





ANIL KSHETARPAL, J.

1. Factual Compass:-

1.1 With the consent of learned counsel representing the parties, two connected petitions i.e. CWP-29483-2022 and CWP-29374-2022, shall stand disposed of by this common order.

1.2 The facts are being noticed from CWP-29483-2022. This Court is called upon to answer the following question:-

"Whether the administrative decision/instructions to retroactively disqualify candidates from admission under State quota sustainable?"

1.3 As many as five aspirants seeking admission to MBBS Course under 'Punjab State Quota' have filed these two writ petitions. The primary challenge is to para 11 and 18 (b) of notification dated 22.08.2022, vide which it has been stipulated that only students who gave their address reflecting residence of Punjab in the NEET form shall be considered for admission in Punjab State Quota. The petitioner has also challenged the correctness of order dated 15.12.2022 passed by the Secretary to Government of Punjab, Department of Medical Education and Research, pursuant to direction of the High Court in a batch of 10 writ petitions.

1.4 The admissions to MBBS and BDS Courses is made through NEET (UG) examination, which is held by National Testing Agency every year. 15% seats fall in the All India Quota, whereas, remaining 85% seats fall in State



quota. After declaration of result of NEET (UG), the States are at liberty to fill the 85% State quota seats. As per Clause 19 of the Information brochure published by NEET in March/April, 2022, the information with respect to postal or permanent address/State does not indicate their domicile, which is extracted as under:-

“19. The information about the State of the respective candidate is only for the purpose of information and it does not mean that the candidate belongs to the domicile of that particular state as it needs to be reaffirmed from the DME of the respective states.”

xxx

xxx

xxx

“Note: The information about the State field of the respective candidate is only for the purpose of information and it does not mean that the candidate belongs to the domicile of that particular state as it needs to be reaffirmed from the DME of the respective states.”

1.5 The State of Punjab’s guidelines issued on 06.06.1996 for determining the residence/domicile of candidates, were applicable in March/April 2022, read as under:-

“Categories”

<i>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.</i>	<i>Certificate to be issued by the Headmaster/ Principal of the Govt. and recognized Schools/Colleges concerned.</i>
<i>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.</i>	<i>Certificate to be issued by respective Head of the Department</i>
<i>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</i>	<i>-do-</i>



<i>of 3 years.</i>	
<i>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.</i>	<i>-do-</i>
<i>d) The employees having atleast 3 years of service in autonomous bodies/companies in which Punjab Govt has 20% or more shares:</i>	<i>-do-</i>
<i>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 Le. on or after 01.11.66, as per their service books.</i>	<i>-do-</i>
<i>j) "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</i>	<i>"Certificate to be issued by the Head of the Department of the Punjab and Haryana High Court</i>
<i>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.</i>	<i>PPO issued by the Accountant General, Punjab</i>
<i>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.</i>	<i>Certificate to be issued by the DC, ADC (R), ADC (D), SDM, GA to DC, DORG, DRO, EM, Tehsildar, Commissioners of Municipal Corporations of Amritsar, Jalandhar and Ludhiana.</i>
<i>v) Children/wards of persons who have held immovable property in Punjab for a period of 5 years, the property should be in the name of the parents/guardians or the candidate himself.</i>	<i>DC, ADC(R), ADC(D), SDM, GA to DC, EM, DORG, Tehsildar/DRO based on copies of Jamabandi, Revenue Record, Municipal Record, Registered deeds or any other documents to the full satisfaction of the DC.</i>
<i>ii)Persons who were born in Punjab and produced a certificate to that effect</i>	<i>As per category (iv) above.</i>

1.6 On 17.07.2022, the entrance test for NEET(UG) was held, in which, the petitioner (Ms. Vasu Sirohi) secured an All India Rank of 31140 by securing 580 marks. The State by issuing notification on 22.08.2022,



disqualified all the candidates who had given their permanent address of some other State than Punjab in NEET form, which was submitted in April-2022 with the following note:-

"Is to be added after approval from competent authority:- Apart from fulfilling eligibility criteria as mentioned in this para, only those candidates shall be considered for the state quota seats who have filled "Punjab" state in the NEET form".

1.7 The petitioner on 07.09.2022, submitted representation protesting against notification. However, Baba Farid University of Health Sciences (BFUHS) in para 11 and 18-B of the prospectus issued on 07.10.2022 for inviting applications for filling up State Quota seats added the following clauses:-

"11. The candidate should be a bonafide resident of Punjab. The resident status of Punjab state shall be taken in terms of Punjab Government, Department of Personnel and Administrative reforms (PP-II Branch) letter No. 1/3/95-3 PP 11/9619, dated 6th June, 1996, and any further instructions issued by the Department of Personnel, if any, and the same shall be adhered to. A copy of notification No. 1/3/95-3 PP II/9619, dated 6th June, 1996 is enclosed herewith.

