

these cases are cases on their own facts, but nowhere has it been ruled that in all events must the High Court enter the army thicket and intermeddle with their affairs. It is *ex facie* patent from the confidential letters Annexures P-2 and P-3, which regretfully have been made public, that the employment of the term 'unsatisfactory service' is not as if writing any adverse remarks concerning an officer but is rather relating to a standard required for promotion to the higher rank of service. Nothing apparently is wrong with such view. Besides in the disciplinary force of the Army, we express our reluctance to make inroads under Article 226 of the Constitution. Our view gets indirect support from *Lt. Colonel K. D. Gupta's* case (*supra*) where their Lordships have observed that the said case is not to be taken as a precedent and the Court would like the discipline of the Defence Department to be maintained by itself in the interest of nation.

(5) Mr. Gupta vehemently urged before us that the judicial precedents cited by him, and to which list he could add a lot many, the Courts in the higher echelons have been interfering and the fact that they have interfered is reflective of their willingness to interfere. We are unable to discern any ready willingness to interfere in matters all and sundry pertaining to the Armed Forces. Rather we, in the interest of nation, see a general hesitancy to enter this area of sensitivity, and more so, in a matter like the present one where the service of the petitioner has been viewed 'unsatisfactory service' i.e. not coming to the standard required for promotion. This would not call judicial review at our end.

(6) Not willing to enter the thicket, we dismiss the petition *in limine*.

P.C.G.

Before : M. R. Agnihotri, J.

DR. ASHUTOSH KAUSHAL,—*Petitioner.*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ Petition No. 4119 of 1989

30th May, 1989

Constitution of India, 1950—Articles 226, 227—Policy of the Government to reserve 2 per cent seats for "OUTSTANDING

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SPORTSMEN" in technical/Medical institutions—Government allowing reservation at M.B.B.S. stage—Such instructions—Whether extendable to M.D./M. S. stage.

Held, in this policy decision, it was nowhere provided that even though the reservation had been provided in favour of 'outstanding sportsmen' in the matter of "admission to medical institutions", yet the same was intended to be restricted only at the stage of M.B.B.S. or for that matter in any particular speciality, discipline or course. The expression "admission to medical institutions" used in clause (i) of the opening para furnishes ample evidence of the intention of the State Government to encourage the sports talent in the State by providing reservation in their favour while granting admission to all the courses run by the *medical institutions*, that is, Degree, Diploma, Post-Graduation, or any other such like discipline or course. No canon of interpretation can be invoked by the Principals of Medical Colleges to abridge or restrict the applicability of the instructions in order to exclude a particular set of candidates who are otherwise eligible and qualified for availing the benefit intended to be provided by the State Government. Any interpretation to support the view taken by the respondents would defeat the very purpose and the objective sought to be achieved by the State Government at the time of making provision for such reservation, that is, to encourage the sports talent.

(Para 7).

Petition under Articles 226/227 of the Constitution of India praying that :

- (a) *the writ of certiorari may kindly be issued quashing the impugned order annexed as Annexure P-1 i.e. the admission notice, wherein the category of sportsmen/women has not been included while including the reservation of other categories.*
- (b) *the writ of mandamus directing the respondents to consider the case of the petitioner under the reserved category of sportsman/women, as per the instructions annexed as Annexure P-4.*
- (c) *the records of the respondents be ordered to be produced in the court.*
- (d) *the petition be allowed with cost.*
- (e) *during the pendency of the petition the petitioner may be given provisional admission.*

(f) *the petitioner may kindly be exempted from serving the notice upon the respondents for filing the petition as the respondents have not adhered to the request of the petitioner inspite of the repeated written request in the application and in the representation made on 13th March, 1989 and 21st March, 1989, the admission are being finalised thus there is no time left for serving the notice upon the respondents.*

Any other order or writ or directions which this Hon'ble Court may deem fit and necessary for the benefit of the petitioner may kindly be issued.

J. S. Narang, Advocate, for the petitioner.

H. S. Bedi, Addl. A.G. (Pb.) with Mr. S. K. Sharma, A.A.G. (Pb.), for Respondents Nos. 1 to 4.

J. L. Gupta, Sr. Advocate with T. S. Dhindsa, Advocate, for Respondent No. 5.

JUDGMENT

M. R. Agnihotri, J.

(1) In this petition filed under Articles 226 and 227 of the Constitution the short question involved is as to whether the policy decision of the State Government dated 11th January, 1962 (Annexure P. 4), providing reservation of 2 per cent of seats in technical/medical institutions in the State in favour of 'outstanding sportsmen', is applicable at both the stages that is, in M.B.B.S. as well as in M.D./M.S., or the same is restricted only to M.B.B.S. Degree Course and is not available to the sportsmen in the M.D./M.S., even though no exception to that effect is carved out in the policy decision itself. Obviously, the reply has to be in favour of the sportsmen thereby upholding the reservation in M.D./M.S. courses also.

