Deepak Sibal

Vs

Punjab University and Another

Civil Appeal No. 837 Of 1989

Miss Ritu Khanna

Vs

Punjab University and Another

Civil Appeal No. 838 of 1989

(M. M. Dutt, Dr. T. K. Thammen JJ)

14.02.1989

JUDGMENT

DUTT, J. –

1. Special leave is granted in both these matters. Heard learned counsel for the parties.

2. These two appeals preferred by the appellants, Deepak Sibal and Miss Ritu Khanna, are directed against the common judgment of the Punjab and Haryana High Court whereby the High Court dismissed the two writ petitions filed by the appellants and also some other writ petitions challenging the constitutional validity of the rule for admission in the evening classes of the three year LL.B. Degree Course conducted by the Department of Laws of the Punjab University.

3. The impugned rule that was published in the prospectus for the year 1988-89 relating to admission to 150 seats in the evening classes in the three year LL.B. Degree Course is extracted as follows :

> Admission to evening classes is open only to regular employees of government/semi-government institutions/affiliated colleges/statutory corporations and government companies. A candidate applying for admission to the evening classes should attach No Objection/Permission letter from his present employer with his application for admission.

4. It is not disputed that there are 150 seats in the morning classes and another 150 seats in the evening classes. In both the morning and evening classes reservation has been made for scheduled castes, scheduled tribes, backward classes, physically handicapped persons, outstanding sportsmen and defence personnel. In the morning classes out of 150 seats, 64 seats are reserved for scheduled castes, scheduled tribes, backward classes etc. and the remaining 86 seats are allotted to general students selected on merits basis. Similarly in the evening classes, the remaining 86 seats are also reserved for regular employees of government/semi-government institution etc., as mentioned in the impugned rule for admission.

5. The appellant, Deepak Sibal, passed the Bachelor of Commerce examination from the University of Punjab in June 1981 securing 61.5 per cent marks in the aggregate. On June 1, 1988, he was appointed to the post of Accountant in Agro Chem Punjab Ltd. with effect from June 2, 1988 on probation for a period of six months Agro Chem Punjab Ltd. is stated to be a joint venture with Punjab Agro Corporation Ltd., Chandigarh, an undertaking of the Punjab Government.

6. On July 18, 1988, the appellant, Deepak Sibal, applied for admission in the evening classes of the Punjab University for the three year LL.B. Degree Course with a 'No Objection Certificate' from his employer dated July 18, 1988. He was granted an interview some time in the first week of August 1988, but he was not selected. On enquiry, he came to know that although his position was 29 in the merit list, he was declared ineligible because he was an employee of a Public Limited Company and did not fall within the exclusive categories, as mentioned in the impugned rule, to which admission in the evening classes was restricted.

7. The other appellant, namely, Miss Ritu Khanna, passed the Bachelor of Arts examination from the Punjab University securing 418 marks out or 650 marks. She was temporarily appointed to the post of Helper in the office of the Director, Water Resources, Punjab. She also applied for admission in the evening classes of the three year LL.B. Degree Course of the University with all requisite certificates on July 18, 1988. She was granted an interview on July 30, 1988 and although her position in the merit list was 19, she was not selected for admission on the ground that she was only a temporary employee.

8. Both the appellants, being aggrieved by the refusal of the University to admit them in the evening classes of the three year LL.B. Degree Course, filed two separate writ petitions in the Punjab and Haryana High Court challenging, inter alia, the constitutional validity of the impugned rule. Five other writ petitions were also filed by the candidates who were refused admission in the evening classes in view of the impugned rule. At the hearing of the writ petitions before the High Court, it was contended on behalf of the petitioners including the appellants, that the impugned rule was violative of Article 14 of the Constitution. The High Court overruled the contention and, as stated already, dismissed the writ petitions. Hence these two appeals by the two appellants.

9. It is now well settled that Article 14 forbids class legislation, but does not forbid reasonable classification. Whether a classification is a permissible classification under Article 14 or not, two conditions must be satisfied, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (2) that the differentia must have a rational nexus to the object sought to be achieved by the statute in question.

10. By the impugned rule, a classification has been made for the purpose of admission to the evening classes. The question is whether the classification is a reasonable classification within the meaning of Article 14 of the Constitution. In order to consider the question as to the reasonableness of the classification, it is necessary to take into account the objective for such classification. It has been averred in the written statement of Dr. Balram Kumar Gupta, Chairman, Department of Laws, Punjab University, respondent 2, filed in the High Court, that the object of starting evening classes was to provide education to bone fide employees who could not attend the morning classes on account of their employment. The object, therefore, was to accommodate bona fide employees in the evening classes, as they were unable to attend the morning classes on account of their employment. Admission to evening classes is not open to the employees in general including private sector employees, but it is restricted to regular employees of government/semi-government

institutions etc., as mentioned in the impugned rule. In other words, the employees of government/semi-government institutions etc. have been grouped together as a class to the exclusion of employees of private establishments.

