

untenable and arbitrary. The oustee policy from the year 1987 does not spell out any economic criterion for allotment. It is certainly relevant, but this has not been the basis in the policy considerations so far. The state may pursue such a policy and restrict it to persons who are poor and who are displaced but the documents filed into court detailing the policy of oustees do not support the pleas that consideration for allotment is not available for persons who have received a large compensation amount.

#### **VII. Conclusion**

(12) The writ petition is allowed and the respondents are directed to consider the application for allotment of the plots and the size and the number of plots shall be assigned to the petitioners depending on the oustee policy extant keeping out of view the restriction sought to be imposed by the impugned proceedings of 2003 which is quashed by this writ petition. The writ petition is allowed with cost assessed at Rs. 10,000.

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**R.N.R.**

*Before Mukul Mudgal, C. J & Jasbir Singh, JJ.*

**SUDESH RANI AND OTHERS—Petitioner**

*versus*

**STATE OF PUNJAB AND OTHERS—Respondents**

**C.W.P No. 6801 of 2008 &**

**CONNECTED WRIT PETITIONS**

20th April, 2010

*Constitution of India, 1950—Arts.14, 16, 38(2) & 226—Recruitment to posts of Educational Services Providers—State Government providing weightage of 5 marks to candidates who had passed their middle and matric examination from rural schools—Government supporting rural weightage on basis of study conducted by Punjabi University demonstrating severe disadvantage suffered by rural students by virtue of their geographical location and deprivation of equal opportunity of principles—Weightage to a rural candidates far from promoting inequality, infact seeks to restore equality between unequals, thus, fulfills mandate of Article 14 of Constitution—However, such weightage is based upon a proper, objective and data based study by a reputable university—Petitions dismissed.*

*Held*, that State of Punjab has been able to satisfy the mandate of the judgment of **Kailash Chand Sharma versus State of Rajasthan, (2002) 6 Supreme Court Cases 562**, which has not ruled out the weightage to rural students provided it was backed up by the scientific study and data. The wide ranging empirical study done by the Punjab University constitutes sufficient material so as to furnish a scientific basis for granting weightage to the rural students. We are also satisfied that since the study finds the rural students, by deprivation of equal opportunity and infrastructure, to be unequal to those coming from the urban background by virtue of their location in a rural setting, this weightage, far from promoting inequality, infact seeks to restore equality between unequals and thus fulfills the mandate of Article 14. Once Kailash Chand Sharma's case has noted the earlier larger bench judgement of **State of Maharashtra versus Raj Kumar, AIR 1982 Supreme Court 1361**, which was followed by **V. N. Sunanda Reddy versus State of Andhra Pradesh and others, 1995(3) RSJ 35**, the latter judgment in Kailash Chand Sharma's case could not be said to be *per incuriarum* and this Court was bound by the law laid down in Kailash Chand Sharma's case which had applied the judgment in **State of Maharashtra versus Raj Kumar** case.

(Paras 28 and 30)

Kapil Kakkar, Advocate, *for the petitioner in C.W.P. No. 6801 of 2008.*

H.S. Baath, Advocate, *for the petitioner in C.W.P. No. 14181 of 2007.*

C.L. Sharma, Advocate, *for the petitioner in C.W.P. No. 15210 of 2007.*

Dr. M.L. Sachdeva Advocate, *for the petitioners in C.W.P. Nos. 6627, 7599, 8012, 8278, 11650 and 11690 of 2008.*

K.K. Garg, Advocate, *for the petitioner in C.W.P. No. 6660 of 2008.*

C.M. Munjal, Advocate, *for the petitioner in C.W.P. No. 8296 of 2008.*

Ms. Anu Chatrath Advocate, *for the petitioner in C.W.P. No. 12344 of 2008.*

Manohar Dadwal, Advocate, *for the petitioner in C.W.P. No. 18943 of 2008.*

V.K. Shukla, Advocate, *for the petitioner in C.W.P. Nos. 19971 of 2008 and 1140 of 2009.*

Rajeev Kaswan, Advocate, *for the petitioner in C.W.P. Nos. 3900 and 6183 of 2008.*

G.S. Sandhu, Advocate, *for the petitioner in C.W.P. No. 4364 of 2008.*

R.N. Moudgil, Advocate, *for the petitioner in C.W.P. No. 4776 of 2008.*

Raman Sharma, Advocate, *for the petitioner in C.W.P. No. 5032 of 2008.*

R.S. Manhas, Advocate, *for the petitioner in C.W.P. Nos. 5184, 6221, 6245 of 2008.*

Veneet Sharma, Advocate, *for the petitioner in C.W.P. No. 5843 of 2008.*

N.K. Nagar, Advocate, *for the petitioner in C.W.P. No. 6697 of 2008.*

R.K. Chopra, Sr. Advocate with Ms. Maninder, Advocate, *for the petitioner in C.W.P. No. 7501 of 2008.*

K.V. Singh, Advocate, *for the petitioner in C.W.P. No. 21415 of 2008.*

Pardeep Bajaj, Advocate, *for respondent No. 5 in C.W.P. No. 6660 of 2008.*

H.S. Mattewal, Advocate General, Punjab with Amol Rattan Singh, Addl. A.G. Punjab, *for the respondent-State of Punjab in all the petitions.*

MUKUL MUDGAL, C. J.

(1) This judgment will dispose of Civil Writ petitions No. 14181 and 15210 of 2007, 3900, 4364, 4776, 5032, 5184, 5843, 6183, 6221, 6245, 6627, 6660, 6801, 7501, 7599, 8012, 8296, 8278, 11690, 11650, 12344, 18943, 19971, 21415 of 2008 and 1140 of 2009. Since common questions are involved, the facts from C.W.P. No. 6801 of 2008

are taken as illustration. In all these writ petitions, selection to 4000 posts of Educational Services Providers and 9998 posts of Teaching Fellows (against the posts of JBT/ETT Teachers), is in dispute.

First we will deal with Civil Writ Petitions No. 14181 and 15210 of 2007, 6801, 8012, 8296, 8278, 11650, 11690, 12344, 18943 and 19971 of 2008 and 1140 of 2009, wherein challenge is to the awarding of 5 additional marks to the candidates who passed their 8th and 10th examination from rural areas.

(2) The State of Punjab advertised 4000 Posts of Educational Services Providers,—*vide* advertisement dated 29th August, 2007 (P-6), against a consolidated pay of Rs. 5,400 per month. The last date for receipt of applications, of the eligible candidates, was fixed as 17th September, 2007. In the same manner, by advertisement dated 5th September, 2007, 9998 posts of Teaching Fellows were advertised for a period of 3½ years against a consolidated salary of Rs. 4,550 per months. The last date to receive applications was fixed as 30th September, 2007.