In addition the following categories of candidates are also eligible for admission in MBBS and BDS 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 bonafide resident of Punjab may be considered as per NEET merit.

"Is to be added after approval from competent authority:-

Apart from fulfilling eligibility criteria as mentioned in this para, only those candidates shall be considered for the state quota seats who have filled "Punjab" state in the NEET form."

"18(b) The State filled by the candidate at the time of filling NEET UG form shall be considered at the time of calling application of State quota seats, only those candidates will be considered who have filled Punjab as Residential State."

1.8 The petitioner was issued residence certificate for purpose of admission to educational institution in the year 2020 and 2022 on account of being a child of individuals who were owner of immovable property in Punjab for a period of 05 years. The petitioner's mother owns a residential accommodation in S.A.S Nagar, Mohali (Punjab) apart from various other properties. In her NEET form, she disclosed that she is residing at Ghaziabad, Uttar Pradesh with her parents. She filed CWP-24318-2022, challenging notifications dated 22.08.2022 and notice dated 14.10.2022, in which, she was permitted to provisionally participate in the counselling with direction to keep



her result in a sealed cover. The petitioner's writ petition alongwith other connected writ petitions were disposed of on 13.12.2022 by directing the competent authority to take decision, however, the same was rejected on 15.12.2022. Immediately, the petitioner filed the present writ petition.

2. **Submissions made by the learned counsel representing rival parties:-**

2.1 While filing the reply, the State has contested the petition.

2.2 Learned counsel representing the petitioners have made the following submissions:-

- i. The NTA clarified that the submitted information by the students/candidates is only for limited purpose and the same cannot be construed as domicile of that State.
- ii. Rules have been changed midway and hence, violative of Article 14 of the Constitution of India.
- iii. There was no such condition that State quota seats will be available only to those students who disclose their permanent residence of Punjab in their NEET form.
- iv. The State by issuing the amended notification has retroactively taken away petitioner's right of consideration solely on the basis of her disclosure while submitting NEET form.
- v. The amendment vitiates legitimate expectations of the petitioner and the impugned notification is hit by doctrine of *promissory estoppel*. She had not applied in State quota for any other State



other than Punjab and the petitioner has been admitted in BDS Course in a college located in State of Himachal Pradesh under All India Quota. While relying upon the judgment of the Supreme Court in "*S. Krishna Sradha vs The State Of Andhra Pradesh and others*", 2020, 17 SCC 465, prayer was made to issue direction to admit the petitioner by creating a supernumerary seat in MBBS in a Government College for academic Session-2024.

2.3 *Per contra*, learned State counsel has submitted that the instructions have not been applied retroactively because the prospectus was issued on 17.10.2022 in order to ensure that the candidates do not claim State quota in different States, in view of observations made by the Bench in CWP-18872-2019 titled as "*Manu Garg Vs. State of Punjab and others*". It is further contended that the petitioner while submitting NEET application has disclosed her permanent residence as Uttar Pradesh, whereas, she was born and has studied in Delhi. While relying upon the judgment passed in "*Saurabh Chaudhary and others Vs. Union of India and others*", 2003, 11 SCC 146, he submits that the State is entitled to lay down criteria and modalities of the students who are eligible to admission in the State quota. Lastly, he submitted that the petitioner is not entitled to any relief, particularly, when two years have already elapsed.

2.4 Learned counsel representing the National Medical Commission has submitted that supernumerary seat in a Govt. College can be created, if this Court directs.



3. **Analysis and Conclusion:-**

3.1 Having heard learned counsel representing the parties, this Bench is of the considered opinion that the petitioners in all these writ petitions have wrongly been deprived of the admission in the academic Session beginning in the year 2022.

i. Undisputably, but for the above rider in the guidelines, the petitioner is qualified to seek admission in State quota. In other words, the petitioners stood deprived of claiming admission in State quota on account of disclosure of their address while filling NEET form in April-2022. The amended notification was issued subsequently(22.08.2022) after the NEET form had already been submitted, hence, the instructions could not be applied retroactively, particularly, when there is no enabling provision in the statute. Executive instructions in absence of enabling power in the statute cannot be made effective retroactively.

ii. It was specifically noted in the brochure issued by NTA that the address disclosed by the candidates is not for the purpose of determining their domicile/residence in a particular State. In this situation, the subsequent rider added by State to deprive the students from seeking admission in State quota seats was clearly arbitrary, without causing them an opportunity before submitting the applications in April-2022. The attention of the Court has not



been drawn to any prior instructions by State of Punjab or the University informing the students that the postal/permanent address disclosed by them while filling NEET form may dis-entitle them from claiming admission in State quota. Undoubtedly, the State has power to lay down reasonable guidelines for assessing candidates' residence but manner in which the decision has applied retroactively is arbitrary.

