

Puneet Kalia Vs State of Punjab and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Nov. 20, 1998

Acts Referred: Constitution of India, 1950 " Article 226

Citation: (1999) 121 PLR 242

Hon'ble Judges: K.S. Kumaran, J; H.S. Brar, J

Bench: Division Bench

Advocate: V.K. Sharma, for the Appellant; Lakhinder Singh, Addl. A.G., for Respondent Nos. 1 and 2 and Subhash Goyal, for the Respondent

Final Decision: Allowed

Judgement

K.S. Kumaran, J.

Petitioner-Puneet Kalia, a resident of Chandigarh, who has passed 10 + 2 class from D.A.V. College, Chandigarh, in

1998, approached the Director of Sports Department, Punjab (second respondent) with a request to countersign the sports gradation certificate

(annexure P-1 dated 19.6.1998) issued to him by the Director of Sports, U.T. Chandigarh (third respondent). The petitioner required the same for

admission to the B.E. Course of the Punjab Technical University, Jalandhar (fourth respondent) from out of the seats reserved for the sports

category persons. Copy of the said letter of request addressed by the petitioner is annexure P-2 dated 24.6.1998. The second respondent

declined the request of the petitioner by his letter dated 29.6.1998 (copy of which is annexure R-2) which reads as follows:

Sub: Gradation certificate-counter-signatures.

Please refer to your request dated 24.6.98 on the subject noted above. It is to inform you that according to Punjab Govt. Gradation Policy dated

10.12.97. para-4 (sub-para-2), your gradation certificate cannot be countersigned because you have played Open National Tournament, whereas

according to this para only for playing National School games can be countersigned. Your certificate is enclosed herein.

2. Therefore, the petitioner has approached this Court under Articles 226/227 of the Constitution of India for the issuance of a writ of certiorari

quashing the action of the second respondent in not countersigning the sports gradation certificate, for directing the second respondent to

countersign the same, and to direct the respondents to consider his candidature for admission to the B.E. Course under the sports quota. The

petitioner has alleged in paragraph-7 of the writ petition that his father is a Government of India employee working as Accounts Officer in the office

of the Accountant General, Punjab at Chandigarh and his mother is employed in the Punjab & Haryana High Court.

3. The petitioner has alleged that during the 10 + 2 course and even prior thereto, he was interested in sports and participated in Fencing

Championship conducted in Chandigarh as well as in the National Junior Championship. He has also alleged that he secured third position in the

individual event in the Junior Fencing Championship and represented D.A.V. College, Chandigarh. According to the petitioner, he also participated

in the National Junior Fencing Championship-1997 held at New Delhi and represented Chandigarh. The petitioner has urged that the Director of

Sports, Chandigarh has issued the sports gradation certificate (annexure P-1 dated 19.6.1998). According to the petitioner, Punjab Government

has reserved certain seats in various institutions for the sports category persons and in order to get admission under the sports category quota, he

has to submit the sports gradation certificate duly countersigned by the Director of Sports, Punjab. The petitioner claims that he submitted an

application on 24.6.1998 to the Director of Sports, Punjab requesting him to countersign the sports gradation certificate, but, was informed that his

certificate will not be countersigned since according to the new policy dated 10.12.1997, the certificate could not be countersigned as the

petitioner has not competed the Junior National Championship as the nominee of the State of Punjab. The petitioner has urged that the Punjab

Government had issued a policy on 4.8.1992 as per which the sports person is entitled to get sports gradation certificate countersigned by the

Director of Sports, Punjab as there was no such condition as in the present policy dated 10.12.1997. According to the petitioner, the provision in

the policy dated 10.12.1997 as mentioned above is against the provisions of the Constitution of India. The petitioner contends that the action of the

respondents 1 and 2 in not countersigning the sports gradation certificate is illegal and unconstitutional.

