

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

1. CWP-19148-2024 (O&M)
Reserved on: 30.08.2024
Date of decision: 04.09.2024

AHSAAS

..Petitioner

Versus

STATE OF PUNJAB AND ORS.

..Respondents

2. CWP-24199-2023 (O&M)

AHSAAS

..Petitioner

Versus

STATE OF PUNJAB AND ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE SHEEL NAGU, CHIEF JUSTICE
HON'BLE MR. JUSTICE ANIL KSHETARPAL

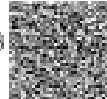
Present: Mr. Neeraj Gupta, Advocate for the petitioner.
Mr. J.S. Gill, Additional Advocate General, Punjab.
Mr. Anurag Chopra, Additional Advocate General, Punjab.
Mr. Nitin Kaushal, Advocate for respondent No.4-University.
Mr. Himanshu Malik, Senior Panel Counsel (UOI).
Mr. Deepak Balyan, Additional Advocate General, Haryana.
Mr. Vikas Mohan Gupta, Advocate
for respondent No.7 (in CWP-24199-2023).

ANIL KSHETARPAL, J.

1. **Brief facts of the case:-**

1.1 The petitioner herein aspires for admission in MBBS course under category of Scheduled Caste in State of Punjab. In the year 2023, he filed a CWP-24199-2023, seeking admission to academic session 2023-

2024. With respect to the academic session beginning from 2024-2025, he



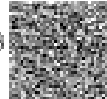
has filed CWP-19148-2024. This order shall dispose of both the writ petitions as an identical issue is involved.

1.2 The petitioner was born at Ambala Cantt. (State of Haryana) in the year 2005. He claims that his grand-parents migrated from the area falling in State of Punjab in the year 1990 on account of massacre of 38 Hindu bus passengers at the hands of extremists. His mother and father have been issued Scheduled Caste certificates by State of Punjab in the year 1983 and 1997, respectively. He places reliance upon instructions issued by State of Punjab on 07.06.2016, and Central Government's instructions issued on 22.02.2018, in support of his claim.

1.3 Per contra, the respondents including State of Punjab, and the University contest the same.

2. **Arguments put forth by the learned counsel for the parties:**

2.1 While relying upon the aforesaid instructions the petitioner's counsel submits that the petitioner's family belongs to 'Ramdasiya' community, who are permanent residents of the area of Lalru, which falls in State of Punjab. As per the presidential notification for State of Punjab vide Constitution (Scheduled Caste) Order, 1950, the 'Ramdasiya' community was declared as Scheduled Caste. He submits that the petitioner is entitled to reservation in the 'State of his origin' and not in any other State in view of the judgments passed by the Supreme Court in **Marri Chandra Shekhar Rao Vs. Dean, Seth G.S. Medical College, 1990 (3) SCC 130**, **Action Committee on issue of Caste Certificates Vs. Union of India, 1994 (5) SCC 244** and a Full Bench judgment of Bombay High Court in **Shweta Santalal Vs. State of Maharashtra and others, 2010 (2) BCR 497**. He submits that the petitioner's fundamental right to seek admission under the Scheduled



Caste category in the State of his origin has wrongly been denied.

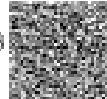
2.2 Per contra, learned counsels representing the University, State of Punjab and private respondent in CWP-24199-2023, submit that the petitioner is not qualified for admission in Scheduled Caste category as he was born and brought up in State of Haryana and studied in Chandigarh. As such the petitioner never resided in the area falling in State of Punjab even for a day.

3. **Analysis and Discussion:**

3.1 It may be noted here that year after year admission to MBBS course has been made the subject matter of litigation before the Courts. Ultimately, in **Dinesh Kumar (Doctor) Vs. Motilal Nehru Medical College, 1986 (3) SCC 727**, the Supreme Court approved that the admissions to medical colleges run by the State Government or funded by the State Governments shall have to fill 15% seats under all India quota, whereas, the States shall be entitled to fill remaining 85% seats in State quota based upon the NEET result.

