
on. Even Respondent-PGI understood the method of selection as indicated by us inasmuch as while compiling the result (as indicated in Annexure P. 3 and P. 6) the choice given by the candidates in their application forms had been indicated in the result. If a seat in the course of first choice is available then as per clause 12 (g) of the prospectus, reproduced above, the candidate cannot be allowed to change the order of preference. Since in the present case, Respondent Nos. 4 and 5 had given the choice for B. Ph.T. course as their fourth choice, they should have been first offered the admission in course for which they have given preference at Sr. No. 1 and if the seats were not available in that course, then they should have been offered the seat in the course of their second, third or fourth choice in that seriatim.

(14) Consequently, for the purpose of this case, the admission of the candidate, lower in merit, amongst Respondent Nos. 4 and 5 is liable to be quashed and the seat is to be offered in the B.Ph.T. course to the petitioner; that being his first choice. We order accordingly.

(15) However, we may also observe here that it will be open to the respondent-PGI to adjust the petitioner in the B.Ph.T. course without disturbing the present arrangement if it decides to create an additional seat. Otherwise, out of the two respondents i.e. Respondent Nos. 4 and 5, who is lower in merit amongst them will have to make room for the petitioner.

(16) The writ petition is disposed of accordingly.

S.C.K.

Before Jawahar Lal Gupta & N.C. Khichi, JJ

BALWINDER KUMAR,—*Appellant*

versus

IKKATTAR SINGH & OTHERS,—*Respondents*

L.P.A. No. 291 of 1998

2nd December, 1998

*Letters Patent Appeal, 1909—Clause X—Admission—
Elementary Teachers Training Course—Reservation for sportsmen—
Provision made in prospectus for determination of inter se merit of*

sportsmen—Test conducted and thereafter criteria amended—Held that candidates took entrance test on the basis of representation made to them in original brochure—Inter se merit to be determined on the basis of criteria notified prior to last date for submission of applications—Judgment of learned Single Judge allowing petition upheld—Letters Patent Appeal dismissed.

Held that the candidates had taken the entrance test on the basis of the representation made to them in the original brochure. Their *inter se* merit had to be determined on the basis of the criteria which had been notified prior to the last date for submission of applications. This criterion was not ambiguous. It was not uncertain. It was clear and the *inter se* merit of the candidates could have been clearly determined on this basis. However, the authority altered it on the basis of certain reasons which have been mentioned in the written statement. Assuming that the reasons were good, the amended criterion could have been applied only from the date of the next entrance test and not to the candidates who had already appeared.

(Para 12)

Further held, that the *inter se* merit of the appellant and the first respondent had to be determined on the basis of the gradation given to them by the Sports Department. It is the admitted position that if the two candidates are judged on that basis, first respondent had secured a higher grading viz. 'C' as compared to the appellant, who was graded 'D'. Thus, the view taken by the learned Single Judge that the first respondent should be admitted is correct and calls for no interference.

(Para 13)

R.K. Chopra,—for the Appellant.

Ramesh Sharma, Advocate,—for respondent No. 1

M.C. Berry, DAG Punjab,—for respondent Nos. 2 to 6

JUDGMENT

Jawahar Lal Gupta, J (Oral)

(1) The solitary seat reserved for sportsmen in the Elementary Teachers Training Course is the bone of contention. The contest is between the appellant and respondent No. 1. Learned Single Judge having accepted the writ petition filed by the first respondent, the

candidate, who had been admitted to the Course by the Department, has filed the present letters patent appeal. A few facts may be noticed.

(2) The State Council of Education Research and Training, Punjab, notified that it would conduct an entrance test for admission to 12 District Institutions of Education and Training in the State of Punjab. 2 per cent seats were reserved for sportsmen. The *inter se* merit of the candidates was to be determined on the basis of the marks secured in the entrance test. However, in case of the seats reserved for sportsmen, it was provided that the admission shall be made on the basis of the gradation given by the Sports Department. It was also provided that a candidate had to secure 50 per cent marks in the entrance test so as to be eligible for admission to the Course. This specific provision appears at page 3 of the brochure a copy of which has been produced before the Court during the course of hearing.

(3) The appellant as well as the first respondent submitted their respective applications for admission to the entrance test. They had appeared in the test which was actually held on 22nd November, 1997. The result was declared on 2nd April, 1998. The appellant had secured 112.48 marks out of a total of 200. The first respondent had secured 109 marks. The appellant was admitted to the Course in May 1998.

(4) The first respondent felt aggrieved by the action of the authorities in not admitting him to the Course. He filed a writ petition alleging, *inter alia*, that the action of the respondents in admitting the present appellant (respondent No. 6 in the writ petition) was contrary to the stipulation in the prospectus. It was alleged that amongst the sportsmen *inter se* merit had to be determined on the basis of the gradation given by the Directorate of Sports. It was claimed that he had been granted Grade 'C' while the appellant was graded as 'D'. Since the respondent-writ petitioner had a higher grading, he claimed that he had a better right to be admitted to the Course. It is also alleged that the sixth respondent (present appellant) had not applied for admission to a seat reserved for sportsmen. Thus, he was not entitled to be considered for the reserved vacancy.

(5) Learned Single Judge having accepted the claim of the respondent-writ petitioner, the candidate whose admission has been quashed, has filed the present letters patent appeal.