4. On notice of motion, the respondents entered appearance through counsel and reply has been filed on behalf of the State of Punjab and the

Director of Sports, Punjab (respondents 1 and 2 respectively) wherein they have admitted that the petitioner is a resident of the Union Territory of

Chandigarh and that he had submitted his application on 24.6.1998 for counter signature, though they have also stated that the petitioner has not

filed other documents i.e. affidavit and proof for working in Punjab State Service at Chandigarh etc. According to these respondents, on perusing

the gradation certificate issued by the Sports Department of U.T. Chandigarh, it was found that he had played Open Level Tournaments and not in

National School Games, whereas as per the policy dated 10.12.1997, the certificates of players representing Chandigarh will be countersigned if

they had represented Chandigarh in National School Games and if their parents are in Punjab State Service posted at Chandigarh during the

period of which gradation is being claimed. These respondents, therefore, contend that the certificate of the petitioner was returned. These

respondents have alleged that the parents of the petitioner are not Punjab Government employees posted at Chandigarh and that the petitioner is

not eligible to get his sports gradation certificate countersigned. These respondents have also urged that the policy dated 10.12.1997 is not

contrary to the provisions of the Constitution of India, and that the condition that the sports person should play as a nominee of the State of Punjab

in the Junior/Senior National Championship so that the Punjab State can get the benefit from their achievements. According to these respondents,

old policy dated 4.8.1992 was not clear about the countersigning of the certificates issued by the Union Territory of Chandigarh and, therefore, in

the present policy, it has been made clear that the benefit of countersignature will be given to the wards of Punjab Government employees posted

at Chandigarh.

5. We have heard the counsel for both the sides and perused the records.

6. The Department of Sports, Punjab has issued letter dated 10.12.1997 (annexure P-3) regarding their policy for issuing sports gradation

certificates for purposes of the reservation of the seats for sports persons in technical/medical institutions. The relevant portion of this policy is as

follows :-

For certification, Sports Department Punjab only consider the cases who fulfil the following requisites:-

1. For gradation Sports Department Punjab will only entertain the claim of domicile of the State who actually participated in the competitions as

nominee of Punjab Team. This will leave out the Sports residents of other States, Punjab domiciles or even of Punjab and Chandigarh who do not

represent Punjab in any competition as Punjab nominee.

2. Claim of the resident of Union Territory of Chandigarh will only be entertained for counter signature of Certificates issued by the Department of

Sports, Union Territory of Chandigarh for National School Games only provided parents belong to the Punjab State Service and are posted at

Chandigarh during the period of which gradation is being claimed for their wards. For Junior and Senior National Championships, they must play

as nominee of the State of Punjab as is the case in para-1 above.

7. The learned counsel for respondents 1 and 2 contends that a reading of paragraph-2 extracted above clearly shows that any claim of a resident

of Union Territory of Chandigarh for counter-signature of the certificate issued by the Department of Sports, Union Territory of Chandigarh will be

entertained (i) For National School Games only, provided parents belong to the Punjab State Service and are posted at Chandigarh during the

period of which gradation is being claimed for their wards; (ii) for Junior and Senior National Championships if sports person play as nominee of

the State of Punjab. He further contends that the petitioner, who has participated in the National Junior Fencing Championship from Chandigarh,

but not as the nominee of the State of Punjab, cannot claim that his sports gradation certificate issued by the Union Territory of Chandigarh should

be countersigned by the second respondent. The contention of the learned counsel for the respondents is that this concession is given to the sports

person who represent the State of Punjab in Open Junior and Senior National Championships. A reading of paragraph-2 extracted above

supports the contention of the respondents that the sports person should have played the game as a nominee of the State of Punjab in case the

sports person has participated in the Junior National Championships, although there is no such restriction where the sports person has taken part

from the Union Territory of Chandigarh in National School Games. That is why these respondents 1 and 2 contend that the case of the petitioner is

not covered by this policy dated 10.12.1997 and, therefore, petitioner's request for countersignature was rightly declined.

8. But the learned counsel for the petitioner, on the other hand, points out that this policy dated 10.12.1997 (annexure P-3) specifically provides

that the same will come into force with effect from 1.1.1998, whereas the petitioner had participated in Fencing Championship in the year 1997, as

is evident from the sports gradation certificate annexure P-1 issued by the third respondent on 19.6.1998 and, therefore, the case of the petitioner

should have been considered in terms of the policy that was in force during that period, and not in terms of the policy-annexure P-3 which had

taken effect from 1.1.1998 only. We agree with the learned counsel for the petitioner in this respect. The Sports Gradation Certificate issued by

the Director of Sports, Chandigarh (annexure P-1) shows that the petitioner who is a resident of Chandigarh, has been adjudged as Grade C.3

Sportsman in Fencing Championship for having participated in the Junior Fencing Championship -1997. Therefore, the contention of the

respondents that he would be governed by a policy which came into force on 1.1.1998, cannot be accepted.