(iii) The university has issued a prospectus inviting application from candidates for 85% State quota seats. The NEET form is submitted by the candidates only to appear in entrance test, which is held by NTA at Pan India Level. The postal address given by the candidates while submitting NEET form is not for the purpose of determining residence in a particular State, whereas, the purpose of such addresses is to ascertain the place where communication (if any) can be sent. There may be some substance in the arguments of learned State counsel that candidates claimed residence in different States in order to claim State quota in various States simultaneously. To curb such practice, the State may evolve appropriate criteria, however, the rider has no nexus with the object sought to be achieved, particularly, when it results in disqualifying the candidates from State quota for the information which they innocently disclose as per provisions contained in NEET form.



(iv) Even, NTA never disclosed the students that the address disclosed by them while filling the NEET form would determine their eligibility in State quota. On the other hand, clear steps stipulates that such information would not determine the residence of candidates in that particular States. It was clearly stipulated in note appended to Clause 19 that the domicile of the candidates should be confirmed by the candidates from the respective States.

3.2 Now, the question is that the relief which can be granted to all the five petitioners. Ms.Vasu Sirohi' counsel has disclosed that she is interested in admission even in this academic year, which is likely to commence in October-2024, whereas, the petitioners' counsel in Himanshu Verma's case has submitted that now the petitioners are not interested in admission, but he presses the writ petition for grant of compensation.

3.3 In 'Vansh S/o Prakash Dolas Vs. The Ministry of Education Vs. Ministry of Health and Family Welfare and others', SPL(C) No. 26179/26180 of 2023 while relying upon 'Manoj Kumar Vs. Union of India and others', 2024 SCC online SC 163, the Supreme Court observed about restitutionary relief. In *S. Krishna Sradha's case* (supra) held that if there was no delay on the part of the candidate then in subsequent year the admission can be ordered while directing creation of additional seat.

4. Decision:

4.1 Accordingly, this Bench respectively following the aforesaid views directs National Medical Council to create additional seat in any of the



Government Colleges located in State of Punjab, for Ms. Vasu Sirohi in the current Session-2024. Additionally, she shall be also entitled to damages/ compensation to the tune of Rs. 10 lakhs as two precious years of her career have been wasted.

4.2 The four petitioners in CWP-29374-2022 are not interested in admission. From the facts, it is evident that all the four petitioners claimed State quota seat in MBBS in various States, which would be evident from the following tabulated compilation:-

List of petitioners showing different permanent addresses in NEET form and BFUHS admission form.						
Sr. No.	Name of the petitioner	CWP No.	State filled in the BFUHS Admission Application Form	State as per NTA (Confirmation Page)		
				NTA 10+2 Passed	NTA Birth Place	NTA Permanent Resident
2.	Himanshu Verma	24730 of 2022	Punjab	Chandigarh	Chandigarh	Chandigarh
3.	Ananya Goswami	25396 of 2022	Punjab	Chandigarh	Haryana	Haryana
5.	Eshita Sandhu	26457 of 2022	Punjab	Himachal Pradesh	Chandigarh	Himachal Pradesh
8.	Sonal	25511 of 2022	Punjab	Delhi	Delhi	Delhi

4.3 Keeping in view aforesaid facts, the amount of appropriate compensation is required to be assessed. Though, the petitioners have not disclosed, however, they appear to have moved on in their respective lives. Hence, four petitioners are held entitled to interim compensation for damages at Rs.50,000/- as they have applied to more than one state and have not taken any specific plea regarding the hardships they have experienced. However, they retain the right to approach the appropriate forum to seek higher compensation if they choose to pursue further claims.

4.4 With these observations, both the writ petitions are allowed.

4.5 All the pending miscellaneous applications, if any, (including CM-20392-2022) are also disposed of.

	(ANIL KSHETARPAL) JUDGE	(SHEEL NAGU) CHIEF JUSTICE
20.09.2024		
neeraj	Whether speaking/reasoned :	Yes No
	Whether Reportable :	Yes No