Harneet Kaur and Others Vs State of Punjab and Others

Letters Patent Appeal No''s. 353 and 360 of 1998

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Sept. 25, 1998

Acts Referred:
Constitution of India, 1950 â€" Article 14

Citation: (1998) 120 PLR 770

Hon'ble Judges: S.S. Sudhalkar, J; R.S. Mongia, J

Bench: Division Bench

Advocate: S.C. Sibal and V.S. Rana, for the Appellant; K.S. Brar and K.S. Ahluwalia, Addl. A.G., R.P. Singh and Shailesh Mani Tripathi for Respondent Nos. 2 and 3, for the Respondent

Final Decision: Allowed

Judgement

S.S. Sudhalkar, J.
This judgment will dispose of L.P.As. No. 353 and 360 of 1998 filed by Harneet Kaur and Yadvinder Singh appellants

respectively. Both the appellants were petitioners in C.W.Ps. No. 12737 and 12083 of 1998 respectively. Both these writ petitions were disposed

of by a common judgment by the learned Single Judge of this Court.

2. A Common Entrance Test known as Punjab Medical Entrance Test (for short ""Entrance Test"") for admission to the professional courses

MBBS/BDS/BAMS(Ayurdevedicharya) in the Medical/Dental Ayurvedic Colleges in Punjab is held every year. For the year 1998, this entrance

test was held by the Panjabi University, Patiala, for making admission to the various colleges. As per the prospectus, the State Government

allocated 150 seats to Government Medical College, Patiala and 50 seats to Medical College, Faridkot. There is also reservation of seats in

various categories and one of the reservations is of two seats in the MBBS which has been made for the wards of staff of Guru Gobind Singh

Medical College, Faridkot"" (hereinafter referred to as the ""Faridkot College""). The relevant clause of reservation which is under challenge before

us reads as under;

xii) Wards of Medical Staff of Guru Gobind Singh. Two seats in Medical College, Faridkot, MBBS only who have minimum five years

continuous service in this college.''

3. It is contended by the appellants that no such reservation has been made by the State Government for Medical College, Amritsar or

Government Medical College, Patiala. However, for the Faridkot College, two seats have been reserved for the wards of the Medical Staff. Both

the appellants challenged this reservation being violative of Article 14 of the Constitution and have prayed for quashing of the same. It is contended

that the reservation is illegal and unconstitutional and the Government is not competent to make such reservation.

4. By the common judgment, the learned Single Judge was pleased to dismiss both the petitions. The learned Single Judge has observed that:

.....it is apparent that the reservation for the wards of employees of an institution is per-se bad being violative of Article 14 of the Constitution

unless it could be shown that there was a justification for making it and that it had a reasonable nexus with the object that was to be achieved.

5. The learned Single Judge has considered the pleadings in the written statement that these two seats had been created in the year 1988 for the

express reasons that medical staff to man the college faculty was not forthcoming on account of the lack of basic civil amenities and teaching

facilities in Faridkot which was a muffasil town at that time; that the concession had been given as an incentive so as to attract the requisite staff to

Faridkot, failing which the very existence of this college would have been in jeopardy. The college was shifted from Faridabad in Haryana to

Faridkot in 1978 and it is on account of the difficulty felt by the State Government in recruiting staff over a period of 10 years that the reservation

had for the first time been created in the year 1988. He has also taken into consideration the record which reveals that the Medical Teachers

Association of the Medical College, Faridkot had repeatedly represented that the reservation for these two seats be continued for the reasons that

the staff was not willing to join at Faridkot as it was an out of way place. It is further observed that the proposal to continue the reservations was

ultimately accepted and that it was directed that this incentive be allowed to continue in view of the representation filed by the Association and

more particularly because it was difficult to find staff to serve in Faridkot and that it was apparent that the reservation was created to tide over a

particularly difficult situation. The learned Single Judge has observed that:-

There was, to my mind a reasonsable nexus between the creation of the reservation and the object behind it, which was to get sufficient and

suitable staff to man the faculty failing which the existence of the institution could well have been at stake. The incentive could therefore, be said to

have the sanctity attached to a service condition. Moreover the stringent nature of the conditions of eligibility as laid down in the clause, make the

intention very clear that the benefit would not be given to all and sundry and confined only to such staff who had put in a substantial length of

qualifying service. The reservation, therefore, fell within the exceptions envisaged in the judgment cited by Mr. Sibal.

