

(2012) 09 P&H CK 0258

High Court Of Punjab And Haryana At Chandigarh**Case No:** Civil Writ Petition No. 14352 of 2012

Taniya

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision: Sept. 21, 2012**Citation:** (2013) 169 PLR 102 : (2013) 2 SCT 348**Hon'ble Judges:** Ranjit Singh, J**Bench:** Single Bench**Advocate:** M.S. Khaira, with Mr. Randeep S. Khaira, for the Appellant; Yatinder Sharma, DAG, Punjab for the State and Mr. K.S. Sandhu for Respondent Nos. 2 and 3, for the Respondent**Final Decision:** Dismissed

Judgement

Ranjit Singh, J.

The petitioner seeks a writ of mandamus commanding the respondents to grant her admission in the M.B.B.S Course as per Punjab Medical Entrance Test, 2012 in accordance with her merit and seniority. The petitioner pleads that she has been arbitrarily and illegally denied admission in violation of principles of natural justice. The petitioner is a student of Kandriya Vidayala, Bakloh, since 2004. The petitioner had to take admission and study at Bakloh Cantt. as her father is an employee of Cantonment Board under Central Government and is posted at Bakloh Cantt. Since 12.3.1988. Otherwise, the father of the petitioner and his entire family claim to be permanent resident of Village Talore, Post Office Narot Jaimal Singh, Tehsil and District Gurdaspur and, thus, is the domicile of Punjab. The petitioner states that she is meritorious student and has obtained 8.8 CGPA in 10th standard and 86.5% marks in Class XII. The petitioner appeared for PMT 2012 Examination held on 20.5.2012. The result was declared on 23.5.2012. The petitioner obtained 608 marks and rank 350. She is ranked 13 in backward class category out of the total seats available for this category, being 18. The petitioner accordingly participated in the counselling, which was held by Baba Farid University for Health Sciences but she has been

denied admission, being not eligible against the seat reserved for State quota.

2. A short reply has been filed on behalf of the University. The factual position in regard to the rank of the petitioner in the PMT examination is not denied. The reply would disclose that counseling for the MBBS Course was conducted on 18.7.2012 and the petitioner was held ineligible as she did not fulfill the eligibility criteria mentioned in Clause 4C (iv) of Punjab Government notification dated 31.3.2008 incorporated in the PMET Prospectus 2012. This clause requires of a candidate for the purpose of eligibility that he or she should have passed his or her examination or other qualifying examination in place of 10+2 from the recognized Institution in the State of Punjab. The petitioner admittedly had passed 10+2 examination from the State of Himachal Pradesh and, thus, has not studied the 10+2 class in the State of Punjab. Clause 4A (vi) of the notification in this regard reads as under:-

4. ELIGIBILITY CRITERIA FOR PMET

A. For PMET (Common Criteria for all Courses)

(vi) Should have passed his/her 10+2 examination or other qualifying examination in place of 10+2, as listed in 4(A) (i)(a) to (f) above, as candidate from a recognized institution situated in the State of Punjab only except for the exemptions wherever applicable. The candidate would be required to submit a certificate to this effect from the Principal/Head of the Institute last attended in the Prescribed Proforma.

3. Though, there are some exemptions provided to this clause but the case of the petitioner is not covered by any exemption clauses.

4. The petitioner in fact has approached this Court basing her claim on the ground that she would be covered by one of the exemption clauses and, thus, eligible for admission, though she had not passed the 10+2 examination from the State of Punjab. Stating that she is domicile of the State of Punjab and that her father is serving as an employee of Military and she being ward of such an employee and born in the territory of Punjab, would be covered by the exemption clause requiring her to fulfill the condition of 10+2 examination from an Institution located in the State of Punjab.

5. While arguing, however, learned senior counsel appearing for the petitioner has added wider colour to plead that the entire condition as contained in the prospectus is arbitrary and whimsical and would be unconstitutional. The counsel pleads with lot of emphasis that where the person like the petitioner would go, who are not being owned by the State of which they are domicile and the State where they happened to reside because of the exigencies of service and, thus, such students or candidates would become Stateless person.

6. I have considered the submissions made by learned senior counsel with all seriousness.

7. As already noticed, the initial plea as made in the petition was mainly on account of the petitioner being eligible for admission on the ground that she would be covered by the exemption clause contained under Clause 4A (iv) but gave the issue a wider colour only when he faced some resistance to the plea so raised.

8. Let us first have a look at the exemption clauses, which would make a student eligible and entitle to seek admission, though he or she may not have studied and qualified 10+2 examination in an recognized Institution situated in State of Punjab. The exemption is provided to the following categories of students, who are children and dependents of various employees and these exemption clauses are as under:-

i. Children/wards/dependents (whose parents are not alive) of all those regular Punjab Government employees, members of All India Services borne on Punjab cadre. Serving Judges and the employees of the Punjab and Haryana High Court, employees of Boards/Corporations/ Statutory Bodies established by an act of the State of Punjab who have been holding post outside Punjab on or before 1st January of the year of entrance test and their children/wards/dependents were compelled to do 10+1 and/or 10+2 outside Punjab.

ii) 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 the year of PMET but were posted outside Punjab or some time during these three years due to which their children/wards/dependents were compelled to do 30+1 and/or 10+2 or equivalent qualifying examination 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.

iii) Children/wards/dependents (whose parents are not alive) of all those Punjab Government pensioners who have retired on or before 1st January of the year of entrance test and have settled outside Punjab on or before 1st January of the year of entrance test and their Children/wards/dependents were compelled to do 10+1 and/or 10+2 outside Punjab.

iv) Children/wards/dependents (whose parents are not alive) o those military/para military forces personnel who were born in the territory of Punjab as per their service record at the time of entry into service.

v) Children/wards/dependents (whose parents are not alive) of those Ex-employees of military/para military forces who were born in the territory of Punjab as per their service record at the time of entry into the service and have retired on or after 1st January of the year preceding two years of the year of entrance test.

vi) Candidates getting admission on all India Basis in BAMS, BHMS courses in case the Punjab candidates are not available.

vii) Candidates belonging to minority community who are competing for the minority quota in the minority institutions.

viii) Candidates seeking admission under NRI category.

ix) Candidates under J & K migrant.

x) Tsunami Victim Category.

xi) Wards of defence personnel posted in Punjab who has passed only for the qualifying examination i.e. 10+2 exam mandatory for the admission to MBBS/BDS Course - in Medical and Dental shall be considered eligible for admission in professional colleges and institutions in State.