(3) In the advertisement for the posts of Educational Services Providers, following mode of selection was provided :

**“Mode of selection :**

The recruitment shall be strictly made to respective categories only on merit, without any recruitment test or interview marks. Merit will be prepared by adding the percentage of marks obtained in basic minimum prescribed academic qualification and basic minimum prescribed professional qualification and higher qualification and experience as detailed below :—

**1. Minimum prescribed qualification :**

- |   |      |
|---|------|
| (a) B.A./B.Sc. (in relevant subjects) 35% of the percentage of the total marks achieved in the Academic Basic qualification | : 35 |
| (b) B.T./B.Ed. 35% of the percentage of the total marks achieved in the Professional qualification :                        | : 35 |
|   | 70   |

Higher Qualification Master Degree i.e. M.A./M.Sc/M.Com./M.Ed.

- |                                      |                |
|--------------------------------------|----------------|
| (a) 1st Division :                   | 8 Marks        |
| (b) 2nd Division :                   | 6 Marks        |
| (c) 3rd Division :                   | 4 Marks        |
| <b>3. Rural Area Maximum Marks :</b> | <b>5 Marks</b> |
| 4. Experience Maximum Marks :        | 7 Marks        |

**Note.—Consolidated 5 marks will be given to the candidates who have passed both Middle and Matric examination from the rural schools. For passing these two classes from the rural area, they have to submit a certificate of that school falling in rural area at the time of passing 8th as well as 10th Class issued by the Head of the School, duly countersigned by concerned DEO.**

E. Basic Qualification and Professional Qualification :—

- (i) Graduate from a recognized University with English as an elective subject in all the three years of Graduation.
- (ii) With teaching of English in B.Ed.”

(4) Similar provision was made for selection to the 9998 posts to Teaching Fellows, advertised on 5th September, 2007. In the advertisement, rural area was defined as under :—

“Rural area is defined as on the date, in which Gram Panchayat exists, i.e. at the time of passing 8th and 10th Classes.”

(5) In all these writ petitions, primary grievance of all the petitioners is to the award of 5 additional marks to the candidates, who have passed 8th and 10th classes examination from Schools, situated in the rural area. It has been alleged that the said weightage runs contrary to the provisions of Articles 14 and 16 of the Constitution of India and as such cannot be sustained. It was further averred that the State Government has failed to set up a rational basis and the weightage to rural students discriminates against the candidates, who have not passed 8th and 10th classes examinations from rural areas. In this writ petition, it was further stated that

by issuing corrigendum Annexures P-7 to P-9, dated 31st August, 2007, 4th September, 2007 and 14th September, 2007, respectively, the State Government has wrongly amended qualification for the posts in question, which runs contrary to the Punjab State Education Class III (School Cadre) Rules, 1978.

(6) Upon notice, reply has been filed by the State of Punjab in all these writ petitions. At the time of arguments, it was agreed by counsel for the parties that the reply filed in C.W.P. No. 5723 of 2008, which is exhaustive one, be read as a common reply to all other connected writ petitions. In the reply filed by the State, a preliminary objection has been raised that after putting in appearance before the Interview Board and taking a chance, it is not open to the petitioners to lay challenge to the procedure adopted by the State for making selection to the posts in question. In support of the above plea, reliance was placed upon the ratio of the judgments of the Hon'ble Supreme Court in **Madan Lal and others versus State of Jammu and Kashmir and others (1)**, and **Dr. G.S. Sarna versus University of Lucknow and others (2)**.

(7) On merits, an attempt was made to justify award of weightage to those candidates who have passed 8th and 10th classes examination from the rural areas. It was specifically stated that it was not a case of any unfair weightage from those rural candidates, taking note of the conditions, in which rural candidates are living. Only a very small benefit has been provided to them, so that they may compete with others, who are better situated. It was further submitted that due to terrorism in Punjab, rural areas were the worse affected, as most of the terrorist activities had taken place in the rural areas of the State of Punjab and rural education centres were the epicentre from where the terrorists exploited the youths for their motives. Those, who were affluent, had shifted their residence to the urban areas. Others, who could not afford to do so, had no option but to stay back in the rural areas. It was further stated that wards of those families and educational institutions suffered in all respects during that period. It was further stated that by granting weightage of 5 marks to the candidates from the rural areas, who are definitely backward in all respect, an attempt has been made to give effect to the Directive Principles of State Policy as

(1) AIR 1995 S.C. 1088

(2) AIR 1976 S.C. 2428

enshrined in the Constitution. Specific reliance has been placed upon Article 38(2) which provides for promotion of social order, it reads thus :

“The State shall, in particular, strive to minimize the inequalities in income, and endeavors to eliminate inequalities in status, facilities and opportunities, not only amongst the individuals, but also amongst the groups of people residing in different areas or engaged in different vocations.”

(8) To support the aforesaid contention, reliance has been placed upon the observations made by the Hon’ble Supreme Court in **Indira Nehru Gandhi versus Raj Narain (3)**, **I.R. Coelho versus State of Tamil Nadu (4)**, and **Shrinivasa Theater versus Government of Tamil Nadu (5)**.

(9) It was further stated that identical treatment in unequal circumstances would amount to inequality and the same was never the mandate of Articles 14 and 16 of the Constitution of India. To support the plea, that the State has the power, on the basis of facts/evidence, to grant benefit to a group or group of persons for their upliftment, reliance was placed upon observations made by the Hon’ble Supreme Court in **Ashutosh Gupta versus State of Rajasthan (6)**, to the following effect :—

“6. The concept of equality before law does not involve the idea of absolute equality amongst all which may be a physical impossibility. All that Article 14 guarantees is the similarity of treatment and not identical treatment. The protection of equal laws does not mean that all laws must be uniform. Equality before the law means that among equals the law should be equal and should be equally administered and that the likes should be treated alike. Equality before the law does not mean that things which are different shall be treated as though they were the same. It is true that Article 14 enjoins that the people similarly situated should be treated similarly but what amount

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(3) AIR 1975 S.C. 2299

(4) AIR 2007 S.C. 861

(5) AIR 1992 S.C. 999

(6) AIR 2002 S.C. 1533

of dissimilarity would make the people disentitled to be treated equally, is rather a vexed question. A Legislature, which has to deal with diverse problems arising out of an infinite variety of human relations must of necessity, have the power of making special laws to attain particular objects ; and for that purpose it must have large powers of selection or classification of persons and things upon which such laws are to operate. Mere differentiation or inequality of treatment does not 'per se' amount to discrimination within the inhibition of the equal protection clause. The State has always the power to make classification on a basis of rational distinctions relevant to the particular subject to be dealt with. In order to pass the test of permissible classification, two conditions must be fulfilled, namely (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others who are left out of the group, and (ii) that that differentia must have a rational relation to the object sought to be achieved by the Act. What is necessary is that there must be a nexus between the basis of classification and the object of the Act. When a law is challenged as violative of Article 14, it is necessary in the first place to ascertain the policy underlying the statute and the object intended to be achieved by it. Having ascertained the policy and the object of the Act, the Court has to apply a dual test in examining the validity, the test being, whether the classification is rational and based upon an intelligible differentia which distinguishes persons or things that are grouped together from others that are left out of the group, and whether the basis of differentiation has any rational nexus or relation with its avowed policy and objects. In order that a law may be struck down under this Article, the inequality must arise under the same piece of legislation or under the same set of laws which have to be treated together as one enactment. Inequality resulting from two different enactments made by two different authorities in relation to the same subject will not be liable to attack under Article 14. It is well settled that Article 14 does not require that the legislative classification should be



scientifically or logically perfect. If we examine the impugned provisions of the Emergency Recruitment Rules from the aforesaid standpoint the conclusion is irresistible that the aforesaid set of Rules have been framed for a specific recruitment to the Administrative Service. The provision of Rule 25 dealing with the seniority has been specifically designed to meet all situations under which people from different walks of life could be recruited to the Rajasthan Administrative Service under the Emergency Recruitment Rules. The law-making authority must be presumed to have examined pros and cons in making the aforesaid provision for seniority in the cadre which is in pari materia with similar provisions for recruitment to the Indian Administrative Service and, therefore, it is difficult for us to hold that the aforesaid provision is discriminatory in nature.”