3.2 Preference in admission on the basis of residence, as well as institutional preference is permissible so long as there is no total reservation on the basis of residence or institutional preference as held by the Supreme Court in **D.P. Joshi Vs. State of Madhya Bharat, AIR 1955 (SC) 334**. Similarly, in **Jagdish Saran (Doctor) Vs. Union of India, 1980 (2) SCC 768**, the same view was reiterated. With respect to State of Haryana, similar view was taken in **Anant Madaan Vs. State of Haryana, 1995 (2) SCC 135**, whereas, with respect to State of Himachal Pradesh, similar view was taken in **Nishan Puri Vs. State of Himachal Pradesh, 1999 (1) SCC 126**.

3.3 With respect to academic session 2023-2024 and 2024-2025, the requirement of admission under State quota has not been changed.



Hence, the relevant extract of the prospectus issued for academic Session 2024-2025, reads as under:-

“9. Out of the total seats in Government Institutes, 15% seats (All India Quota) in MBBS/BDS courses shall be filled by the Government of India through centralized Counselling by Medical Counselling Committee of DGHS, MOHFW, Govt. of India on the basis of marks obtained in NEET. Rest 85% seats shall be filled as per merit of NEET by the Admission Committee constituted by the Government of Punjab.

10. The details of the institutions and category wise seats shall be available on the official website of Baba Farid University of Health Sciences, Faridkot i.e. www.bfuhs.ac.in.

11. The eligibility of the candidate for state quota is as under:

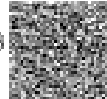
- a) The candidate should be Citizen of India.***
- b) The candidate must have passed 10+1 & 10+2 from the state of Punjab or***
- c) The candidate should have born in the State of Punjab or***
- d) The candidate must be a “Permanent Resident” in the state of Punjab.***

Note:- ***“Permanent resident” in the State of Punjab means:-***

i) Candidates who have studied for a period of 5 years in Punjab or have studied in Punjab for 2 years just preceding the qualifying examination for the admission or

ii) Children wards of

- a) The employees of Punjab Govt. posted in or outside Punjab State or working on deputation having atleast 3 years of service. Or*
- b) The employee of Govt. of India posted in Chandigarh or in Punjab in connection with the affairs of the Punjab Govt. for a period of 3 years. Or*
- c) The employees of State Govt. institutions/undertakings who are posted in Chandigarh or in Punjab in connection with the affairs of the Punjab Govt, for a period of 3 years. Or*
- d) The employees having atleast 3 years of service in autonomous bodies/companies in which Punjab Govt. has 20% or more shares. Or*



e) The Residents who are residing outside Punjab on Account of their service either with the GOI or with the employees of the Govt. of Punjab in the matter of issue of 'Residence Certificate' provided the permanent address of such employees fall in the reorganized Punjab i.e. on or after 01.11.66, as per their service books. Or

f) The employees borne on the establishment of Punjab and the Haryana High Court discharging duties in connection with the affairs of the State of Punjab having atleast three years of service who have not availed this facility from their parent State and State of Haryana and U.T; Chandigarh. Or

iii) Children/wards of the pensioners of Punjab Government irrespective of the fact that the original home of the retiree is in a state other than Punjab or he has settled after retirement in or outside Punjab. Or

iv) Children/wards of persons who have settled in Punjab or had resided in Punjab for a period of atleast 5 years at any time prior to the date of submission of the application either in pursuit of a profession or holding of a job.

In addition the following categories of candidates are also eligible for admission in MBBS and EDS courses in medical and dental institutes in Punjab:-

a) Wards of defence personnel posted in Punjab.

b) Candidates seeking admissions under NRI category.

c) Candidates belonging to minority community who are competing for the minority quota in the minority institutions.

d) Children/wards/dependents (whose parents are not alive) of all those regular Central Government employees, employees of Boards/Corporations/ Statutory Bodies of the Central Government who have remained posted inside Punjab for at least two years out of the three years preceding year of passing 10+2 examination but were posted outside Punjab for some time during these three years due to which their children/wards/dependents have passed class XI and/or XII or equivalent qualifying examinations from outside Punjab. However those who remained posted in Punjab continuously for these three years shall not be entitled to be exempted as they are equally placed with other Punjab Government employees posted in Punjab.

Provided however, that in case adequate number of candidates is not available for BDS course, then candidates who are not eligible for state quota may be considered."

