

(1998) 02 P&H CK 0023

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 8174 of 1997

Dr. Ravinder Singh

APPELLANT

Vs

Dayanand Medical College and
Hospital and Another

RESPONDENT

Date of Decision: Feb. 19, 1998

Acts Referred:

- Constitution of India, 1950 - Article 14

Citation: (1998) 119 PLR 187

Hon'ble Judges: H.S. Bedi, J

Bench: Single Bench

Advocate: Davinder Pal Singh, for the Appellant; P.S. Patwalia, for the Respondent

Judgement

H.S. Bedi, J.

The petitioner after having secured a M.B.B.S. Degree was selected in the P.C.M.S. on 15th November, 1995 and was posted at Amritsar. The respondent-Dayanand Medical College & Hospital, Ludhiana, issued an advertisement for filling in seats for various Post Graduate Courses that were to be run by it. The entrance test was held by the P.G.I., Chandigarh on 14th December, 1996. The petitioner appeared in test on that date and was declared pass and, thereafter called for interview on 21.12.1996, on the declaration of the result, the petitioner was found to be placed at serial No. 1 in the waiting list in the speciality of Surgery, on 13.5.1997 the petitioner received information that he should report to the respondent-college the next day as a seat in the speciality of Surgery had become available and he being at serial No. 1 in the waiting list had been selected to fill the same. The petitioner, however, reached the office on 15th May, 1997 and was given a letter of even date Annexure P-1 to the petition which postulated certain formalities before his selection could be finalised. These formalities were admittedly complied with by the petitioner by the evening of 17th May, 1997. The petitioner, however, went to the respondent college on 21st May 1997 after having resigned from his government job a day earlier, but

was informed that all the vacant seats were to be re-advertised and a notice to that effect would be displayed on the Board the next day. The petitioner, immediately submitted a representation under registered cover seeking admission and also met the concerned authorities but having failed in getting redress, has filed the present petition on 4th June, 1997. Notice of motion was issued for the next date to be served by dasti process. The respondents appeared through their counsel on 6th June, 1997 and sought time to file a reply. The petition was, thereafter, adjourned time and again and was finally admitted on 12th January, 1998 and is now before me in this situation.

2. In the reply filed by the respondents, it has been pleaded that as per the prospectus Annexure R-1 for the session January, 1997 in which the petitioner claims admission, the last date for filling up the seats from the waiting list was 31st January, 1997 and as this date had admittedly expired the vacant seat that had come into existence sometime in May, 1997 could not have been offered to a candidate on the waiting list and in that eventuality, the Admission Committee of the respondent - College decided that the eight vacancies in various disciplines should be circulated amongst the candidates who had appeared in the entrance examination in order of merit and as Dr. Kuldeepak Singh-respondent No. 2 had been higher in merit and had got admission in the subject of Ophthalmology in the entrance test but had also opted for the discipline of Surgery, was entitled to admission over the petitioner. It has also been pleaded that the petitioner who had appeared for interview on 4th June, 1997 in response to the fresh invitation and had accepted his selection in the department of ophthalmology, the present writ petition was now misconceived.

3. Mr. D.P. Singh, the learned counsel appearing for the petitioner has raised two argument before me. He has first argued that there were eight seats in all that had fallen vacant including one in Surgery and this seat had to be offered to a candidate who was on the waiting list and as the petitioner was at serial No. 1 of that list, he was entitled to selection. In the alternative, he has pleaded that as per Clause 14 of the Prospectus Annexure R-1, the candidate who had been selected in a speciality and had joined that speciality, could not be allowed to change that speciality under any circumstances and in that eventuality, Dr. Kuldeepak Singh-respondent No. 2, who had taken admission in ophthalmology should not be permitted to shift over to surgery.

4. As against this, Mr. Patwalia, the learned counsel for the respondents has relied upon Clause (iii) on page 8 of the Prospectus and on Clause 12 on page 12 of the Prospectus to contend that in case any matter on which there was no provision in the Prospectus or in a case, an interpretation was required with regard to the contents of the Prospectus, the decision of the Admission Committee was to be treated as final. He has also argued (as was placed in the written statement) that the petitioner had accepted his admission in the speciality of Ophthalmology and as such, could not claim a seat in Surgery.

5. I have heard that learned counsel for the parties and have gone through the record with their assistance.

6. The first argument raised by Mr. D.P. Singh does not commend itself to me. It will be seen that the Prospectus issued by the Institution has the force of law as has been repeatedly held now and as such, to my mind, the waiting list could be held to be valid only up to 31st January, 1997.