6. The learned Single Judge thereafter considered the arguments that the reservation as framed ought to be confined only to the wards to the

Doctors/teaching staff only in the Medical College and not to any other category of Staff. The learned Single Judge has held that:

It is apparent from a bare reading of the clause that the word ""Medical Staff has been used which would include not only Doctors and the

teaching staff but the supporting staff working in the Medical College as well.

7. It was also held by learned Single Judge that the benefit could not be extended to such members of the staff who had ceased to be in position

prior to 27.3.1998. It is observed that:

I have considered this argument of the learned counsel and find that broadly speaking the interpretation given by Mr. Sibal merits acceptance as

the words who have five years continuous service in the college used in clause (xii) are in the present tense and the benefit could not be extended

to such members of the staff who had ceased to be in position prior to 27.3.98 but to mind this principle would not apply to such members of the

medical staff who have been posted out on administrative exigencies. Mr. Brar has nevertheless clarified that Jasmina Dhingra had, in fact, been

treated as a ward by the admitting authorities and that she had filed the present application by way of abundant caution. To my mind, her

application had been rightly entertained as a ward of the medical staff.

8. Learned Single Judge while considering the arguments regarding reservation being in excess of 50 percent held that this point had not been

pleaded in the writ petition and being a question of fact, could not now be urged. So far appellant Yadvinder Singh is concerned, it has been held

by the learned Single Judge that he himself applied under clause (xii) and after having taken the test and waiting for the result which was declared

on 12.6.98, he could not be permitted to challenge the reservation.

9. We have heard learned counsel for the parties.

10. Mr. Sibal has argued that no reservation as made vide clause (xii) could be legally made or constitutionally held to be valid and the same

requires to be quashed. He has relied on the case of Thapar Institute of Engineering and Technology, Patiala Vs. State of Punjab and another, . In

that case a Division Bench of this court has held that the reservation of seats in favour of wards of employees of the institution is violative of Article

14 of the Constitution. The writ petitions under consideration of the DB were dismissed. This led to the filing of appeals in the Apex Court and the

Apex Court decided the matter vide its judgment reported as Thapar Institute of Engineering and Technology and Others Vs. State of Punjab and

Another, and the judgment of the Division Bench of this Court was upheld. The learned Single Judge has dealt with these judgments.

11. As stated above, the learned Single Judge agreed with the principles laid down in the said judgments and held that though apparently the

reservation for the wards of employees of an Institution is bad being violative of Article 14 of the Constitution, Yet it could be shown that there

was justification for making it and that it had a reasonable nexus with the object that was to be achieved and the matter was required to be

examined in that context. He has considered the reasons for creation of these two seats as mentioned above in the earlier part of the judgment. The

learned Single Judge has relied on the observations in para 6 of the judgment of the Apex Court in the case of Thapar Institute of Engineering

(Supra): The relevant portion reads as under:

In the context of admission to an institution imparting higher education in professional courses a question has often arisen whether the State can

make provision giving preferential treatment to candidate seeking admission to the institution. In dealing with this question the approach of this court

has been that such preferential treatment must be consistent with the mandate of Article 14 of the Constitution guaranteeing equality of opportunity

and that though reasonable classification is permissible, such classification must have a reasonable nexus with object of the rules providing such

admission, namely, to select the most meritorious amongst the candidates to have advantage of such education.

12. The other observations made in the above judgment of the Apex Court and relied on by the learned Single Judge are as under:

There is no dispute that the G.B. Pant University is aided and financed by the State Government and the University is an instrumentality of the

State. Any instrumentality of the State cannot give preferential treatment to a class of persons without there being any justification for the same. The

reservation of seats for admission to the B. Tech. Course in favour of the sons and wards of the employees of the University is violative of the

doctrine of equality enshrined under Article 14 of the Constitution. There is no rationale for the reservation of the seats in favour of the sons and

wards of the employees of the University nor any such reservation has any rationale nexus with the object which is sought to be achieved by the

University. The State Government, in our opinion, rightly insisted on the University to do away with the reservations in favour of the sons and

wards of the employees.