3.4 In Clause 15 of the prospectus, the sub-classification (i.e. reservation) in the ‘State quota’ seats has been given, which is extracted hereunder:-

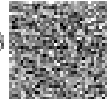
“15. Reservation in Government Medical/Dental Colleges:

The reservation for the State quota seats in Government Institutes in various categories for admission to the Undergraduate 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>Persons with disability</i>	<i>5%</i>
(v)	<i>Sports Persons</i>	<i>1%</i>

3.5 The eligibility of candidates for taking admission in State quota lays down that the candidate shall fulfil two out of four requirements. Condition (a) is mandatory and from the remaining three requirements, the candidate has to fulfil either (b), (c) (d) to be eligible to get admission in the State quota. Condition (b) provides that the candidate must have passed 10+1 & 10+2 (qualifying exam) from educational institution located in State of Punjab. Condition (c) lays down that candidate should have been born in State of Punjab. Condition (d) states that a candidate must be a ‘Permanent Resident’ of State of Punjab. The expression ‘Permanent Resident’ has been defined in the note appended to clause 11. As per the petitioner, migrated persons and their progenies migrated to various other states should be exempted from fulfilling Clause 11. It is significant to note that the petitioner neither fulfils condition (b) nor (c) and nor (d). He fails to fulfil any of the conditions laid down for claiming admission in State quota.

3.6 It is evident that as per Clause 11, the petitioner does not fall in the category of eligible candidates for admission in the State quota. In the



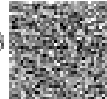
subsequently filed writ petition also, he has not challenged the correctness of Clause 11. In the considered opinion of this Court, the petitioner's entitlement to the reservation in Scheduled Caste category can be considered only if he fulfils the requirements for admission to MBBS seats in the State quota as laid down in Clause 11. The States are entitled to give preference to its own residents. Similarly, institutional preference is also permissible so long as there is no total reservation. Thus, he is not entitled to stake claim in the seats exclusively reserved for the candidates who are residents of Punjab and therefore, entitled to seek admission in State quota. The reservation laid down under Clause 15 is only for the candidates eligible for taking admission under State quota seats.

3.7 The petitioner's case is also not covered by the instructions dated 07.06.2016, issued by State of Punjab. Clarification was issued about giving facilities/benefits to the persons migrated to Punjab from other States.

Learned counsel for the petitioner relies upon para 4, which reads as under:-

“4. Thus, those persons who were permanent residents of the State of Punjab on the date of notification of their caste, their children, their children's children, etc. are Scheduled Castes of the State of Punjab, and the state of origin of the said persons for taking benefit of scheduled caste is Punjab. The persons belonging to Scheduled Castes/Scheduled Tribes of any State/Union Territory of India other than the State of Punjab, who have come to the State of Punjab from their State of Origin, are considered to have migrated for availing the benefit of Scheduled Castes person to be considered. The format regarding issuance of Scheduled Caste, Scheduled Tribe certificate to these migrated persons, is enclosed as Annexure-A.”

3.8 The aforesaid instructions are applicable only to those persons, who are permanent residents of State of Punjab. The expression 'Permanent Residents' has already been explained in the prospectus. These instructions do not lay down that the grand-children of migrants from State of Punjab,

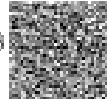


who are neither born nor studied nor resided in Punjab shall be entitled to admission in the State quota.

3.9 Further reliance on instructions issued by Government of India on 22.02.2018 is also misplaced. These instructions are only reiteration of the procedure for the issuance of Scheduled Caste certificates to the migrants from other States/Union Territories. The SC/ST certificates can be issued by the States where the migrant's family is residing on the basis of a previous certificate issued by his or her State of origin.