(10) To further justify weightage to the rural candidates reliance was placed upon observations made by the Hon'ble Supreme Court in **Kailash Chand Sharma versus State of Rajasthan** (7), and **M. Nagaraj and others versus Union of India and others**, (8) and observations made by a Division Bench of this Court in **Mahender Kumar and others versus State of Haryana and others**, (Civil Writ Petition No. 13887 to 2006), decided on 27th February, 2008 (Annexure P-13 with this writ petition).

(11) To support the plea that the candidates in the rural areas are a separate class, reliance was placed upon a scientific study conducted by the University of Patiala through its Department of Economics and Centre for Research in Economic Change, which was published in September, 2006, under the heading 'RURAL STUDENTS IN UNIVERSITIES OF PUNJAB : AN EXPLORATORY STUDY' (hereinafter referred to as 'the study'). It was averred that as per the said study, in the four Universities in the region, namely-Panjab University, Chandigarh, Punjabi University, Patiala, Guru Nanak Dev University, Amritsar ; and Punjab Agricultural University, Ludhiana along with their regional centres, total number of

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(7) (2002) 6 S.C.C. 562

(8) (2006) 8 S.C.C. 212

students was 22,360 and proportion of rural students in the aforesaid Universities and the Regional Centres constituted a meagre 4.7% only of that strength, i.e. 911 students only. To prove the aforesaid averment, reliance was placed upon a study in the form of a record. The same reads as under :—

“Number of Students in Universities of Punjab (2005-06) :  
University Campus and Regional Centre :

	Total Enrollment			Rural Students					
	Boys	Girls	Over- all	Number			Percentage		
	Boys	Girls	Over- all	Boys	Girls	Over- all	Boys	Girls	Over- all
(a) Campus	9281	9217	18598	451	245	696	4.81	2.66	3.74
	(50.44)	(49.56)	(100)	(64.80)	(25.20)	(100.00)			
(b) Regional Centres	2560	1202	3762	141	74	215	5.51	6.16	5.72
	(68.05)	(31.95)	(100)	(65.58)	(34.42)	(100.00)			
Total (a+b)	11941	10419	22360	592	319	911	4.96	3.06	4.07
	(53.40)	(46.60)	(100)	(65.98)	(35.02)	(100.00)			

**Table 3.2 Rural Students in Universities of Punjab :—  
University-wise Scenario.**

**Punjabi University Patiala :**

	Total Enrollment			Rural Students					
	Boys	Girls	Over- all	Number			Percentage		
	Boys	Girls	Over- all	Boys	Girls	Over- all	Boys	Girls	Over- all
(a) Campus	2067	2184	4251	217	125	342	10.5	5.72	8.05
(b) Regional Centres	597	433	1030	62	27	89	10.39	6.24	8.64
Total (a+b)	2664	2617	5281	279	431	431	10.47	5.81	8.16

**Guru Nanak Dev University Amritsar :**

Total Enrollment	Rural Students								
	Number			Percentage					
	Boys	Girls	Over- all	Boys	Girls	Over- all	Boys	Girls	Over- all
(a) Campus	2370	2513	4883	89	55	144	3.76	2.19	2.95
(b) Regional Centres	1472	587	2059	41	24	65	2.79	4.09	3.16
Total (a+b)	3842	3100	6942	130	79	209	3.38	2.55	3.01

**Panjab University, Chandigarh :**

Total Enrollment	Rural Students								
	Number			Percentage					
	Boys	Girls	Over- all	Boys	Girls	Over- all	Boys	Girls	Over- all
(a) Campus	3842	3742	7584	90	31	121	2.34	0.83	1.6
(b) Regional Centres	491	182	673	38	23	61	7.74	12.64	9.06
Total (a+b)	4333	3924	8257	128	54	182	2.95	1.38	2.2

**Punjab Agricultural University Ludhiana :**

Total Enrollment	Rural Students								
	Number			Percentage					
	Boys	Girls	Over- all	Boys	Girls	Over- all	Boys	Girls	Over- all
(a) Campus	1102	778	1880	55	34	89	4.99	4.37	4.73

Note.—Universities of Punjab here means four Universities, viz, Punjabi University, Patiala, Panjab University, Chandigarh, Punjab Agricultural University, Ludhiana and Guru Nanak Dev University, Amritsar.

Source : Primary Survey.”

(12) On the strength of facts and figures shown above, it was stated that the proportion of rural students in the Universities is far less as compared to the rural population, which is 66.05% in the State (2001 census). Further reference was made to the disparities existing in rural and urban areas in terms of infrastructure. In that regard, it was stated as under :—

“There exists a big gap in terms of the facilities, services and opportunities available to the rural and urban people. People living in cities/towns have better income earning opportunities, better transportation & communication means, etc. On the other hand, the villagers are deprived of such facilities and consequently lagged behind than their urban counterparts. Another factor revealed by the study made by the Punjabi University, Patiala, Department of Economic and Centre for Research in Economic change as referred to above is that a very high proportion of students, who join the Universities belong to urban area and this is on account of that the students of rural area do not have better economic conditions and also do not have better facilities as compared to the students belonging to urban area. The schools affiliated to the CBSE/ICSE are the English Medium Schools and are too costly. Thus these schools are most likely beyond the access and affordability of majority of rural students coming from weaker section of society which mainly form part of rural area. There is a strong relationship between the Education level of Parents and Children. It is in this context that the urban children are having an edge over their rural counterparts. Since most of the present day rural parents are either uneducated or having a very low level of Education, their children are borne to be adversely affected by this phenomena. More so, since education is the ladder for socio economic upliftment, the educated parents have a better capacity to finance the Education of their children. The proportion of fathers and mothers having postgraduate and having professional degrees was 5.38 percent and 1.87 percent ; and 11.31 percent and 3.95 percent respectively as per the figures given in the aforesaid report.”