13. The question that arises is whether it is open now for any Court after various judgment of the Apex Court especially the judgment in Thapar

Institute of Engineering and Technology"s case (supra) to go into the question as to whether reservation for the wards of the employees of an

Institution has any reasonable nexus with the object to be achieved? According to us, the Apex court in the aforesaid judgment had specifically laid

down that reservation for wards for the employees of an Institution cannot have any nexus for admission to the wards in the Institution. The Apex

Court had not laid down that every time and at each occasion reservation is made for the wards of the employees of the Institution. The question

will have to be determined as to whether in that particular case there is a reasonable nexus or not Para 6 of the Judgment in Thapar Institution"s

case (supra) has already been reproduced above which lays down that the reservation must have reasonable nexus with the object to be achieved.

In para 15 of the judgment, this point was specifically dealt with by the Apex Court whether in any circumstances, reservation of wards of

employees of an Institution for purpose of admission can have any reasonable nexus with the object to be achieved. It will be apposite to

reproduce para 15 of the judgment of the Apex Court in Thapar Institution"s case (supra):

The question whether reservation in the matter of admission is permissible for wards of employees of the institution was considered by this court

in Chairman/Director, Combined Entrance Examination (CEE) 1990 v. Osiris Das, (1992) 3 SCC 543 . It relates to the G.B. Pant University,

which is aided and financed by the Government of U.P. The Government of U.P. had issued a notification directing that admission of the students

to the various Engineering Institutions in the State shall be made in order of merit and through a Combined Entrance Examination to be conducted

by an Admission Committee. The G.B. Pant University made provisions for reserving 5% seats over and above the sanctioned strength of seats for

sons and wards of the employees of the University for admission to the B. Tech. Course. The State Government insisted that any such reservation

was not justified and would be contrary to constitutional provisions. The University accepted the said directions issued by the State Government

and decided to do away with the reservation. In writ petitions filed by the students who failed to qualify for admission in the general category of

candidates and were claiming admission against the reserved quota, interim orders were passed by the Allahabad High Court for giving provisional

admission. Setting aside the said orders of the High Court, this Court has held:

There is no dispute that the G.B. Pant University is aided and financed by the State Government and the University is an instrumentality of the

State. Any instrumentality of the State cannot give preferential treatment to a class of persons without there being any justification for the same. The

reservation of seats for admission to the B. Tech. course in favour of the sons and wards of the employees of the University is violative of the

doctrine of equality enshrined under Article 14 of the Constitution. There is no rationale for the reservation of the seats in favour of the sons and

wards of the employees of the University nor any such reservation has any rational nexus with the object which is sought to be achieved by the

University. The State Government, in our opinion, rightly insisted on the University to do away with the reservations in favour of the sons and

wards of the employees.

14. After examining the question whether reservation in the matter of admission is permissible for wards of the employees of an institution, the

Apex Court in the aforesaid paragraph while quoting the earlier judgments has held that ""the reservation of seats for admission to B. Tech. course

in favour of the sons and wards of the employees of the institution is violative of doctrine of equality enshrined under Article 14 of the Constitution.

There is no rationale for reservation of seats in favour of sons and wards of the employee of the University nor any such reservation has any

rationale nexus with the object which is sought to be achieved by the University."" In other words, the Supreme Court found that any instrumentality

of the State cannot give preferential treatment to a class of persons without there being any justification for the same and found that reservation of

seats for admission in favour of sons and wards of the employees has no justification to give them preferential treatment. This was not being said in

a particular case but was being down as law that such reservation is not permissible. It may further be observed here that in the which was decided

by the Apex Court in the aforesaid judgment, the reservation was sought to be made on the ground to give representation to the weaker and

backward section of the society in general and people of rural area in particular and, therefore, reservation for admitting students from such strata

was permissible. This was, however, negatived by the Division Bench of this court in the judgment referred to above as well as by the Apex Court

in Thapar Institute''s case (supra). With respect to the learned Single Judge, the question having been answered by the Apex Court that there

cannot be any reservation for wards of the employees of an Institution as it has no reasonable nexus with the object to be achieved, there was no

need to go any further in the matter.