3.10 **Marri Chandra Rao's case (supra)**, relates to admission of candidates, who have migrated to another State. It was held that the candidate recognized as a member of Scheduled Caste/Scheduled Tribe in his original State on migration to another State is not entitled to benefit of reservation of seats in the migrated State. Similarly, in **Action Committee on issue of Caste Certificate's case (supra)**, a Five Judges Bench of the Supreme Court held that a person belonging to Scheduled Caste/Scheduled Tribe in relation to his original State of which he is a permanent resident or ordinary resident, cannot be deemed to be so in relation to any other State on his migration for the purpose of employment/education etc. The following observations were made by the Supreme Court while examining the concept of involuntary migration:-

“10. It has, however, to be borne in mind that a man does not cease to belong to his caste by migration to a better or more socially free and liberal atmosphere. But if sufficiently long time is spent in socially advanced area then the inhibitions and handicaps suffered by belonging to a socially disadvantageous community do not continue and the natural talent of a man or a woman or a boy or girl gets full scope to flourish. These, however, are problems of social adjustment i.e. how far protection has to be given to a certain segment of socially disadvantaged community and for how long to become equal with others is a matter of delicate social adjustment. These must be so balanced in the mosaic of



the country's integrity that no section or community should cause detriment or discontentment to other community or part of community or section. Scheduled Castes and Scheduled Tribes belonging to a particular area of the country must be given protection so long as and to the extent they are entitled in order to become equal with others. But equally those who go to other areas should also ensure that they make way for the disadvantaged and disabled of that part of the community who suffer from inabilities in those areas. In other words, Scheduled Castes and Scheduled Tribes say of Andhra Pradesh do require necessary protection as balanced between other communities. But equally the Scheduled Castes and Scheduled Tribes say of Maharashtra in the instant case, do require protection in the State of Maharashtra, which will have to be in balance to other communities. This must be the basic approach to the problem. If one bears this basic approach in mind, then the determination of the controversy in the instant case does not become difficult. For the purpose of understanding the problem, it may be worthwhile to refer to the Report of the Joint Committee of the Parliament on the Scheduled Castes and Scheduled Tribes (Amendment) Order Bill, 1967. It may also be worthwhile to refer to the proceedings of the Constituent Assembly on the 17th September, 1949 dealing with Articles 303 and 304, which later on became Articles 341 and 342 respectively. Dr. B.R. Ambedkar moving the Resolution observed as follows:

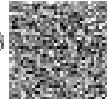
“That after Article 300, the following articles be inserted:

300A.(1) The President may, after consultation with the Governor or Ruler of a State, by public notification specify the castes, races or tribes or parts of or groups within castes races or tribes, which shall for purposes of this Constitution be deemed to be Scheduled Castes in relation to the State.

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued by the President under clause (1) of this article any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

300B. (1) The President may after consultation with the Governor or Ruler of a State, by public notification specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for purposes of this Constitution be deemed to be scheduled tribes in relation to that State.

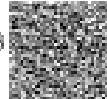
(2) Parliament may by law include in or exclude from the list of scheduled tribes specified in a notification



issued by the President under clause (1) of this article any Tribe or Tribal community or part of or group within any Tribe or Tribal community but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

The object of these two articles, as I stated, was to eliminate the necessity of burdening the Constitution with long lists of Scheduled Castes and Scheduled Tribes. It is now proposed that the President, in consultation with the Governor or Ruler of a State should have the power to issue a general notification in the Gazette specifying all the Castes and tribes or groups thereof deemed to be Scheduled Castes and Scheduled Tribes for the purposes of the privileges which have been defined for them in the Constitution. The only limitation that has been imposed is this: that once a notification has been issued by the President, which, undoubtedly, he will be issuing in consultation with and on the advice of the Government of each State, thereafter, if any elimination was to be made from the List so notified or any addition was to be made, that must be made by Parliament and not by the President. The object is to eliminate any kind of political factors having a play in the matter of the disturbance in the Schedule so published by the President.

23. Having construed the provisions of Article 341 and 342 of the Constitution in the manner we have done, the next question that falls for consideration, is, the question of the fate of those scheduled caste and scheduled tribe students who get the protection of being classed as scheduled caste or scheduled tribes in 'the States of origin when, because of transfer or movement of their father or guardian's business or service, they move to other States as a matter of voluntary transfer, will they be entitled to some sort of protective treatment so that they may continue or pursue their education. Having considered the facts and circumstances of such situation, it appears to us that where the migration from one State to other is involuntary, by force of circumstances either of employment or of profession, in such cases if students or persons apply in the migrated State where without affecting prejudicially the rights of the scheduled castes or scheduled tribes in those States or areas, any facility or protection for continuance of study or admission can be given to one who has so migrated then some consideration is desirable to be made on that ground. It would, therefore, be necessary and perhaps desirable for the legislatures or the Parliament to consider appropriate legislations bearing this aspect in mind so that proper effect is given to the rights given to scheduled castes and scheduled tribes by virtue of the provisions under Articles 341 and 342 of the Constitution, This is a

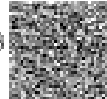


matter which the State legislatures or the Parliament may appropriately take into consideration.”