(13) It was also stated that marks were granted to rural candidates taking note of their limitations and handicap. To say that inflow of the rural candidates in the public service in the State of Punjab is virtually negligible, reference was made to an affidavit, filed by the Director of Public Instructions (EE), Punjab, Chandigarh, on 25th August, 2008 in C.W.P. No. 5723 of 2008, relevant extract of which reads thus :

“Item No. 1 : Number of persons who have Entered Civil Services from Rural Areas in Punjab Since 2005 :

S. No.	Name of the Department	No. of Persons in Class I & II Categories
1	Department of Controller Printing and Stationery	Nil
2	Department of Information and Public Relation Punjab	1
3	Department of Technical Education and Industrial Training	(Regular) Nil (Contract Basis) 23
4	Department of Forests	Nil
5	Department of Co-operation	Nil
6	Department of Defence Service Welfare, Punjab	Nil
7	Department Sainik Welfare, Punjab	Nil
8	Department of Education, Punjab	Nil
9	Department of Health and Family Welfare	4
10	PCS Executive	12 out of 46 since 1995

**Item No. 2 : XXX XXX XXX**

**Item No. 3 : Shortage of ETT Teachers in Rural and Urban Areas of Government Schools in the State of Punjab :**

1. Position of ETT Teachers in Primary Schools According to Advertised Posts/and as on 31st July, 2008

S. No.	Total Number of Vacancies/ Shortage of Teachers	Total Number of Vacancies/ Shortage of Teachers in Rural Areas	Total Number of Vacancies/ Shortage of Teachers in Urban Areas
1	9998 11175	8934 10052	1064 1123

**Shortage of Teachers in Rural and Urban Areas of Government Middle/High/Senior Secondary Schools in the State of Punjab**

Position of Master Cadre only as on July, 2008 :

S. No.	Total Number of Vacancies/ Shortage of Teachers	Total Number of Vacancies/ Shortage of Teachers in Rural Areas	Total Number of Vacancies/ Shortage of Teachers in Urban Areas
	Master/Mistress 6760	Master/Mistress 6204	Master/Mistress 556

**Item No. 4 : XXX XXX XXX**

**Item No. 5 : XXX XXX XXX**

**Item No. 6 : XXX XXX XXX**

Item No. 7 : Number of Villages with Middle and High Schools out of the total number of the Villages in Punjab (The total number Village is also given)

## Total Number of Inhabited Villages :

12278, Cities 14, Towns 143

(Census 2001)

S. No.	Number of Villages with Middle Schools	Number of Villages with High Schools
1	2650	2043

## Number of Middle/High/Senior Secondary Schools in Cities and Towns of Punjab :

S. No.	Middle	High
1	3024	2704

S. No.	Senior Secondary	Total
1	2081	7809

**Item No. 8 : Comparison of Power Cuts Imposed in 2007-08 and 2008-09 in Rural and Urban Areas**

## Power Cut (Hrs. Min) 2007-2008

Date	Main Cities	Dist. Hq.	U/I Cat.I	UPS Feeders 3Wire 4 Wire
April to March				
Total	322.52	461.07	712.48	1203.49 1119.5
2008-09				
April	49.42	84.38	113.3	133.15 142.19
May	17.48	27.51	27.06	13.01 12.18
June	9.15	2.31	4.2	22 15.23
July	149.31	153.43	168.43	174.04 144.05
Total	225.36	267.83	312.99	342.2 313.65

- Notes.*—1. Main Cities include Patiala, Amritsar, Ludhiana, Jalandhar, Bathinda and Mohali.
2. Distt. Hqs include all Distt. Hqs except those in 1 above.
  3. U/I are the mixed Urban Industrial feeders feeding areas within Municipal Committees and Councils.
  4. Other rural areas are covered in 24 hrs. supply feeders of 3 wire and 4 wire (Urban Pattern Feeders).

*Source* : P.S.E.B.

**Item No. 9 : Percentage of People filing Income Tax in Urban and Rural Areas**

As per report of Income Tax Department, Headquarter (STAT) Chandigarh, dated 18th August, 2008, the Income Tax Department is receiving returns on the basis of Territorial Jurisdiction. There are about 150 Assessing Officers in the State of Punjab. It is not possible to segregate returns on the basis of Urban and Rural. Moreover there is no definition of Urban and Rural Assesses in Income Tax Act, 1961.”

(14) The State counsel has also shown us report of Punjab Agricultural University regarding survey conducted on Farmers and Agricultural labourers. This study was conducted in Sangrur and Bhatinda districts, wherein it has come to the notice of the authorities that due to indebtedness 2990 farmers had committed suicide in these two districts between 2000 and 2008. It was further stated in the report that the fatal steps were taken by the farmers and labourers to escape growing indebtedness, which rose up to 3.3 Lakhs per farmer in District Sangrur. In Bhatinda, indebtedness was to the extent of 2.49 lakhs per deceased. By making reference to the Survey conducted by Institute for Development in Communications (IDC), it was stated that worst sufferers of the suicide syndrome were the young citizens between the age of 15 and 29 years and it happened due to agrarian break down. Most of the suicide victims in Punjab were illiterate. It was also brought to the notice of the Court that birth rate has gone down so far as urban areas is concerned. However, it has gone up in the rural areas of the State of Punjab. Infant mortality in the rural areas is also on the higher side.



(15) At the time of arguments, factually no dispute was raised regarding change in qualification,—*vide* corrigendum Annexures P-7 to P-9.

(16) Before conclusion of arguments, taking note of paucity of Teachers in the State of Punjab, the State Counsel agreed to take some of the petitioners in service by adding 5 marks benefit to their merit.

(17) At the time of arguments, Shri Kakkar has very fairly conceded that facts given in the report of Punjabi University, Patiala, are not disputed. However, by placing reliance upon judgment of the Hon'ble Supreme Court in **State of Maharashtra versus Raj Kumar, (9)**, and **V.N. Sunanda Reddy versus State of Andhra Pradesh and others, (10)**, and **Kailash Chand Sharma versus State of Rajasthan and Others, (11)**, he urged that on the basis of having passed 8th and 10th classes examinations from rural areas, no additional benefit can be given to those candidates as this would run counter to the following position of law down in the above judgments of the Hon'ble Supreme Court.

(18) It **State of Maharashtra versus Raj Kumar's case (supra)**, it was observed that :-

“in the first place the object of the rule was to take officers who had full knowledge of rural life, its problems, aptitudes, working of the people in villages and the suitability for working as officers in the rural areas so as to be materially useful and in order to make a constructive contribution to the upliftment of rural life. In order to achieve this purpose a rule was made that a candidate coming from the rural areas will be a rural candidate and he must have passed S.S.C. Examination which is held from a village or a town having only a 'C' type Municipality. This rule, however, when translated into action does not seem to fulfill or carry out the object sought to be achieved because as the Rule stands any person who may not have lived in a village at all can appear for S.S.C. Examination from a village and yet become

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(9) AIR 1982 S.C. 1301

(10) 1995 (3) R.S.J. 35

(11) 2002 (3) S.C.T. 938

eligible for selection in the competitive examination. Thus there is no nexus between the classification made (assuming for the purpose of this case that such a classification is reasonable) and the object which is sought to be achieved as a result of which the rule is clearly violative of Arts. 14 and 16 of the Constitution of India. Another infirmity from which the rules suffer is that any person who has passed the S.S.C. Examination and is supposed to be a rural candidate has to be given particular weightage by the Public Service Commission who has to award 10% marks in each subject for such a candidate. The rules also provide that *viva-voce* Board would put relevant questions to judge the suitability of candidate for working in rural areas and to test whether or not they have sufficient knowledge of rural problems, and this no doubt amounts, to a sufficient safeguard to ascertain the ability of the candidate regarding his knowledge about the affairs of the village. In such a situation there was absolutely no occasion for making an express provision for giving weightage which would virtually convert merit into demerit and demerit into merit and would be per se violative of Article 14 of the Constitution as being an impermissible classification. The rule of weightage as applied in this case is manifestly unreasonable and wholly arbitrary and cannot be sustained. The High Court has fully elaborated these points and has aptly observed thus :

“.....On the contrary, it places a rural candidate in an advantageous position by a sheer accident of his passing the S.S.C. Examination from rural area.”