11. It appears that in or about the year 1986, admission to evening classes was open to those who were in bona fide employment including self-employed persons. In supersession of that rule, the impugned rule was framed excluding private sector employees and self-employed persons. In the counter-affidavit filed in this Court on behalf of the respondents by the Registrar of the Punjab University, an explanation has been given why the University framed the impugned rule restricting the admission in the evening classes open to government/semi-government institution etc. The explanation, as given in the counter-affidavit, is extracted below :

> It is submitted that since the morning classes are open to all, the merit is much higher, whereas since the admission to the evening classes is only for regular employees of government/semi-government etc. the merit goes lower. It is in this view of the matter that in the past also, the Department of Law found that various certificates by employees were found to be incorrect and obtained by applicants only with a view to get admission to the evening classes and, thereafter applied for transfer to the morning classes. On account of the past experience it was felt that the admission to the Law Courses in the morning be kept open to all persons whether employed or unemployed but the admission to the evening classes be restricted to only those who will be genuine and regular employees. Since the government/semi-government and similar other institutions as mentioned in the prospectus are actually involved in lot of litigation, it was felt that imparting legal education to the employees of such institutions would be in public interest. It is submitted that it is in view of this practice of issuing of certificates by private employers in the past that the Department of Law was compelled to restrict the admission of students of evening classes as has been done.

12. Thus, the respondents have sought to justify the exclusion of private employees restricting admission to evening classes only to the government/semi-government and similar other institutions principally on two grounds, namely, (1) production of bogus certificates of employment from private employers, and (2) imparting of legal education to the employees of the government/semi-government and other institutions, as mentioned in the impugned rule, in public interest. Besides the above two grounds, Mr. P. P. Rao, learned counsel appearing on behalf of the respondents, has added two more grounds, namely, (1) a candidate should have an assured tenure of employment likely to continue for three years, and (2) as far as possible, there should be no possibility of wastage of a seat. It is submitted that employees of only government/semi-government institutions etc. have an assured tenure of employment and if the admission in the evening classes is restricted to such employees, there would be no possibility of any wastage of a seat and the University will not have to engage itself in finding out whether or not a certificate produced by an employee of a private establishment is a bogus certificate and whether such employee has an assured tenure of employment likely to continue for three years. In upholding the validity of the impugned rule, it has been observed by the High Court that the government employees have protection of Article 311 of the Constitution, which non-government employees do not have and that employees of semi-government institutions are also on the same footing.

13. It is apparent that in framing the impugned rule, the respondents have deviated from its objective for the starting of evening classes. The objective was to accommodate in the evening

classes employees in general including private employees who were unable to attend morning classes because of their employment. In this backdrop of facts, we are to consider the reasonableness of the classification as contemplated by the provision of Article 14 of the Constitution.

14. It is difficult to accept the contention that the government employees or the employees of semi-government and other institutions, as mentioned in the impugned rule, stand on a different footing from the employees of private concerns, insofar as the question of admission to evening classes is concerned. It is true that the service conditions of employees of government/semi-government institutions etc. are different, and they may have greater security of service, but that hardly matters for the purpose of admission in the evening classes. The test is whether the employees of private establishments are equally in a disadvantageous position like the employees of government/semi-government institutions etc. in attending morning classes. There can be no doubt and it is not disputed that both of them stand on an equal footing and there is on difference between these two classes of employees in that regard. To exclude the employees of private establishments will not, therefore, satisfy the test of intelligible differentia that distinguishes the employees of government/semi-government institutions etc. grouped together from the employees of private establishments. It is true that a classification need not be made with mathematical precision but, if there be little or no difference between the persons or things which have been grouped together and those left out of the group, in that case, the classification cannot be said to be a reasonable one.

15. It is, however, submitted on behalf of the respondents that the employees of private establishments have been left out as it is difficult for the University to verify whether or not a particular candidate is really a regular employee and whether he will have a tenure for at least three years during which he will be prosecuting his studies in the three year LL.B. Degree Course. It is submitted that in making the classification, the surrounding circumstances may be taken into account. In support of that contention, much reliance has been placed on the decision of this Court in Shri Ram Krishna Dalmia v. Justice S. R. Tendolkar (1959 SCR 279 : AIR 1958 SC 538). In that case, it has been observed by Das, C.J. that while good faith and knowledge of the existing conditions on the part of a legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation. It follows from the observation that surrounding circumstances may be taken into consideration in support of the constitutionality of a law which is otherwise hostile or discriminatory in nature. But the circumstances must be such as to justify the discriminatory treatment or the classification subserving the object sought to be achieved. In the instant case, the circumstances which have been relied on by the respondents, namely, the possibility of production by them of bogus certificates and insecurity of their services are not, in our opinion, such circumstances as will justify the exclusion of the employees of private establishments from the evening classes.