(Para amended vide Corrigendum No. 5/3/08-3HBIII/4363 dated 25.8.2009).

Note 1 - For those candidates who are repeaters in categories (i) to (v) the year of entrance for the purpose of all these clauses shall be taken as the year of passing 10+2 examination by the Candidates in place of year of PMET.

Note 2 - The dependency certificate in case of those whose parents are not alive shall have also to be taken from the Deputy Commissioner of the District where the candidate resides.

9. The petitioner has based her entire claim on exemption clause (iv) reproduced above, which relates to children/wards/dependents, (whose parents are not alive) of those Military or Para Military Forces personnels who were born in territory of Punjab as per their service record at the time of entry into service. As per the counsel, the father of the petitioner is an employee of Cantonment Board of Defence Forces, whereby he is posted to serve in Himachal Pradesh and is serving at Military Hospital, Bakloh Camp. On this basis, it is pleaded that the petitioner is a child of father, who is Military employee, born in the State of Punjab as per his service record and, thus, the condition of requiring the petitioner to pass 10+2 examination from an Institution located in the State of Punjab would stand exempted in her case.

10. The petitioner can pray for exemption only if it is found that her father could be taken as an employee of Military. The father of the petitioner is in the employment of Cantonment Board. He may be serving in the Hospital, which is a Military Hospital, but apart from combatants, who are subject to the Army Act or the other enactment like Air Force and Navel Act, there are certain civilian employees of the Ministry of Defence, who are posted and work as employees in various Military Establishments. By virtue of posting in a Military establishment, they do not acquire the status of being an employee of Military or Para-Military Forces personnels. They are such civilian employees, who are employees of the Ministry of Defence and can not be equated with and termed as Military Forces personnels.

11. In support of his plea that such an employee can be treated as Military personnel, the learned counsel has placed before me a judgment in Civil Writ Petition No. 10371 of 2009 (Micky Samyal v. State of Punjab and another), decided on 19.8.2009. The petitioner in the said case has also claimed exemption under clause 4C(iv) as is the case of the petitioner at hand. The father of the petitioner in the case of Micky Samyal (supra) was serving in the office of Defence Estate Officer, Jammu Cantt., where he was posted since September 2006. Due to this reason, the petitioner therein had passed 10+2 examination from MHS DAV Senior Secondary School, Kathua in the States of Jammu and Kashmir. The petitioner therein had claimed admission under three different categories, namely, S.C., backward area and border area. The petitioner had prayed for seeking direction for his consideration in the reserved category of S.C on the basis of residence of the petitioner's father in the State of Punjab and birth in the territory of Punjab at the time of his entry into service. It is on the basis of a certificate given by the competent authority that his father belonged to the State of Punjab as per his service record and on this count, his case was found to be falling in category 4C(iv). The petitioner in the said case was not seeking admission on the ground that her father was an employee of Military and no such issue was considered in the said petition. The claim of the petitioner was to be considered in the S.C category of State of Punjab and who was born in the territory of Punjab. The question whether the father of the petitioner therein was a Military employee was neither raised nor considered and was, thus, not adjudicated upon. This judgment, therefore, can not be taken as any binding precedent so far as nature of such employment is concerned in respect of persons who are serving in the Military establishments but are not in the employment of Military as such.

12. I am also not much impressed by the plea of the counsel for the petitioner to view this condition containing reservation on the wider connotations added by the counsel for challenging reservation as such. The plea that students like the petitioner are rendered Stateless has also not impressed me, though it may sound a bit attractive. How such student would be Stateless appears beyond comprehension. Such students always have a right to be considered for admission in All India quota seats, for which separate reservation is provided. It is only under the category of seats reserved for domicile and residents of the State that the petitioner has been found ineligible. This does not in any manner would make her a person without State. She being a student of Himachal Pradesh, perhaps can stake claim for admission in an Institution in the State of Himachal Pradesh. It is too late in a day to go into the validity of reservation made for grant of admission for various categories, which have long since been recognized and approved by various Courts in large number of precedents. A person who approaches the Court to seek benefit of reservation and seek admission on that basis, can not be permitted to challenge the same clauses on which he/she has based the case. This approach is not fair. Learned senior counsel made a last ditch effort by placing before me a page

containing reference to a judgment in some journal, where High Court of Rajasthan has expressed a view that a bonafide resident of State of Rajasthan could not be denied admission to the Veterinary Nursing Course merely because the Institution from where he passed the Senior Secondary Examination was located outside the State of Rajasthan. This note, without looking into the detailed reasoning, can not properly guide us to cull out the ratio of law that may have been laid in the judgment. Moreover, it would depend upon the conditions contained in the prospectus, rules or notifications issued by the Government in that case, which are not forthcoming in any manner. I can not, therefore, persuade myself to consider this judgment.

I, thus, find no merit in the writ petition and would dismiss the same.