

5 per cent. It is apparently a loss being caused to the petitioners. The mere fact that on account of the revision of pay scales they will still get an amount equal to or a little more of what they were originally drawing is of no consequence. Accordingly, I find that there is no rationale for reduction of remuneration as ordered by the respondents.

(15) Accordingly, the writ petition is allowed. The order dated August 8, 1989 is set aside. It is directed that the petitioners shall be paid remuneration in accordance with the order dated January 30, 1984 at the rate of 10 per cent of their pay as defined under Rule 2.44 (a) of the Punjab Civil Services Rules, Vol. I, Part I. The needful shall be done within three months from the date of the receipt of a copy of this order. The petitioners shall also be entitled to their costs which are assessed at Rs. 2,000.

S.C.K.

Before : A. L. Bahri & Ashok Khan, JJ.

POONAM YADAV,—Petitioner.

versus

SHRI CHARAN SINGH, HARYANA AGRICULTURAL UNIVERSITY
AND OTHERS,—Respondents.

Civil Writ Petition No. 11775 of 1992.

September 16, 1992.

Constitution of India, 1950—Art. 226 & 227—Admission—Petitioner seeking admission to Bachelor course of Veterinary Sciences and Animal Husbandry—Having more marks than respondent No. 4 who got admission on Compassionate grounds after an additional seat was created—Action of University denying admission to petitioner challenged—Held that action of University is arbitrary in creating additional seat.

Held, that the action of the University is arbitrary. Creation of a special seat for respondent No. 4 who had competed with other candidates for admission is indeed unfortunate and undesirable bringing it within the ambit of arbitrariness. From this it should not be implied that the respondent University could not create a special seat. Special seat can be created for a justifiable cause, Which we find did not exist in the present case.

(Para 4)

Further held, that admission to the University is for the interests of the society at large and cannot be given merely on compassionate grounds such as that of respondent No. 4 specially when he had competed along with other candidates for admission to the course.

(Para 6)

N. S. Panwar, Advocate, for the Petitioner.

Sumant Batra, Advocate, for the University.

Ravi Verma, Advocate, for the Respondents.

JUDGMENT

A. L. Bahri, J.

(1) Petitioner has filed this writ petition for issuance of a writ of *mandamus* or any other suitable writ or order directing the respondents to admit the petitioner to Bachelor of Veterinary Sciences and Animal Husbandry (for short B.V.Sc. & A.H.). Total number of seats was 50 including the number of reserved seats. 24 seats were meant for general category candidates. Petitioner belongs to the general category candidates. It is admitted case of the parties that petitioner did not come on merit so far as 24 seats meant for general category candidates were concerned. Petitioner's grievance is that respondent No. 4 Shri Abhishek Dhinsa has been admitted to the course although he was much lower in merit. Petitioner got 83.33 per cent marks as against 71 per cent marks obtained by respondent No. 4 including the weightage. The last candidate admitted from general category candidates was with 87.33 per cent marks.

(2) Separate written statements have been filed by the University as well as respondent No. 4. The stand taken by the respondents in their written statements is that petitioner failed to secure the position in the first 24 seats meant for the general category candidates. In fact, there were still 20 students who were higher in merit than the petitioner for the seats meant for general category, that respondent No. 4 has been given admission by creating an additional seat on compassionate ground on an application made by the father of respondent No. 4. The compassionate ground mentioned is that the mother of respondent No. 4 died during the period when he was taking his examination and that is why, he could not get sufficient number of marks to be admitted on merits. Taking that to be a ground for creating a seat, an additional seat was created for respondent No. 4 who was admitted against the said seat.

(3) We have heard the counsel for the parties. Admittedly respondent No. 4 had applied for being admitted to the course along

with the petitioner and other candidates. He did not qualify on merits. The special seat was created for him thereby ignoring the merit list which was prepared for giving admission to the students in the course. Counsel for the respondents argued that there is no prayer in the writ petition that he be given admission after cancelling the admission given to respondent No. 4. We do not find any substance in this submission. Apart from the specific prayer that he should be admitted, the petitioner has also made a prayer in the writ petition that any other suitable writ, order or direction be issued as the Court may deem fit. Since respondent No. 4 has competed along with other students for admission to the Course, creation of a special seat for him for of Course, creation of a special seat for him for Admission to the course, under the circumstances, is totally uncalled for. In our opinion, the action of the University is arbitrary. Creation of a special seat for respondent No. 4 who had competed with other candidates for admission is indeed unfortunate and undesirable bringing it within the ambit of arbitrariness. From this, it should not be implied that the respondent-University could not create a special seat. Special seat can be created for a justifiable cause which we find did not exist in the present case. We refrain ourselves from enumerating the special circumstances under which a seat could be created. Normally speaking, seats filled up on merit should be given admission in the programme.

(4) It was next argued by the counsel for respondents that the petitioner could compete only against 50 seats for which advertisement had been issued for admission to the course and not against the 51st, which had been specifically created for respondent No. 4 as no right of the petitioner or any other similarly situated person was in **any manner adversely effected**. S. S. Sodhi, J. in *Parveen Hans v. The Registrar, Panjab University, Chandigarh* (1), repelled the plea raised before him observing as under :—

“Faced with this situation, Mr. Jawahar Lal Gupta, Senior Advocate, appeared for the respondent-University sought to contend that as this reservation in favour of the wards of the University employees had been made against newly created seats, no right of persons claiming admission under

other categories was in any manner, adversely effected Further the effort was to justify this reservation on the plea that it was done as a measure of welfare of the University employees. He also adverted to the agitation by the University employees in this behalf. To lend credence to his argument there was also an attempt by counsel, to seek to equate such reservation for the University employees and their wards with the Railway passes being given to the employees of the Indian Railways. This is indeed a wholly untenable stance. Admissions to the University are for society at large and the reservations that are made, are designed to make allowances for the disadvantage or handicap that a special category may be suffering from. They were not there to be given merely as a measure of welfare. The analogy of Railway passes being given to the Railway employees cannot, therefore, stand scrutiny. The reference to agitation by the University employees cannot justify the University authorities succumbing to a course of action, which is clearly contrary to law. Reservations as has been held in the binding judicial precedents, referred to earlier, bear no reasonable nexus with the object to be achieved and are plainly discriminatory and have thus to be held to be wholly unconstitutional."

We fully endorse the view taken by S. S. Sodhi, J. and hold that admission to the University is for the society at large and cannot be given merely on compassionate grounds such as that of respondent **No. 4 specially when he had competed along with other candidates** for admission to the course. Counsel appearing for respondent No. 4 argued that the seat meant for him be not cancelled. We do not find any substance in this submission. The studies in the course have not commenced till date and in our opinion no special equity has come to vest in respondent No. 4. Under the circumstances, the candidature of respondent No. 4 is cancelled. We direct that the additional seat which has been created be given to the student who had applied in order of merit if the University wants to retain the additional seat created. It would be open to the University not to fill up the newly created seat as it had been created specifically for respondent No. 4. No costs.

J.S.T.