9. A copy of the previous policy of the Punjab Government dated 4.8.1992 has been placed on record as annexure P-4. The contention of the

learned counsel for the petitioner is that it is only this policy which will govern the case of the petitioner. The Note appended to this policy dated

4.8.1992 reads as follows :-

Note: For certification, Sports Department Punjab only entertains the claims of residents in the State and the Union Territory of Chandigarh (The

later is only entertained for countersignatures of certificates issued by Department of Sports, Union Territory, Chandigarh). This leaves out the

sportsmen-residents of other states or even of Punjab who do not represent Punjab or any institution in Punjab in any competition.

10. As rightly contended by the learned counsel for the petitioner, a reading of this Note shows that the Department of Sports, Punjab was bound

to entertain only the claims of residents in the State of Punjab and the Union Territory of Chandigarh, and not of the sportsmen-residents of other

states or even of Punjab who do not represent Punjab or any institution in Punjab in any competition. But, so far as the claim of the residents of

Union Territory of Chandigarh is concerned, such claim is entertained only for countersignature of the certificate issued by the Department of

Sports, Union Territory of Chandigarh. This provision is found within brackets wherein there is no restriction as found in the policy dated

10.12.1997 (annexure P-3) that the sports gradation certificate issued by the Department of Sports, Union Territory of Chandigarh in respect of

National School Games only will be entertained for counter-signature, and that for Junior and Senior National Championships, the sports person

should have played as a nominee of the State of Punjab. In the absence of such a provision restricting the claim to those who have represented

Punjab State, the claim of the petitioner for countersigning his sports gradation certificate cannot be rejected on the ground that he had played in

the Junior Fencing Championship only from the Union Territory of Chandigarh, and not as the nominee of Punjab State.

11. But the learned counsel for the respondents, on the other hand, contends that though the petitioner may have participated in the Fencing

Championship in the year 1997, he had applied to the second respondent for the countersignature of his gradation certificate on 24.6.1998 vide his

letter annexure P-2 by which time the policy dated 10.12.1997 (annexure P-3) had come into force and, therefore, his claim for counter-signature

will have to be considered in terms of the said policy - annexure P-3 But we are of the view that the date when the petitioner sent the application

for countersignature is irrelevant and immaterial to decide the question as to which of the policies is applicable to the case of the petitioner, because

the petitioner does not require a fresh sports gradation certificate. He has already been issued a sports gradation certificate by the third respondent

1 on 19.6.1998. But whatever might be the date of the said sports gradation certificate, it is seen from the said certificate that he had taken part in

the Junior Fencing Championship held in the year 1997, where as policy dated 10.12.1997-annexure P-3 though dated 10.12.1997, specifically

provides that it will come into force with effect from 1.1.1998 only. The said policy does not say or even impliedly indicate that it will have

retrospective operation. Therefore, we are of the view that it is only the policy/order which was in force at the time when the petitioner took part in

the Fencing Championship, that will govern the request of the petitioner for countersigning his gradation certificate. That being the position, it is only

the policy/order dated 4.8.1992 (annexure P-4) that will govern the case of the petitioner's claim for countersignature. We have already pointed

out that there is no restriction in the policy/order dated 4.8.1992 that the sports person who takes part in the Junior National Championship should

have done so as a nominee of the State of Punjab. Therefore, we are of the view that the date on which the petitioner applied for countersignature

is immaterial inasmuch as his claim for countersignature had to be considered under the policy/order dated 4.8.1992 which was in force when the

petitioner took part in, the Junior Fencing Championship.

12. Another objection taken by the respondents is that the petitioner had not produced any documentary proof that his parents are in Punjab

Government Service posted at Chandigarh and, therefore, his claim could not be entertained The petitioner, of course, has stated that his father is a

Government of India employee working at Chandigarh and that his mother is an employee of the High Court of Punjab & Haryana. But we are of

the view that the petitioners claim cannot be rejected on this ground, firstly, because the rejection letter-annexure R-1 does not say that his claim

could not be entertained in view of this reason, but only mentions that he had played Open National Tournament, whereas according to the policy

dated 10.12.1997, the certificate can be countersigned only if he had played for National School Games. Therefore, it is seen that the second

respondent who had not taken this ground for rejection of the request of the petitioner at the time of passing the order annexure R-1, cannot now

take up this additional ground in his reply.

