



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-20492 of 2024 (O&M)

Reserved on: 11.09.2024

Date of Order:17.09.2024

Jivitesh Dutt (minor) through his mother Smt. Vandana
Garg @ Bandani Devi @ Vandana Rani as his natural guardian.

.Petitioner

Versus

State of Punjab and others

..Respondents

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

Present: Mr. D.S.Malik, Advocate and
Mr. Ved Priya Malik, Advocate
for the petitioner.

Mr. Anurag Chopra, Addl. Advocate General, Punjab.

ANIL KSHETARPAL, JUDGE

1. BRIEF FACTS OF THE CASE:-

1.1 The petitioner herein aspires to get admission in Bachelor of Engineering in the State of Punjab through Category-(i) of public notice issued by Directorate of Technical Education & Industrial Training, Punjab. He has also challenged the constitutional validity of instructions dated 06.06.1996, issued by the State of Punjab.

1.2 He claims that his maternal grandfather was killed by terrorists on 22.01.1988. His mother was born in the State of Punjab. She is settled Yamuna Nagar (Haryana) after getting married in the year 2005. He was born in the State of Haryana and his mother is working as an Assistant Professor in Maharishi Dayanand University, Rohtak. Originally, the

petitioner sought a writ of mandamus directing the respondents to grant him admission under Group-01, Category-(i), which reads as under:-

“A. ELIGIBILITY

- i) *Children/Grand Children of those who have lost a bread winner owing to terrorist action or where such a person has suffered permanent disability of 50% and above, as a result of terrorist action.*
- ii) *Children/ Grand children of riot victims, if someone in family, was killed between 31.10.1984 and 07.11.1984 in the riots in Delhi, Bakari, Kanpur and other places.”*

“The Candidate should be resident of Punjab in terms of Punjab Govt. letter No.1/03/95/PPH/9619 dated 06.06.1996 as mended from time to time. In case of riot victims, if candidate seeks relaxation of residence proof, then detailed justification seeking relaxation with documentary evidence in support of claim should be attached within the application.”

ELIGIBILITY

S.No.	Affidavit/Certificate Categories	Authorities competent to issue the same
(a)	Citizens of India	Affidavit of the parents/Guardian to be attested by an Executive Magistrate/Oath Commissioner/Notary Public.
(b)	Produce an affidavit to the effect that they or their children/wards have not obtained the benefit of residence in any other States.	
(i)	Candidates who have studied for a period of 5 years in Punjab or have studied in Punjab for 2 years just proceeding the qualifying examination for the admission.	Certificate to be signed by the Headmaster/Principal of the recognized Schools/Colleges concerned.
(ii)	Children/Wards of:	Certificate to be issued



	(a) The employee of Punjab Government posted in or outside Punjab State or working on deputation having atleast 3 years of service. (b) The employees of Government of India posted in Chandigarh or in Punjab in connection with the affairs of the Punjab Govt. for a period of 3 years. (c) The employees of State Government Institutions/ Undertakings who are posted in Chandigarh or in Punjab in connection with affairs of the Punjab Government for a period of 3 years. (d) The employees having atleast 3 years of service in autonomous bodies/companies in which Punjab Government has 20% or ore shares.	by the respective Head of the Department.
(iii)	Children/Wards of the pensioners of Punjab Govt. 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	PPO issued by the Accountant General, Punjab.
(iv)	Children/Wards of the persons who have settled in Punjab or had resided in Punjab for a period of at least 5 years at any time prior to the date of the submission	Certificate to be issued by the DC, ADC(R), ADC(D), SDO(Civil), GA to DC, DORG, DRO, EM, Tehsildar, Commissioner of Municipal Corporation

	of the application either in pursuit of a profession or holding or a job.	of Amritsar Jalandhar and Ludhiana.
(v)	Children/Wards of persons who have held immovable property in Punjab for a period of five years. The property should be in the name of the parents/guardians or the candidate himself.	DC, ADC(R), ADC(D), SDO(Civil), GA to DC, EM, DORG, Tehsildar/ DRO based on copies of Jamabandi, Revenue Record, Municipal Record, Registered deeds of any other document to the full satisfaction of the DC.
(vi)	Persons who were born in Punjab and produced a certificate to that effect	As per category (iv) above.