“.....Here we are faced with a problem that a candidate by sheer chance of his appearing and passing the examination from rural area gets an advantage over all others by arbitrary addition of ten per cent of marks which, as we have indicated above, has no reasonable nexus or connection with the object of getting the best candidates suitably adapted to rural life.”..(emphasis supplied)

(19) Similarly, the Hon'ble Supreme Court in **V. N. Sunanda Reddy's case** (*supra*) held that :—

“in this connection, we may profitably refer to a decision of this Court in the case of **State of Maharashtra v. Raj Kumar** (A.I.R. 1982 SC 1301) wherein a rule of recruitment framed by the Government of Maharashtra giving weightage in recruitment to a candidate coming from rural area and who had passed S.S.C. Examination held at villages or places with 'C' type Municipality was held to be violative of Articles 14 and 16 of the Constitution. The Court speaking through Fazal Ali, J., found that there was a provision that during viva-voce the Board would put relevant questions to judge the suitability of candidate for working in rural area and to test his knowledge of rural problems. This being a sufficient safeguard to test the ability of candidate the express provision for giving weightage would virtually convert merit into demerit and demerit into merit and would be per se violative of Article 14. In our view the situation in the present case is also similar. We respectfully concur with the views expressed by Fazal Ali, J.”

(20) It was also held by the Hon'ble Supreme Court in **Kailash Chand Sharma's case** (*supra*) that :—

“23. This plea proceeds on the supposition that the proportion of employment of rural residents is much less than that of the residents in the towns ; in other words, the major chunk of appointments in State services are going to those born in and brought up in towns. The other assumption underlying this argument is that the educated people in the rural areas are economically weaker than those living in towns. None of these assumptions are based upon any data or concrete material. We must say that the argument built up on this plea falls more in the realm of platitudes rather than affording a solid basis for the classification.” ... (emphassis supplied).

27. The above discussion leads us to the conclusion that the award of bonus marks to the residents of the district and the residents of the rural areas of the district amounts to impermissible

discrimination. There is no rational basis for such preferential treatment on the material available before us. the ostensible reasons put forward to distinguish the citizens residing in the State are either non-existent or irrelevant and they have no nexus with the object sought to be achieved, namely, spread of education at primary level. The offending part of Circular has the effect of diluting merit, without in any way promoting the objective. The impugned circular dated 10th June, 1998 in so far as the award of bonus marks is concerned, has been rightly declared to be illegal and unconstitutional by the High Court.

28. One more serious infirmity in the impugned circular is that it does not spell out any criteria or indicia for determining whether the applicant is a resident of rural area. Everything is left bald with the potential of giving rise of varying interpretations thereby defeating the apparent objective of the rule. On matters such as duration of residence, place of schooling etc., there are bound to be controversies. The authorities, who are competent to issue residential certificates, are left to apply the criteria according to their thinking, which can by no means be uniform.”

..(emphasis supplied).

48. Another parting observation. While we realize the need to generate better employment opportunities to the people of rural backward areas and an affirmative action in this regard is not ruled out, any such action should be within the framework of constitutional provisions relating to equality. Equalising unequals by taking note of their handicaps and limitations is not impermissible under the Constitution provided that it seeks to achieve the goal of promoting overall equality. However, measures taken by the State on considerations of localism are not sanctioned by the constitutional mandate of equality. As indicated in the judgment, any attempt at giving weightage to the rural candidates should be backed up by scientific study and considerations germane to constitutional guarantee of equality.”...(emphasis supplied).

(21) While not disputing the position of law laid down by the Hon'ble Supreme Court in the above decisions, Shri H.S. Mattewal, learned Advocate General of the State of Punjab has submitted that in paragraph 48 of the judgment of the Hon'ble Supreme Court in **Kailash Chand Sharma's case** (*supra*), it was held that measures taken by the State on considerations of localism are not sanctioned by the constitutional mandate of equality. However, it was also held that any attempt at giving weightage to the rural candidates should be backed up by scientific study and considerations germane to constitutional guarantee of equality. Thus reliance has been placed upon a study conducted by the Department of Economic & Centre for Research in Economic Change, Punjabi University, Patiala, in September, 2006. He thus submitted that the judgment of the Hon'ble Supreme Court did not bar in toto the weightage given to rural areas and did not rule out the affirmative action. The only requirement for such affirmative action was that such action should be within the framework of constitutional provisions relating to equality and should have been backed up by scientific study. It was also held in **Kailash Chand Sharma's case** (*supra*) that so long as over all object of quality is achieved, equalising unequals by taking note of their limitations and handicaps is not impermissible under the Indian Constitution. He therefore, relied upon the following passages from the above study conducted by the Punjabi University :—

#### **“1.4 Research Design and Methodology**

##### **1.4.1 Coverage and Scope of Study.**

Keeping in view the specific objectives and scope of the study, it has been decided to conduct a comprehensive survey of the various universities of Punjab and their regional centres to know the ground realities.

In order to get a genuine approximation of rural students in terms of number and other characteristics, a survey was conducted for each and every class and course from all of the campus teaching departments and regional centres through a pre-tested questionnaire (Appendix 1). The survey was executed through the help of the various officials/administrators, heads of the departments, concerned teachers, student representatives and other known and effective persons besides the members of the

study team. In the first round, a list of rural students was prepared from every class, and then questionnaires were got filled from all these rural students. In all, the universe of study comprises of 177 teaching departments as follows : Punjabi University (43 departments), Guru Nanak Dev University (35 departments), Panjab University (44 departments) and Punjab Agricultural University (55 departments). Further the study has been confined to the departments admitting regular students only. Thus, the study is confined to regularly admitted *bona fide* rural students admitted in various courses of all of the teaching departments on the university campuses and their regional centres.

#### 1.4.2. Objectives of Study

The specific objectives of the study are :

1. to work out the share of rural students in the Universities of Punjab ;
2. to study the educational background of the rural students admitted in the Universities of Punjab ;
3. to explore the educational background and occupation status of the siblings (brothers/sisters) of rural students ;
4. to examine the educational background of the parents of rural students ;
5. to analyse the socio-economic status of the parents of rural students ; and
6. to suggest policy recommendations.