16. We are also unable to accept the contention of the respondents that such exclusion of the employees of private establishments is justified on the ground of administrative convenience. The decision in Pannalal Binjraj v. Union of India (1975 SCR 233 : AIR 1957 SC 397), relied on by the respondents does not, in our opinion, lay down any such proposition of law. In that case, the provision of Section 5(7-A) of the Income Tax Act, 1922 was, inter alia, challenged as ultra vires Article 14 of the Constitution inasmuch as it was discriminatory. Section 5(7-A) confers power on the Commissioner of Income Tax and the Central Board of Revenue, inter alia, to transfer any case

from one Income Tax Officer to another. It has been observed by this Court that in order to minimise the inconvenience of the assessee, the authority concerned may transfer the case of such assessee to the Income Tax Officer who is nearest to the area where it would be convenient for the assessee to attend and if, on account of administrative exigencies, this is not possible and the assessee requests that the examination of accounts or evidence to be taken should be in a place convenient to him, the Income Tax Officer comply with the request of the assessee by holding the hearing at the place requested. It is manifestly clear from the observation that the power of transfer is not exercised for administrative convenience, but for the convenience of the assessee. In the instant case, there is no question of any administrative inconvenience. The respondents have not placed any material before the High Court or in this Court as to in how many cases they had come across such bogus certificates produced by private employees during the time the admission to evening classes was open also to private employees. It may be that there were one or two cases of production of bogus certificate, but that cannot be a ground for the exclusion of all private employees from the benefit of getting legal education in the evening classes.

17. In the circumstances, we are not at all impressed with the contention that in order to avoid production of bogus certificates of employment from the private employers and having regard to the fact that employees of government/semi-government institutions etc. have an assured tenure of employment likely to continue for three years, the private employees were excluded for the purpose of admission to the evening classes. By the impugned rule, admission to evening classes is restricted to regular employees of government/semi-government institution etc. There is no material to indicate that by the expression "regular employees" it is intended to include only those employees who will have an assured tenure of service for three years, that is to say, co-extensive with the period of three year LL.B. Degree Course. The expression "regular employees", in our opinion, normally means bona fide employees. Such bona fide employees may be permanent or temporary. All that the University can insist is that one should be bona fide employee and if there be materials to show that a candidate for admission in the evening classes is a bona fide employee the University, in our opinion, cannot further insist on an assured tenure of service of such an employee for a period of three years. Be that as it may, the reason for exclusion of private employees on the ground that there may not be an assured tenure of employment likely to continue for three years, not only does not stand scrutiny but also is unfair and unjust and cannot form the basis of such an exclusion.

18. In this connection, we may also examine another ground restricting the admission in the evening classes to the employees government/semi-government and other institutions, as mentioned in the impugned rule, namely, imparting of legal education to such employees. According to the respondents, imparting of legal education to the employees of government/semi-government and other institutions, as mentioned in the impugned rule, would be in public interest. Indeed, in the counter-affidavit filed in this Court on behalf of the respondents by the Registrar of the University, that is also the objective for framing the impugned rule. The counter-affidavit is, however, silent as to why imparting of legal education to the employees of government/semi-government institutions etc. would be in public interest. It is not understandable why government/semi-government employees in general should be imparted legal education and what sort of public interest would be served by such legal education. It may be that certain sections of government employees require legal education but, surely, Government employees in general do not require legal education.

19. A similar rule, which was framed by the Government of Kerala reserving 100 per cent seats to government and quasi-government employees irrespective of their category, came to be considered by the Kerala High Court in Jolly A. V. v. State of Kerala (AIR 1974 Ker 178 : 1974 Ker LT 94). In that case, it has been observed by the Kerala High Court that there may be some posts in

government service, some even in public corporations which may require incumbents who may be able to perform their functions very efficiently with a legal background provided to them., but this cannot be said of all employees whether of the State Government or Central Government or of the public corporations or government owned companies. In our opinion, there is much force in the observation of the Kerala High Court. It cannot be laid down that only government employees require legal education and not private employees. Certain private sector employees may require legal education in the interest of the establishments of which they are employees. It is difficult to understand the logic of the rule restricting admission in the evening classes to employees of government/semi-government institutions etc. on the plea that such employees require legal education in public interest.