15. Even if the grounds for the reservation are to be gone into to see whether the same have any reasonable nexus with the object to be achieved,

we are of the opinion that the learned Single Judge erred in holding that on facts there was reasonable nexus with the object to be achieved. As

observed above, the reservation was for the wards of the medical staff who had put in atleast five years of service on a particular date. According

to learned Single Judge, since nobody was prepared to work in the Institution, it being in a remote area, to give incentive, two seats were reserved

for the wards of the employees for admission to MBBS course, otherwise the very existence of the college was in jeopardy. It may be observed

that there is no special recruitment of the employees for the Institution alone. The employees are recruited as a Government servant throughout the

State of Punjab and their job is transferable. Any person can be transferred, by the State Government to Faridkot Institution as the transfer is one

of the incidence of service. No Government servant can refuse to join at Faridkot on transfer. The intention cannot be that once a person is posted

at Faridkot he is bound to serve there for five years to enable him to get his ward considered for admission against two seats reserved in the

MBBS course. In other words, if any incentive is to be given, the Government is bound to keep each employee of the Institution for minimum a

period of five years to enable him to get advantage for his ward. This, according to us, could not be the intention to put embargo on the States

power to transfer its employees. Assuming that the reservation is an incentive, though we are not in agreement with that, the same is too meagre,

remote and an eye-wash. There are more than 500 employees who can stake claim for the admission of their wards against the two reserved

seats. Nobody would get himself appointed or transferred to Faridkot that after a period of five years his ward may get a remote chance to be

amongst first two students in the merit list in the reservation category to get admission in the MBBS course. This would be a mere gamble. Even on

facts, we do not find that the reservation has any reasonable nexus with the object to be achieved. Otherwise also, the object to be achieved

should be one which is to do something with the admission and not with the service conditions of the parents or guardian of the wards.

16. For the foregoing reasons, with respect to the learned Single Judge, we are unable to persuade ourselves to agree with the finding recorded by

him.

17. The next question is regarding percentage for reservation. It is contended that the total seats allocated to the Institution are 50. There is already

a reservation of 50% of the seats and thus by reserving two more seats, the reservation has gone beyond 50% and even on this score, the

reservation is liable to be set aside. The learned Single Judge has dealt with this question and has observed that:

Mr. Sibal"s final argument with regard to the reservation being in excess of 50% must now be dealt with. In this connection Mr. Sharma has

stated that as per the notification dated 27.3.98 admissions to the three Medical Colleges at Patiala, Amritsar and Faridkot were one composite

whole and that the PEMT held was for admission to all these institutions, with the seats being apportioned amongst the successful candidates in the

three medical college not exclusively as per their choice but on the basis of their merit as well as determined by their standing in the PMET. This

argument appears to be correct as a bare look at the notification dated 27.3.98 reveals that the total extent of reservation has been given and no

institution wise break up has been carved out. Moreover, this point had not been pleaded in the writ petition and being a question of fact, cannot

now be urged.

18. Considering from all those angles, we hold that the impugned reservation in this case is not justified and is violate of Article 14 of the

Constitution of India.

19. Learned counsel for the appellants has stated that in case LPA No. 353 of 1998 is allowed then L.P.A. No. 360 of 1998 as well as the writ

petition No. 12083 of 1998 against which LPA No. 360 of 1998 was filed be dismissed as withdrawn.

20. For the foregoing reasons, we allow LPA No. 353 of 1998 and set aside the judgment of the learned Single Judge dated August 28, 1998.

The writ petition No. 12737 of 1998 would stand allowed. The respondent-authorities are directed to give admission against the reserved seats in

question to the candidates in the general category as per their merit in accordance with law. LPA No. 360 of 1998 and Civil Writ Petition No.

12083 of 1998 would stand dismissed as withdrawn. There will be no order as to the costs.