#### 1.4.3. Rural Students : Definition :

The idea to conduct the study, in fact, originated out of the general feeling and concern emanating from four factors, viz. (i) declining standards of rural schooling, (ii) widening gap between rural and urban educational standards, (iii) systematic exclusion of masses from the quality education under the operation of the new economic policy regime, and (iv) growing tendency on the

part of rurally based influential parents to shift their wards to urban schools, mainly on daily-commuting basis. So, it is held that the share of rural students from the typically rurally located schools declined, over the time period, in the state and national level educational institutions and education based job markets under the cumulative pressure of entrance tests ; academic merits ; lack of exposure ; and deficiency of human, material and social capital on the part of their parents. Thus, these specificities have been given paramount importance in the adoption of the definition of the rural students. So, in this study, the rural student has been defined as below :

In the study only those students are treated as rural students who have passed either of their matriculation or Senior Secondary (plus two) examination or both from the rural schools situated anywhere in India. Only those schools are considered as rural schools which do not fall in the area of a Municipal Corporation/Municipal Committee/Nagar Council/Notified Area Committee. It is to be noted that the central thrust of the study was to assess the number of students passed out from rurally located schools entering the universities of the state. Thus, what matters most for the purpose of identification, main objective of the study, is the location of the school from where a student passed out either the matriculation or plus two examination or the both.

#### **1.4.4. Data Sources and Time-period :**

The study is primarily based on the primary data. The data have been collected through a census survey method from all the identified rural students enrolled in the campus departments and regional centres of the universities, i.e. 911 students consisting of 592 boys and 319 girls.

#### **1.5 Chapter Scheme :**

The study consists of five chapter. Chapter 1, besides discussing the methodological framework, deals with three components : (a) relationship between education and development ; (b) financing

of education and (c) access equity and affordability. Chapter II examines the higher education scenario in Punjab by exploring the growth, expansion and accessibility of this sector. Chapter III provides the number and proportion of rural students in the universities and their regional centres. This Chapter also brings out the number and proportion of rural students, both faculty-wise and department-wise. Chapter IV dwells on certain important socio-economic and educational details about the rural students and the households from where they come. The summary of main conclusions and public policy prescriptions are put forth in the last chapter i.e. Chapter V.

### **3.1 Overall : Universities and Regional Centres :**

During the academic session 2005-06, the total number of students in all the universities of the state was 22,360 (Table 3.1). The rural students in all the universities and their regional centres constituted a meagre proportion of 4.07 per cent (9.11 students). The share of rural boys and rural girls in universities' overall boys and overall girls was 4.96 percent and 3.06 per cent, respectively. The proportion of rural students in the universities of Punjab is, thus, far below than that of the proportion of rural population in the state (66.05 per cent as per Population Census of 2001). Further proportion of the girl students from the rural areas is rather dismal. Amongst the total students enrolled the universities of Punjab, the share of girl students is 46.60 per cent, whereas the share of rural girls among the total rural students is 35.02 per cent. Thus, as compared to their urban counterparts, the share of rural girls in the universities of Punjab is much lower.

### **4.2 Location of Villages :**

Approximately 45 per cent of rural students came from the villages located on the main roads, whereas the remaining 55 per cent were from the villages located on the link road (Table 4.2.1). The distance of the villages located on the link roads from the main roads varied from 2 to 10 Kms. (Table 4.2.2). It means that they have to cover extra distance and spend more time to



reach the destination. About 23 per cent of rural students travelled up to 2 kms. 36.06 per cent between 3 and 5 kms. 24.50 per cent between 6–10 kms. and 16.14 per cent travelled more than 10 kms. to reach at the main roads.

#### **4.5 Examination Score :**

Nearly 62 per cent rural students were having first division in matriculation, 55.65 per cent in +2, and 44.16 per cent in graduation. Clearly, their performance while moving towards the higher levels of education witnessed a decline. However, the proportion of rural students who got second division at the respective levels of education registered an increase. The proportion of rural students getting third division, however, declined as they moved from matriculation to graduation. It may be attributed to the better sense of awareness and responsibility, which is likely to be increased with the maturity of age, towards the importance of higher education.

#### **4.6 Schools : Type, Affiliation and Location :**

Table 4.6.1 presents a picture about ownership of schools from where the rural students in the universities acquired their education. As regards primary and middle school, 63 to 67 per cent students studied in government/aided schools. This proportion in the case of high and Senior Secondary Schools was 71.57 and 70.14 per cent, respectively. Clearly, a very sizeable proportion of students studied in the Government and Government aided schools. This proportion in the case of high and Senior Secondary Schools was 71.57 and 70.14 per cent respectively. Clearly, a very sizeable proportion of students studied in the Government and Government aided schools. Contrary to the popular perception and belief, the proportion of rural girls studied in private schools at all levels of school education has been higher than that of boys.

#### **Summary Main Conclusions and Public Policy Interventions :—**

In the last decade or so, Punjab's higher education sector has gone through sea changes both at the individual and collective levels.

**First**, the state government has withdrawn from this sector at a

greater speed. **Second**, the private entrepreneurs have opened new institutions of higher learning in the fields of professional, technical and medical education. **Third**, the entry of private entrepreneurs has completely changed the scenario of providing higher education from social service to for-profit education service. This has led to the commercialization of higher educational products like other goods and services. **Fourth**, these private educational enterprises are in the process of recovering of more than full-cost, in the shortest possible time, of imparting higher education from the students or their parents. And, **lastly**, the very high fees and funds charges by these for-profit institutions has certainly accelerated the 'exclusion process' of students belonging to the weaker sections of society (students of scheduled castes, backward classes, rural areas, landless agricultural workers, marginal, small and medium farmers, petty shopkeepers etc., and urban marginalized sections of petty traders, slum dwellers, etc.) from acquiring the higher education, who are otherwise talented and hardworking. Such a scenario would result in a mediocratic society rather than a meritocratic and advanced society.

During the academic session 2005-06, the proportion of rural students among the overall students of four surveyed universities of the state was 4.07 per cent. The share of rural boys and rural girls in the universities' overall boys and girls was 4.96 per cent and 3.06 per cent respectively. Punjabi University has the highest proportion (8.16 per cent) of rural students among all the universities of Punjab. Punjab Agricultural University, with a share of 4.73 per cent, comes at the next. Guru Nanak Dev University and Panjab University have 3.01 per cent and 2.20 per cent of rural students on their rolls, respectively. The proportion of rural students at the respective regional centres was found to be higher than that of the concerned university's campus departments.

For the university campus departments and regional centres combined, the share of girl students in total students was found to be the highest in Punjabi University (49.55 per cent), followed by

Panjab University (47.52 per cent), Guru Nanak Dev University (44.66 per cent), and Punjab Agricultural University (41.38 per cent). As compared to its, the respective share of rural girl students in total girl students was 5.81 per cent, 1.38 per cent, 4.37 per cent and 2.55 per cent respectively. However, the share of rural girl students at the regional centres of the universities was higher than that of their respective campuses.