(2) The petitioner is an outstanding sportman of international standing. He represented India under 19/20 years' age group in the discipline of cricket in the year 1980-81. He was selected in the Indian Cricket Team which visited Sri Lanka for playing the test match at Colombo in 1980-81. On the basis of his attainment in the field of sports, the petitioner was awarded "A" Grade Certificate by

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the Director of Sports, Punjab, Chandigarh, which is the highest grade in the sports category.

(3) The petitioner was admitted to the M.B.B.S. Course in the Government Medical College, Patiala, against a seat reserved for 'outstanding sportsmen' on the basis of his having attained distinction in the game of cricket. He passed all the professional examinations in the first attempt securing First Division in every professional examination and also passed his M.B.B.S. Examination with First Division in the year 1986. Thereafter, he completed his rotatory internship for one year as also his house job for one year required for admission to the Post-Graduate Medical Degree. He completed one year's house job in a break up of 6 months in General Medicine and the remaining 6 months in Ophthalmology. In February, 1989, admission notice was issued by the Principal, Medical College, Amritsar, for general admissions to the Post Graduate Medical Degree/Diploma Courses in the Punjab State Medical Colleges at Amritsar and Patiala for the year 1989. By this notice, applications were invited from the Medical Graduates upto 8th March, 1989. In this notice, as usual, though provision of reservation in favour of Scheduled Castes/Tribes, Backward Classes and for candidates out of Riot Affected/Terrorist Affected areas, etc. was repeated, yet reservation for 'outstanding sportsmen' did not find mention. Despite this, the petitioner submitted his application on 7th March, 1989, that is, in time, on the basis of the Punjab Government instructions dated 11th January, 1962, providing reservation for 'outstanding sportsmen' in technical/medical institutions, and also submitted a separate communication to the Principal, Government Medical College, Amritsar, bringing to his notice the omission on their part. In response thereto, the petitioner was called for interview on March 21, 1989, but he was told that he could be interviewed only under the 'general' category and not against the reserved category of 'outstanding sportsmen'. The petitioner submitted another representation to the Chairman of the Interview Board but he was not considered as a candidate entitled for reservation meant for 'outstanding sportsmen' as there was no mention of this reservation in the admission notice, even though the policy instructions of the State Government circulated as back as 1962 provided for the same. Aggrieved by this, the petitioner has approached this Court for the redressal of his grievance and praying for the consideration of his claim for admission to the M.D./M.S. Course in the current session.

(4) Notice of motion was issued on 29th March, 1989, for 6th April, 1989, and on that date the Motion Bench adjourned the case in order to enable the respondents to file their replies and also directed that one seat be kept reserved meanwhile. Thereafter, when replies were filed by the respondents, the Motion Bench admitted the writ petition on 25th April, 1989, and ordered the same to be listed for hearing in the third week of May, 1989, high-up in the list. However, the stay order dated 6th April, 1989, issued earlier regarding reservation of one seat was vacated.

(5) In the written statements filed by the respondents, attempt has been made to justify the omission in the matter of reservation in favour of 'outstanding sportsmen' in M.D./M.S. Post-Graduate Course on the ground that there was no specific provision in favour of such reservation in the policy instructions of the State Government issued on 11th January, 1962 (Annexure P. 4). From this, the respondents want to infer that obviously the intention of the State Government was not to provide for any reservation in M.D./M.S. that is, Post-Graduate Degree/Diploma Course in the State Medical Colleges.

(6) Having heard the learned counsel for the parties and after going through their pleadings and the material on the record, I am of the considered view that the action of the respondent authorities is wholly untenable in law and is without any basis.

(7) It was on 11th January, 1962, that the Chief Secretary to Government, Punjab, issued policy instructions, Annexure P.4, regarding 'reservation of seats for outstanding sportsmen in Technical/ Medical Institutions and in service of the State Government' which instructions have not been rescinded, superseded, withdrawn, or modified till today. The very opening para of this policy letter reads as under :—

"Sir,

I am directed to inform you that with a view to ensure sports talent Government have been considering the question of reservation of certain percentage of seats for them for:

- (i) admission to technical/medical institutions in the State,
and

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(ii) recruitment of services under the State, through the Punjab Public Service Commission/Subordinate Services Selection Board.

2. After careful consideration Government have decided in regard to (i) above, that 2 per cent of the seats in technical/*medical institutions* in the State should be reserved for outstanding sportsmen provided that they possess the minimum education qualifications prescribed for admission to such institutions."

