Sr No	Disability Type	Type 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, Poliomyelities etc.	Less than 40% disability	40-80% disability Persons 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%
			* Attention should be paid to loss of sensations in fingers and hands, amputation, as well as involvement of eyes and corresponding recommendations be looked at. ** Attention should be paid to impairment of vision, hearing, cognitive, function etc. and corresponding recommendations be looked at. *** Both hands intact, with intact sensations, sufficient strength and range of motion are essential to be considered eligible for medical course.			

The 12 designated disability centers have been specified separately as per notice dated 26.10.2020 issued by Govt. of India, **(Annexure P-7)** which are authorized for issuing the disability certificate as per the Medical Council of India guidelines for admission under the All India Quota.

The Haryana Government issued notification dated 29.10.2020, providing for procedure for admission to MBBS/BDS Course in Government/Govt.Aided/Private Medical and Dental Educational Institutions in the State for 85% State quota seats. The relevant extract of the notification, insofar as it provides for admission to persons with disability, is as under:-

“5% seats of the State quota shall be filled up by candidates with benchmark disabilities in accordance with the provisions of the Rights of Person with Disabilities Act, 2016, based on the merit list of National Eligibility-cum-Entrance Test and as per MCI Guidelines issued from time to time. The disability certificate issued by the designated disability centers notified by NBE in the prospectus issued for NEET 2020 and Medical Board constituted by PGIMS, Rohtak will only be considered valid for admission purpose for the Academic Session 2020-21. The dates on which the Medical Board at PGIMS, Rohtak will sit shall be duly publicized on the Admission Web-portal on the website of Pt.B.D.Sharma UHS,Rohtak”.

The petitioner appeared before the Admission Committee on 01.12.2020 without the disability certificate from any of the designated

disability centers. He was therefore asked to get himself medically examined by the Medical Board constituted by the PGIMS, Rohtak, respondent No.3 who found that the disability of the petitioner was below the benchmark disability of 40% as specified in guidelines Annexure H-1, reproduced above. When the petitioner produced the disability certificate, Annexure P-8, which did not deal with the specified disability as per guidelines, he was re-examined by the Medical Board of the PGIMS, Rohtak, who vide impugned memo dated 08.12.2020 (Annexure P-11) opined as under:-

“He is an operated case of brachial plexus injury left upper limb with mild pain in left hip area. He is having decreased range of motion in left shoulder with active abduction upto 110 degrees, active flexion upto 110 degrees, full adduction, external rotation upto 20 degrees, internal rotation up to 70 degrees in front of chest (however, he cannot touch his back) and extension upto 20 degrees. He has decreased power in abductors, flexors and external rotators of left shoulder. He also has mild pain in left hip while walking and has a linear surgical scar on left arm. The radiology of hip is normal.

On account of above clinical findings, his permanent disability is assessed to be twenty percent (20%) which does not fall in the criteria of disability required for the course, hence IN-ELIGIBLE for the medical course.”

The Medical Board of PGIMS, Rohtak-respondent no.3 comprising of senior medical faculty has based its opinion regarding the disability of the petitioner on the guidelines mentioned in Annexure H-1,

reproduced above. The disability of the petitioner has been assessed on the basis of clinical findings and the degree of permanent disability has been found to be twenty per cent which is below the benchmark disability, and thus, renders him ineligible for admission to MBBS in the quota reserved for persons with disability. We have no reason to disbelieve or ignore the assessed disability by the competent authority for the State quota seats.

As a result, this Court is of the view that the writ petition is sans any merit and the same is consequently dismissed.

(JASWANT SINGH)
JUDGE

(SUVIR SEHGAL)
JUDGE

December 23, 2020
savita

Whether Speaking/Reasoned	Yes
Whether Reportable	Yes/No