At the campuses of the universities of state, it is the faculty of Education and Information Science that has the highest proportion of rural students (12.14 per cent), followed by the faculty of Art & Culture (8.87 per cent) and the faculty of Social Science (6.76 per cent). As expected, faculty of Professional Courses has the lowest proportion of rural students (1.41 per cent). And, the Department-wise, the proportion of rural students was the highest in the departments of Family Resource Management (36.36 per cent), followed by the Religious Studies and the Theatre & TV (21.43 per cent each). The lowest proportion of rural students was found to be in department of Chemical Engineering (0.23 per cent). On the whole, however, eight departments have no rural students. These are : Biophysics, Chemical Engineering, Geology, Gandhian Studies, Centre for Women Studies, Dance, Foreign Languages and University Institute of Engineering.

The five departments of the different universities where the proportion of rural students was highest are as follows (in descending order) : **Punjabi University**—Department of Physical Education (29.85 per cent), Sociology (27.78 per cent), Defence Studies (24.14 per cent), Religious Studies (21.43 per cent) and Library & Information Science (20.75 per cent) ; **Guru Nanak Dev University**—Department of Political Science (18.29 per cent), Library & Information Science (16.67 per cent), Bio-Technology (15.56 per cent), Physical Education (12.64 per cent), and Sanskrit & Pali (11.11 per cent) ; **Panjab University**—Departments of Theatre & T.V. (37.50 per cent), Anthropology (10.59 per cent), Education & Community

Services (9.52 per cent), Public Administration (8.60 per cent) and Punjabi (8.47 per cent) ; and **Punjab Agricultural University**—Departments of Family Resource Management (36.36 per cent) ; and 4 rural students out of 11), Plant Pathology (33.33 per cent ; 5 rural students out of 15), Veterinary Anatomy & Histology (33.33 per cent ; 2 rural students out of 6), Horticulture (25.93 per cent ; 7 rural students out of 27), Animal Breeding & Genetics (20 per cent ; 1 rural students out of 5), Clothing & Testiles (20 per cent ; 1 rural students out of 5) and Veterinary Pathology (20 per cent ; 2 rural students out of 10).

Among the regional centres of the universities of the State, the highest proportion of rural students was found in the faculty of Social Sciences (16.51 per cent), and among the departments, it was the highest in Punjabi (26.90 per cent). Even at the regional centres five Departments did not have any rural student. These are : Urdu, Shastri, Journalism & Mass Communication, Commerce and Education.

The educational attainments and performance of rural students show great deal of sensitivity to their socio-economic backgrounds. The proportion of rural scheduled caste students in the total identified rural students was 14.60 per cent. The maximum proportion of rural students (56.75 per cent) was in the 21-23 years age group. And, 70.25 per cent rural students belong to Sikh-religion, 27.44 per cent to Hindu religion, 0.88 per cent to Islam, and 1.43 per cent to others. About 45 per cent rural students came from the villages located on the main roads, and the remaining 55 per cent were from the villages located on the link road. Nearly 62 per cent students were found to be living in hostels, and the remaining 38 per cent were daily commuters. The distance travelled by daily commuters ranged between 10 kms and 61 kms. Nearly three-fourth travelled by buses, and 18.29 per cent by their own conveyance. About 55.43 per cent rural students put in between one hour and one and half hour time daily in travelling.

(22) Consequently, recommendations were made in the study and those recommendations which relate to rural areas read as follows :—

- “2. Out of total budget of higher education, the share of universities, government colleges and aided colleges be specifically raised keeping in view the global demands and resource requirements of these sub-sectors. Moreover, rural section institutions should get more allocation of funds, even more than the proportion of rural population to bridge the rural-urban divide.
4. There is a strong need to provide special incentives to students from the weaker sections of society that pass out from the rural schools, and get admission in the universities and other prestigious institutions. The state should finance the study cost of such students by creating a special fund, and reimburse the fees, funds and hostel charges of such students to the concerned institutions.
5. Since there is an organic link among all levels of education—elementary, secondary and tertiary—there is a need to strengthen and improve the quality of education at all the levels. It is recommended that instead of allowing a mushrooming growth of private schools (sub-standard, ill-equipped and for-profit, albeit teaching shops) without social responsibility, there is a need to strengthen the existing government and private aided schools in the rural areas.
14. The state and education institutions must make efforts to strengthen the voluntary, philanthropic, diasporic and community funding in the education sector through various forms (incentives, concessions, etc., particularly in the typically rural, backward and other disadvantageous areas and sections of the society. The state has not yet realized the full potential of these sources of funding to the education sector. The funds collected by the state under education cess needs to be transferred fully to the education sector.
18. The establishment of neighbourhood campuses/regional centres in the rural areas by universities would certainly make the higher education more cost effective and accessible to rural students.

The experiment of Punjabi University, Patiala during the last couple of years are worth replicating.

19. Education of ruralites in the State is *sine qua non* for shifting the workforce from agriculture to non-agricultural sectors and for reaping the benefits/dividends of changing global economic scenario. As such, education sector in general and rural education in particular should not be left to the mercy and vagaries of market forces. Public funding and policy intervention along with public-private partnership (in an accountable and transparent manner) are of great necessity. Even the World Bank Reports support the public funding of education.
21. In order to take stock of the ground reality regarding the presence of rural students in other courses, there is a need to conduct such studies in all the degree colleges of the state, and also in the college/institutes affiliated with Punjab Technical University, Baba Farid University of Health Sciences, Rajiv Gandhi National University of Law, Guru Angad Dev University of Veterinary and Animal Sciences and Thaper Institute of Engineering and Technology (deemed university).”

(23) In so far as State of Maharashtra *versus* Raj Kumar (*supra*) is concerned, Hon’ble Supreme Court in the above judgment held that even a person who had not lived in a village could appear in the S.S.C. examination from a village and become eligible for selection. Thus, it was held that there was no nexus between the classification made and the object which was sought to be achieved. One of the factors which weighed with the Hon’ble Supreme Court in **State of Maharashtra versus Raj Kumar** was the awarding of 10% marks to a candidate merely because of his choosing a rural centre. The Hon’ble Supreme Court took note of the fact that no stay in rural areas was required and merely the exam had to be passed from a rural examination centre. In the present case, sufficient attachment to a rural area is ensured by insisting upon the passing of 8th and 10th class examination from the rural centre. The requirement of passing 8th and 10th class in our view gives sufficient linkage and nexus of a candidate in respect of a rural area so as to take out the present case out of the prohibition imposed by the Hon’ble Supreme Court. Another factor which distinguishes this case

from the dicta of the Hon'ble Supreme Court in **State of Maharashtra V. Raj Kumar** is that as contrasted from the 10% weightage in the **Maharashtra** case in the present case the weightage is only 5 additional marks.

(24) In so far as V. N. Sunanda Reddy's case (*supra*) is concerned, State of Maharashtra *versus* Raj Kumar (*supra*) was referred to and applied. While applying the above judgement of State of Magarashtra *versus* Raj Kumar (*supra*) in Kailash Chand Sharma's case, the Hon'ble Supreme Court held that the classification between the rural and urban candidates was not based upon concrete material. It was also found that there was no solid basis for such classification.