3.11 The Supreme Court has already observed that it is for the Parliament/Legislature/Executive to take a policy decision based on the existing conditions and requirements of a State. The Court, in exercise of power of judicial review, is primarily concerned with evaluating the legality and constitutionality of decisions taken by the public authorities. This approach allows the Courts to render a decision that is concise and focused on the most important aspect of law, ensuring that the judgment addresses the essential legal principles, without becoming bogged down in policy matters.

3.12 Similarly, the Full Bench judgment of Bombay High Court in *Shweta Santalal's case (supra)* examined the question, “whether a person who was not the ordinary resident as on the date of the relevant presidential notification in the area that now constitutes the State of Maharashtra will be entitled to benefit of reservation in the State?” It was declared that if the area in which the person was residing, has now become a part of State of Maharashtra, then he will be entitled to reservation. It is evident that this judgment is not related to migration of the person belonging to the Scheduled Caste/Scheduled Tribe, hence, the same is not applicable to the facts of the present case. In fact, the Full Bench was examining the situation in the context of transfer of an area on reorganization of State.

3.13 There is yet another aspect of the matter. It has been brought to the notice of the Court that the admission to the academic Session starting in the year 2023 was completed as per the schedule, whereas, for the academic Session 2024, the last date for submitting online application form is 15.08.2024. As per schedule, the admission process is to be completed by



30.08.2024 and physical reporting of candidates in the respective provisionally allotted colleges and deposit of six months' tuition fee is from 31.08.2024 to 05.09.2024, which is sacrosanct.

3.14 Article 15(4) of the Constitution of India is an enabling provision, which authorizes the State for making any special provision, with respect to admission of candidates belonging to Scheduled Caste. In other words, the State is entitled to take a conscious decision while laying down the criteria which entitles a particular person to claim reservation in admission in educational institutions. Part XVI of the Constitution makes a special provision relating to certain classes including Scheduled Caste and Scheduled Tribe. Article 335 is restricted to claims of Scheduled Castes and Scheduled Tribes to services and posts. It does not deal with admission to the educational institutions. Article 341 provides for the presidential notification specifying the castes, races or tribes as Scheduled Caste with respect to a State, hence, the argument of learned counsel for the petitioner that petitioner's fundamental right has been violated holds no firm ground.

3.15 Similarly, the petitioner's prayer to read down Clause 11 of the prospectus lacks merit because the reading down of provision is a tool available to the constitutional Courts to save it from being declared unconstitutional or arbitrary. In this case, the petitioner has failed to establish that Clause 11 violates the constitutional provision or is manifestly arbitrary.

3.16 Similarly, this Court does not find it appropriate to issue any direction to the respondent to amend Clause 11 because it is the prerogative of the State to lay down the criteria for the migrated Scheduled Castes and their progenies as the same falls in the arena of policy making, which should

left to the State Government.

3.17 The last argument put forth by the petitioner’s counsel is that petitioner is neither entitled to reservation in State of Haryana nor in State of Punjab. He submits that the petitioner belongs to a Scheduled Caste but he is not entitled to reservation either of the States, i.e. where his grant-parents permanently resided nor in the State they migrated. This aspect has been considered by the Supreme Court in para 10 & 23 in Marri Chandra Shekhar Rao’s case (supra).

4. Conclusion:

4.1 For the foregoing discussion, finding no merit, both the writ petitions are dismissed.

4.2 All the pending miscellaneous applications, if any, are also disposed of.

(ANIL KSHETARPAL)
JUDGE

(SHEEL NAGU)
CHIEF JUSTICE

September 04th, 2024
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Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No