(6) Mr. R.K. Chopra, learned counsel for the appellant, has contended that in the prospectus it had not been specifically clarified as to how the *inter se* merit of the candidates competing as sportsmen had to be determined. The ambiguity in the prospectus was clarified by the Department by issuing a notification dated 25th February, 1998. It was provided that the *inter se* merit shall be determined on the basis of the marks secured in the entrance examination. Since the appellant had secured 112.48 marks, he was higher in merit than the first respondent, who had secured 109 marks. Thus, the appellant claims that he was rightly admitted and that the learned Single Judge has erred in quashing his admission.

(7) The claim made on behalf of the appellant has been controverted by Mr. Ramesh Sharma, Advocate, who has appeared for the first respondent.

(8) The short question that arises for consideration is : Was there a clear and categorical provision in the prospectus regarding the method for determination of *inter se* merit of candidates competing for the seat reserved for sportsmen ?

(9) It appears that neither side has placed on record the complete prospectus. Yet the relevant portion is there on the file. A copy of the relevant extract is at Annexure P1 with the paper book. It has been, *inter alia*, provided as under:—

“The admissions will be based on specification of seats by the State Government and on the basis of the Districtwise Merit List in the E.T.T. Course. The candidates belonging to the Sports Category will be treated on the *inter se* merit of grading by the Sports Department on the basis of the Gradation Certificate.”

(10) The above quotation represents the translation from Panjabi to English. We have perused the original. A perusal of the relevant portion clearly shows that the *inter se* merit of the candidates competing for the seats reserved for sports persons was to be determined “on the basis of the gradation certificates” issued by the Sports Department. Still further, a perusal of the original brochure shows that at page 3 while prescribing the conditions for eligibility for admission, it had been provided that the candidate should have secured 50 per cent marks in the entrance examination. In case of persons belonging to the reserved categories viz. Scheduled Castes etc., the requisite percentage of marks was fixed at 45. Thus, it is

clear that a categoric provision had been made in the prospectus regarding the method of determination of *inter se* merit of the sports persons.

(11) In view of this categorical provision, the authorities were bound to make the admission on the basis of the gradation given to sports persons by the Directorate of Sports. However, instead of doing so, an order was issued on 25th February, 1998 in which it was provided that the admission shall be made "on the basis of marks obtained in merit." In other words, all sportsmen—a National champion and a mere participant—were reduced to the same level and their *inter se* merit was required to be determined on the basis of the marks secured in the entrance test.

(12) In the present case, we are not concerned with the validity or otherwise of the criterion notified on 25th February, 1998. However, the short question that arises is—Could the authority amend the criteria after it had duly notified the method for determination of *inter se* merit for the admission of the candidates? Still further, could this be done even after the test had actually been conducted? In our view the candidates had taken the entrance test on the basis of the representation made to them in the original brochure. Their *inter se* merit had to be determined on the basis of the criteria which had been notified prior to the last date for submission of applications. According to this criteria, the *inter se* merit of the sports persons was not dependent upon the marks secured in the entrance test but on the distinctions achieved by them in the respective disciplines. At the same time even the academic standards were not totally sacrificed. It was categorically provided that each candidate shall have to secure a minimum of 50 per cent marks in the entrance examination. Thus a person, who was reasonably good in academics and had achieved a higher grading in sports was to be preferred to a person who had a lower grading in the particular discipline. This criterion was not ambiguous. It was not uncertain. It was clear and the *inter se* merit of the candidates could have been clearly determined on this basis. However, the authority altered it on the basis of certain reasons which have been mentioned in the written statement. Assuming that the reasons were good, the amended criterion could have been applied only from the date of the next entrance test and not to the candidates who had already appeared.

(13) In view of the above, we are clearly of the view that the *inter se* merit of the appellant and the first respondent had to be

determined on the basis of the gradation given to them by the Sports Department. It is the admitted position that if the two candidates are judged on that basis, first respondent had secured a higher grading viz. 'C' as compared to the appellant, who was graded 'D'. Thus, the view taken by the learned Single Judge that the first respondent should be admitted is correct and calls for no interference.

(14) Mr. Chopra contended that the respondents had not amended the criteria but only clarified 'an ambiguity'. This contention is wholly fallacious. It is not supported by the averment made in the written statement filed on behalf of the State Government and the other authorities. It has been categorically averred that "the Government consciously decided to amend the relevant portion of the information brochure and clarified that all the candidates, who fulfil minimum qualifications as sportsman would be admitted in accordance with the merit obtained in Entrance Examination....." thus, the plea that only a clarification was issued, is not tenable.

(15) Lastly it was contended by Mr. Chopra that the appellant had been admitted in May, 1998. He has already appeared in the 1st Semester, Examination and is studying in the Second Semester. Thus, his admission should not be disturbed.

(16) We are unable to accept this contention. The admission was not in accordance with the notified criteria. It was contrary to the provisions contained in the prospectus. Thus, it was illegal. It has been rightly set aside by the learned Single Judge.

(17) It also deserves notice that there is only one seat reserved for sports persons. The first respondent, whose writ petition was allowed, had a better right to that seat. His right was illegally defeated. Thus, he must get his seat. The seat has to be given to him. However, we may add that in case the appellant can be adjusted after admitting the first respondent, the authorities may do so. This should not be at the cost of a more meritorious candidate.

(18) Subject to the above, the appeal is dismissed. In the circumstances, the parties are left to bear their own costs.

J.S.T.