(25) In the light of the above application of Raj Kumar's case, however, as discernible from the Kailash C. Sharma judgment and in particular paragraph 48 thereof, such conclusion was based on the fact that such weightage was granted without any data or study to support the weightage to rural students. However Kailash Chand Sharma's case did not rule out such weightage, provided it was based on a scientific study and helped eradicate inequality. The State of Punjab has supported the rural weightage on the basis of the study conducted by the Punjabi University, Patiala and the cardinal issue arising in those petitions is as to whether the weightage to rural students can be supported by the conclusions of the study and if so whether such weightage would satisfy the principle of equality by levelling the playing field for the rural students *qua* their urban counterparts.

(26) A perusal of the study extracted above clearly demonstrates the sever disadvantage suffered by rural students by virtue of their geographical location and deprivation of equal opportunity of principles by virtue of not enjoying similar amenities as enjoyed by an urban student.

(27) A perusal of the study reveals that :—

- (a) 4.2 of the study very eloquently addressed the issue of disadvantages suffered by the rural students by virtue of the distances required to be travelled by them for receiving education. It was found that about 55.43 percent rural students travelled between 1 and 1½ hour every day. Thus not only time but substantial amount of money is also required to be spent by a rural student in commuting creating glaring inequality requiring affirmative redressal.

- (b) 3.1 of the study shows the evident disparity that exists between the rural and urban population as far as education is concerned. During the academic session 2005-2006, the share of rural boys and rural girls out of overall boys and girls in Universities, was ascertained to be a mere 4.96 percent and 3.06 percent, respectively. Also rural students in all Universities and their regional centres constituted a tiny proportion i.e. 4.07% (911 students) out of the total number of 22,360.
- (c) Chapter V of the report states that progress with respect to education in the State has been iniquitous in terms of reasons, districts, locations, population groups, genders, classes, and castes. As an example, it has been put forth that in 1998-99, 75% of children from the top quintile of the house holds completed their 9th grade but merely 9% from the bottom to quintile house holds completed the same. As a result the education system has generated certain significant educational inequalities.
- (d) Also Chapter V states that it is evident that the presence of rural students who have passed out from the typically rural located schools is very low in the Universities of Punjab. Students from the relatively better off sections of rural populace found their way into the University campuses and regional centres. Thus, the need for radical changes in the public policy pertaining to rural school-college education as well as university level education has been highlighted as the need of the hour.

In our view, weightage to a rural candidate would achieve such a purpose to neutralize the disadvantages suffered by a rural student and in fact achieve equality by bringing unequals at par.

(28) In the light of the above and the conclusions based on a scientific study and spread over State of Punjab and academic institutions in the State of Punjab, we are satisfied that State of Punjab has been able to satisfy the mandate of the judgement of Kailash Chand Sharma's case which has not ruled out the weightage to rural students provided it was backed up by the scientific study and data. The wide ranging empirical study done by the Punjab University in our opinion constitutes sufficient material so as to furnish a scientific basis for granting weightage to the rural students. We are also satisfied that since the study finds the rural students, by deprivation of equal opportunity and infrastructure, to be unequal to those coming from the urban background by virtue of their location in a rural



setting, this weightage, far from promoting inequality, in fact seeks to restore equality between unequals and thus fulfills the mandate of Article 14.

(29) Mr. Kakkar, relied upon the following judgments of the Hon'ble Supreme Court :—

- (i) **U.P. State Electricity Board versus Pooran Chandra Pandey and others (12)**
- (ii) **Bharat Petroleum Corporation Ltd. and another versus N.R. Vatramani & another, (13).**
- (iii) **N. Meera Rani versus Govt. of Tamil Nadu & another, (14).**

to submit that Kailash Chand Sharma's case (*supra*) rendered by two Hon'ble Judges could not be the basis for weightage to rural students in view of larger bench judgments of State of Maharashtra *Vs.* Raj Kumar and V. N. Sunanda Reddy's case cited (*supra*).

(30) In our view, once Kailash Chand Sharma's case has noted the earlier larger bench judgement of State of Maharashtra *V.* Raj Kumar (*supra*) which was followed by V.N. Sunanda Reddy's case (*supra*), the latter judgement in Kailash Chand Sharma's case could not be said to be *per incuriaum* and this Court was bound by the law laid down in Kailash Chand Sharma's case which had applied the judgment in State of Maharashtra *V.* Raj Kumar case (*supra*).

(31) We feel that it is pertinent to note a plea put forth by the State. According to the State, terrorism in Punjab affected the rural areas the most. Youths belonging to the rural areas were exploited by the terrorists for their motives and rural education centres had turned into their centre-stages. In the aforesaid situation, the affluent populace moved to the urban area, whereas the others, having no other option, had to stay back. This led to further enhancement in the already existing disparity and inequality between the rural and the urban areas.

(32) We are also satisfied that the study eloquently sums up the disadvantages suffered by a rural student due to shortage/ absence of infrastructure, teachers and the large distances required to be covered for attending school. The weightage impugned in these petitions seeks to redress

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(12) 2007(4) SCT, 623

(13) AIR 2004 S.C. 4778

(14) AIR 1989 S.C. 2027

such disadvantages. In fact, treating unequals such as the urban students as equals to the rural students would obviate against the principles of equality enshrined under Articles 14 and 16 of the Constitution, as laid down by the Hon'ble Supreme Court's judgement in **U.P. Power Corporation Ltd. versus Ayodhya Prasad Mishra and Anr (15)** as follows :—

*“It is well settled that equals cannot be treated unequally. But it is equally well settled that unequals cannot be treated equally. Treating of unequals as equals would as well offend the doctrine of equality enshrined in articles 14 and 16 of the Constitution.”* ... (emphasis supplied)

This measure is also supported by the mandate of Article 38(2) of the Directive Principles which provides that the State shall endeavour to eliminate inequalities in status, facilities and opportunities amongst groups of people residing in different areas. Consequently, we are of the view that the weightage of 5 additional marks to rural students is fully justified in the facts and circumstances of the case and is not only permitted by the decision of the Supreme Court in Kailash Chand Sharma's case (*supra*) but the study of the Punjabi University also fulfills the requirements for such weightage set out in the said judgement.

(33) Accordingly, we dismiss Civil Writ Petitions No. 14181 and 15210 of 2007, 6801, 8012, 8296, 8278, 11650, 11690, 12344, 18943 and 19971 of 2008 and 1140 of 2009. However, we would like to add a word of caution here. This judgement, upholding the weightage to the rural students, is based upon a proper, objective and data based study by a reputable university and hence the weightage of five additional marks is being upheld but this judgment should not be taken as an imprimatur for indiscriminately giving weightage to various segments of the society.

(34) In so far civil Writ Petitions No. 3900, 4364, 4776, 5032, 5184, 5843, 6183, 6221, 6245, 6627, 6660, 6697, 7501, 7599 and 21415 of 2008 who passed their 8th and 10th from the States other than Punjab are concerned, they obviously do not fall within the purview of the study of the Punjabi University conducted for the State of Punjab and thus cannot avail of the benefit of the weightage of 5 additional marks to rural students which is based upon the above study. Consequently, these Writ Petitions are also dismissed.

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**R.N.R.**