2. **ARGUMENTS PUT FORTH BY THE LEARNED COUNSEL REPRESENTING THE PARTIES:-**

2.1 The petitioner's counsel contends that the State while issuing the prospectus has made an inadvertent error as it has given no specific clause with respect to the relaxation of residence proof of children, who have lost a breadwinner owing to a terrorist action. He also submits that the requirement of residence proof as provided in the guidelines is arbitrary. Subsequently, he amended the petition to challenge the correctness of instructions/guidelines issued on 06.06.1996. While relying upon para 10, 19, and 20 of **Dr. Pradeep Jain etc. etc. vs. Union of India and others, (1984) 3 SCC 654,** he submits that the previous judgement passed in **D.P.Joshi vs. State of Madhya Bharat, (1955) 1 SCR 1215,** stands overruled.

2.2 Per contra, the State's counsel has submitted that the relaxation regarding residence can only be given to the students/candidates falling in



Category-A(ii) which is distinct from Category-A(i). He further submits that the guidelines have been issued by the State of Punjab in accordance with the law laid down in *Dr. Pardeep Jain's case (supra)*.

3. **ANALYSIS AND DISCUSSION:-**

3.1 Having heard the learned counsel representing the parties, this Bench does not find substance in the petition on the following grounds:-

- (i) On careful side by side reading of Clause-(i) and (ii), it is evident that Clause-(i) is applicable to children/ grand children of those who have lost a breadwinner owing to a terrorist action or where such a person has suffered permanent disability of 50% or above as a result of terrorist action, whereas, Category-(ii) is applicable to children/grand children of riot victims, who were killed between 31.10.1984 to 07.11.1984 in the riots in Delhi, Bakaro, Kanpur and other places. It is evident that one category is with respect to children/grand children of those who lost a breadwinner owing to terrorist action, whereas in second category the expression used is 'riots victims'. For availing the benefit of Clause-(i), the candidate is required to be a resident of Punjab in terms of Punjab Government's Letter issued on 06.06.1996. The relaxation with respect to residence proof can only be sought in case of children/grand children of riot victim and not of terrorist action. Hence, the exemption of residence proof is not available to the students falling in



Category-(i).

- (ii) The instructions dated 06.06.1996, prescribe the requirements of residence proof. The State is entitled to make reservation for its own bonafide residents under Article 15 of the Constitution of India. The discrimination on the basis of place of birth is prohibited. However, the State's powers are not restricted to provide for reservation/preference to its own bonafide residents. In *Dr. Pardeep Jain's case (supra)*, this distinction was noticed and it was held that the reservation can be made on the basis of residence. However, the court held that the States cannot reserve all the seats on the basis of domicile/residence requirement within the State or on the basis of institutional preference, i.e for the candidates who have passed the qualifying examination held by the University or the State and such wholesale reservation was declared unconstitutional and void.
- (iii) On careful reading of the requirements of being considered a resident, it is evident that an effort has been made by the State to give preference to its own bonafide residents. The petitioner's counsel has failed to put forth any convincing argument that the residence requirements are arbitrary or unconstitutional.
- (iv) Before claiming reservation under a particular category, the student is required to fulfill its basic requirements. In



this case, the petitioner does not fulfill the mandatory requirements of being considered a resident. It is also not the petitioner's case that wholesale reservation has been made by the State.

3.2 This Bench has carefully read the judgment of the Supreme Court in Dr. Pardeep Jain's case (supra). It is evident that the judgment passed in D.P.Joshi's case(supra) has not been overruled. The Court has only explained that wholesale reservation on the basis of domicile/residence requirement within the State is not appropriate and is void. The judgment of D.P.Joshi's case(supra) was relied upon by the Bench in Dr. Pardeep Jain's case (supra).

4. DECISION:-

4.1 For the aforesaid reasons, this court expresses inability to grant any indulgence to the petitioner.

4.2 Dismissed.

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

(ANIL KSHETARPAL)
JUDGE

(SHEEL NAGU)
CHIEF JUSTICE

17th September, 2024
nt

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No