In this policy decision, it was nowhere provided that even though the reservation had been provided in favour of 'outstanding sportsmen' in the matter of "*admission to medical institutions,*" yet the same was intended to be restricted only at the stage of M.B.B.S. or for that matter in any particular speciality, discipline or course. The expression "*admission to medical institutions*" used in clause (i) of the opening para furnishes ample evidence of the intention of the State Government to encourage the sports talent in the State by providing reservation in their favour while granting admission to all the courses run by the *medical institutions*, that is, Degree, Diploma, Post-Graduation, or any other such like discipline or course. No canon of interpretation can be invoked by the Principals of Medical Colleges to abridge or restrict the applicability of the instructions in order to exclude a particular set of candidates who are otherwise eligible and qualified for availing the benefit intended to be provided by the State Government. Any interpretation to support the view taken by the respondents would defeat the very purpose and the objective sought to be achieved by the State Government at the time of making provision for such reservation, that is, to encourage the sports talent. The petitioner who has also got a consistent and brilliant academic record to his credit, is certainly entitled to claim admission as matter of right on the basis of the aforesaid policy decision of the State Government and the impugned admission notice. Annexure P.1, issued by the Principal, Medical College, Amritsar, cannot stand in the way of the petitioner.

(8) Realising the weakness of the stand taken by the respondents, Mr. H. S. Bedi, learned Additional Advocate-General, Punjab, sought to argue that even if reservation was to be provided in favour of 'outstanding sportsmen' by earmarking 2 per cent of seats in

their favour, there was no guarantee that the petitioner could have got the seat amongst the reserved category. With respect, the argument is of desperation. The whole claim of the petitioner is that provision for reservation in favour of the 'outstanding sportsmen' in the matter of admission to Medical institutions having been made as back as in 1962 and having not been withdrawn specifically or otherwise any time thereafter, the Principals of the Medical Colleges at Amritsar and Patiala were duty bound to maintain the same while making admission to M.D./M.S. Course in 1989 session also. If, the petitioner despite being an outstanding sportsman of international recognition and recipient of "A" Grade Certificate from the Director of Sports, Punjab, cannot secure a seat for him because an outstanding sportsman of better merit and higher rating is available to dislodge him from his position, then like a good sportsman, he would certainly give a walk over in his favour. But, all this is no answer to the claim of the petitioner and no ground to deprive him of his valuable right based on the policy decision of the State itself.

(9) Another submission made by Mr. Bedi, learned Additional Advocate-General, Punjab, was that in exactly similar matter, a civil suit had also been filed at Patiala, in which interim relief by way of injunction had been granted to the plaintiffs there, for admission to the M.D./M.S. Course by providing reservation in favour of outstanding sportsmen/sportswomen, and the interim relief had been confirmed by this Court in appeal/revision. According to the learned Additional Advocate-General, that matter (civil suit) has already been heard by a learned Single Judge in the High Court and, therefore, it would be advisable to wait for the decision of that case. With respect to the learned Additional Advocate-General, the argument is only to be noticed for being rejected. If at all, it strengthens the case of the petitioner that the claim of the outstanding sportsmen and sportswomen is so strong and the defence of the State so frivolous, that even the Civil Court at Patiala did not feel any hesitation in granting an interim injunction in favour of the plaintiffs.

(10) Consequently, I allow this writ petition and by issuing a writ of *mandamus* command the respondent State of Punjab, through the Secretary to Government, Punjab, Department of Health and Medical Education, as also the Director of Medical Research and Education, Punjab, and the Principals of Government Medical

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Colleges at Amritsar and Patiala, to consider the claim of the petitioner for admission to M.D./M.S. Post-Graduate Medical Course in the speciality/discipline applied for by him, and in case on such consideration he is found meritorious enough to claim the seat in the quota of 'outstanding sportsmen', to grant the same to him according to the priority of choice indicated by him in his application, forthwith. The petitioner shall also be entitled to the costs of this petition, which are quantified at Rs. 1,000.

P.C.G.

Before : G. R. Majithia, J.

OM PARKASH,—Petitioner.

versus

DARSHAN LAL AND OTHERS,—Respondents.

Civil Revision No. 1305 of 1983.

20th June, 1989

Code of Civil Procedure (V of 1908)—S. 47, O. 21, Rl. 35—Haryana Urban (Control of Rent and Eviction) Act, 1973—Execution Proceedings—Judgment Debtors filing objections against execution—Objectors claiming protection of 1973 Act as tenants—Civil Court—Whether has jurisdiction to pass decree of eviction.

Held, that in order to be covered under the definition of non-residential building in section 2 (d) of the Haryana Urban (Control of Rent and Eviction) Act, 1973, the lease has to satisfy two conditions, namely, (a) the lease has to be in respect of a building and (b) the subject-matter of lease must be covered under the definition of "building" as defined in the Act. The Court must determine the character of the lease by asking itself as to what was the dominant intention of the parties. A close scrutiny of the lease deed reveals the dominant purpose of the lease was leasing of the factory comprising of building and machinery. In fact, the letting out was of the running business. The building which housed the factory becomes secondary since the business or the industry has to be accommodated in some enclosure or building. The dominant purpose was thus leasing out of the running business and if that is so, the definition of "building" as contained in section 2(a) of the Act will be inapplicable and the lease will not come under the purview of the Act.

(Para 4).

Held, that the decree-holder in the present case leased out the factory—a running business to the judgment-debtors. The terms