7. Mr. D.P. Singh has, however, laid more emphasis on the alternative argument that once a candidate had joined a particular speciality, he could not change the same under any circumstances. From the arguments raised by the learned counsel for the parties, it is apparent that the decision on this aspect would hinge on Clause (iii) on page 8 of the Prospectus and Clauses 12 and 14 on pages 12 and 13 respectively of the prospectus. These clauses are reproduced below: -

Clause (iii) : The provisions of this Prospectus are subject to alternations/amendments and modifications as may be considered necessary from time to time by the authorities. In all matters which either need any interpretation or for which no provision exists in the prospectus, the decision of the Admission Committee shall be final. No correspondence will be entertained regarding rejection or disqualification of any candidate"

Clause 12 : Admissions are made according to the rules and regulations as mentioned in this prospectus. However, in all matters which either need interpretation or for which no provisions exists in the prospectus, the decision of the Admission Committee shall be final. No correspondence will be entertained regarding rejection or disqualification of any candidate.

Clause 14 : The candidate shall have to work in the speciality in which he/she wants to do Post-graduation as a whole time in-service candidate in this institution and will be known as P.G. Registrar/P.G. Demonstrator. Once a candidate has joined particular speciality, he/she will not be allowed to appear in the subsequent P.G. Entrance Tests or to change his/her speciality under any circumstances."

A bare reading of Clause 14 of the Prospectus makes it absolutely clear that a candidate who has once joined in a particular speciality, cannot be allowed to change it "under any circumstances". To my mind, therefore, the transfer of Dr. Kuldeepak Singh-respondent No. 2 from Ophthalmology to Surgery was wholly unauthorised. Even otherwise, it has been held by a Full Bench of this Court in Anil Jain, M.S. General Surgery and Others Vs. The Controller of Examinations, Maharishi Dayanand University and Others, that once a candidate has accepted admission in a speciality of his choice, the admission is not to be varied even in case a seat becomes vacant in another discipline. The Full Bench relied upon a judgment of the Supreme Court and observed that the allotment should be "fair and final" and a candidate who had got admission in a course was higher in merit than the one, who was not seeking admission, was no ground to allow a change in the speciality. Mr.

Patwalia's argument that it had been left to the Admission Committee by virtue of Clause (iii) and Clause 12 ibid to interpret the prospectus on matters which required interpretation or in which, there was no provision in the prospectus is to no avail. In the light of Clause 14 which provides that a speciality once accepted cannot be changed. This clause to my mind is clearly unequivocal and does not require interpretation. Once it is held that respondent No. 2 could not change his speciality the petitioner would be the next candidate in order of merit.

8. Mr. Patwalia has then argued that 51 seats in all had been advertised at the initial stage and 49 had been filled in leaving eight seats vacant and the Admission Committee had, accordingly, thought it proper that since a large number of seats had fallen vacant, all the candidates who had been successful in the entrance examination, should be allowed to make a fresh choice of their speciality. As already held above, this action of the Admission Committee who wholly unauthorised in view of Clause 14 mentioned above.

9. Mr. Patwalia has finally relied upon a judgment of the Supreme Court in State of Uttar Pradesh and Ors. v. Dr. Anupam Gupta etc. J.T. 1992 (4) 422 and has urged that as almost one year of the three years P.G. Course had since expired, it would be inappropriate to give admission to the petitioner at this stage.

10. As against this, Mr. D.P. Singh, the learned counsel for the petitioner has argued that the course which had to commence in February, 1997 had, in fact, started in June, 1997 and the petitioner had come to this Court on the very day when the interview took place i.e on June 4, 1997 and if the matter had remained pending in this Court for eight months now the petitioner could not be allowed to suffer prejudice on that account.

11. I have heard the learned counsel for the parties on this aspect as well. It will be seen from what has been mentioned above that the action of the respondent-College was wholly unauthorised and contrary to the Prospectus issued by it. It is also evident that the petitioner had come to this Court on the very day on which the interviews took place. It is also the admitted position that though the seat in the speciality of Ophthalmology vacated by respondent No. 2. Dr. Kuldeepak Singh had been offered to this petitioner, he has decided not to take it and has chosen to await the outcome of this writ petition. It is also the admitted position that courses are started every six months in January and July of the year in question depending on the number of seats available. It is also clear that as the petitioner has not been able to attend the course in the speciality of Surgery, he can join the course which has commenced in February, 1998, there is no question of any mid term admission in the course. The petitioner will, accordingly, be admitted in the course which commenced in February, 1998, and in case, there is no seat in the speciality of surgery, the respondents shall take steps to create an additional seat to accommodate him, without disturbing respondent No. 2 as he had given up his seat in Ophthalmology and has undergone about eight months of the Course. In this view

of the matter, I am supported by a Full Bench judgment of this Court in *Swaranjit Singh v. State of Punjab and Ors.* (1998) 117 P.L.R. 691, wherein it was observed that where the respondent had been given admission due to no fault of his and had undergone some period of the course, it would be inappropriate to quash his admission at this stage. I am, therefore, of the opinion that respondent No. 2 Dr. Kuldeepak Singh should be permitted to continue with the course as well. This petition, is, accordingly, allowed in the above terms. No costs. A copy of this order be given dasti.