13. We have already held that petitioner's claim for counter-signature will have to be considered in terms of the policy/order dated 4.8.1992. The

Note appended to this policy/order dated 4.8.1992 only provides that the claims for certification are entertained only with regard to the residents

of the State and the Union Territory of Chandigarh. It does not say that the parents should belong to Punjab State Service and should be posted at

Chandigarh. When there is no such condition, the respondents are not justified in raising this objection that the parents of the petitioner should be

employees of the Punjab Government posted at Chandigarh at the time when the request of countersignature was made. Even in annexure P-3, the

condition that the parents should be employees of the Punjab State posted at Chandigarh, has been imposed only in respect of the sports person

who has participated in National School Games only. There is no such restriction or condition with regard to those sports persons who had taken

part in the Junior or Senior National Championships.

14. The learned counsel for the respondents relied upon the decision of the Hon"ble Supreme Court in Sandeep Brar and Anr. v. State of Punjab

and Ors., 1993(1) R.S.J. 323 and contended that this Court cannot direct that a different procedure should be followed. But that was a case

where the High Court had struck down the admission on the basis of the gradation certificates and held that instead of grading sportsmen under the

Government instructions dated August 6, 1986 weightage as provided in the Presidential Order dated August 30, 1984 be the governing factor in

the admission to the reserved seats for sportsmen/sportswomen. It is in these circumstances the Hon"ble Supreme Court held that it is the function

of the Executive to lay down the procedure for admission to the reserve categories, though the Court has the power of judicial review and if the

validity of the Government instructions is challenged the Court can examine the same. The Hon"ble Supreme Court held that the High Court was

not justified in directing a different procedure than the one notified by the State Government be made applicable to the admissions. In doing so, the

Hon"ble Supreme Court took note of the fact that the High Court only gave its preference for the weightage system provided under the

Presidential Order dated August 30, 1984 and directed that admissions be regulated on that basis.

15. But that is not the case before us. The dispute is as to which of the orders/policies is applicable to the case of the petitioner. The contention of

the petitioner is that the policy which was in force on the date when he took part in the competition will govern his case and we have accepted the

same. Therefore, this decision relied upon by the learned counsel for the respondents is not applicable to the facts of this case.

16. Another decision relied upon by the learned counsel for the respondents is also of the Hon"ble Supreme Court in Rajalakshmi v. State of

Mysore, AIR 1967 S.C. 993. This decision is also inapplicable to the facts of this case. The petitioners there in claimed that they were not given

certain concessions which were given to certain others and that they have been discriminated. But the Hon"ble Supreme Court held that a

concession cannot be claimed as a matter of right and a writ of mandamus cannot be issued commanding the authority to show indulgence.

17. The learned counsel for the respondents also relied upon a Full Bench decision of this Court in Amardeep Singh Sahota Vs. The State of

Punjab etc., . That was a case wherein it was held that the policy of the Government laying down sports as the sole criterion for admission cannot

be countenanced though excellence in sports may be a very important consideration for admission in the sports quota. It was held that a certain

minimum academic standard is also required to enable the student to obtain degree. Therefore, this decision again is inapplicable to the facts of this

case.

18. The learned counsel for the respondents also relied upon the decision of this Court in Nand Lal v. State of Punjab 1991(1) R.S.J. 131. The

question that arose before the Division Bench was whether it was open to the Government to withdraw the grant of House Rent Allowance and

City Compensatory Allowance. The Division Bench held that it was open to the Government to withdraw concessions. The contention that it was a

statutory allowance was rejected and it was held that the Government can make any change which could not be challenged in the writ jurisdiction.

Therefore, this decision is also inapplicable to the facts of this case.

19. In these circumstances, we are of the view that the contentions raised by the respondents cannot be accepted. In view of our finding that the

petitioner's case is covered by the policy dated 4.8.1992 (annexure P-4), we find that it is not necessary to go into the constitutional validity of the

impugned provisions contained in the policy-annexure P-3 dated 10.12.1997.

20. Taking into consideration all these aspects, we are of the view that the second respondent ought to have countersigned the sports gradation

certificate of the petitioner, and the order rejecting his claim-annexure R-1 dated 29.6.1998 has to be quashed.

21. In the result, the petition is allowed quashing the impugned order-annexure R-1 dated 29.6.1998. We direct the second respondent to

countersign the Sports Gradation Certificate of the petitioner. The petitioner shall immediately present the same with covering letter to the second

respondent who shall countersign and return the same within five days from the date of its presentation. In the circumstances of the case, we make

no order as to costs.