20. In considering the reasonableness of classification from the point of view of Article 14 of the Constitution, the court has also to consider the objective for such classification. If the objective be illogical, unfair and unjust, necessarily the classification will have to be held as unreasonable. In the instant case, the forgoing discussion reveals that the classification of the employees of government/semi-government institutions etc. by the impugned rule for the purpose of admission in the evening classes of three year LL.B. Degree Course to the exclusion of all other employees, is unreasonable and unjust, as it does not subserve any fair and logical objective. It is, however, submitted that classification in favour of government and public sector is a reasonable and valid classification. In support of that contention, the decision in Hindustan Paper Corpn. Ltd. v. Government of Kerala ((1986) 3 SCC 398), has been relied on by the learned counsel for the respondents. In that case, it has been observed that as far as government undertakings and companies are concerned, it has to be held that they form a class by the themselves, since any project that they may make would in the end result in the benefit to the members of the general public. The government and public sector employees cannot be equated with government undertakings and companies. The classification of government undertakings and companies may, in certain circumstances, be a reasonable classification satisfying the two tests mentioned above, but it is difficult to hold that the employees of government/semi-government institutions etc., as mentioned in the impugned rule, would also constitute a valid classification for the purpose of admission to evening classes of three year LL.B. Degree Course. The contention in this regard, in our opinion, is without any substance.

21. The next contention of the respondents is that the University being an educational institution, is entitled to identify the sources for admission to the evening classes and that has been done by the University by the impugned rule and that cannot be challenged as violative of Article 14 of the Constitution. In support of this contention, much reliance has been placed on behalf of the respondents on a decision of this Court in Chitra Ghosh v. Union of India ((1969) 2 SCC 228 : (1970) 1 SCR 413) relating to reservation of seats in a medical college. In upholding such reservation of seats it has been observed by this Court as follows : (SCC pp. 232-33, para 9)

It is the Central Government which bears the financial burden of running the medical college. It is for it to lay down the criteria for eligibility. From the very nature of things it is not possible to throw the admission open to students from all over the country. The government cannot be denied the right to decide from what sources the admission will be made.

22. This observation in Chitra Ghosh case ((1969) 2 SCC 228 : (1970) 1 SCR 413) has also been relied on by the High Court. It has been contended by the learned counsel for the respondents that the question of reasonable classification has nothing to do with the identification of sources for admission by an educational institution. We are unable to accept the contention. It is true that an

educational institution is entitled to identify sources from which admission will be made to such institution, but we do not find any difference between identification of a source and a classification. If any source is specified, such source must also satisfy the test of reasonable classification and also that it has a rational nexus to the object sought to be achieved. Indeed in Chitra Ghosh case ((1969) 2 SCC 228 : (1970) 1 SCR 413), it has also been observed that if the sources are properly classified whether on territorial, geographical or other reasonable basis, it is not for the courts to interfere with the manner and method of making the classification. It is very clear from this observation that the sources must be classified on reasonable basis, that is to say, it cannot be classified arbitrarily and unreasonably.

23. The principle laid down in Chitra Ghosh case ((1969) 2 SCC 228 : (1970) 1 SCR 413) has been reiterated by this Court in a later decision in D. N. Chanchala v. State of Mysore ((1971) 2 SCC 293 : 1971 Supp SCR 608). It has been very clearly laid down by this Court that government colleges are entitled to lay down criteria for admission in its own colleges and to decide the sources from which admission would be made, provided of course, such classification is not arbitrary and has a rational basis and a reasonable connection with the object of the rules. Thus, it is now well established that a classification by the identification of a source must not be arbitrary, but should be on a reasonable basis having a nexus with the object sought to be achieved by the rules for such admission.

24. It follows from the above discussion that the impugned rule, with which we are concerned, having made a classification which cannot be justified on any reasonable basis, must be held to be discriminatory and violative of Article 14 of the Constitution. It is, however, submitted by Mr. P. P. Rao that in case the court holds against the constitutional validity of the impugned rule, the entire rule may not be quashed, but only such portion of it which is found to be discriminatory in nature and, as such, invalid. It is contended that if the impugned rule had not restricted the admission to evening classes to the employees of government/semi-government institutions etc. but had provided for admission to regular employees including employees of private sectors, the classification would have been a reasonable one and having a rational nexus to the object sought to be achieved by the rule, namely, to accommodate the regular employees in the evening classes, as they would be unable to attend the morning classes. Accordingly, it is submitted that instead of striking down the whole of the impugned rule, a full stop may be put after the words "regular employees" in the impugned rule and the remaining part of the rule after the said words can be struck down as discriminatory and violative of Article 14 of the Constitution. If that be done, the rule will be read as "Admission to evening classes is open only to regular employees". Prima facie it appears that this part, which is sought to be retained, is not severable from the remaining part of the rule. In R. M. D. Chamarbaugwalla v. Union of India (1957 SCR 930 : AIR 1957 SC 628), it has been laid down by this Court that if the valid and invalid provisions are so inextricably mixed up that they cannot be separated from one another then the invalidity of the portion must result in the invalidity in its entirely. In the instant case, the invalid portion is inextricably mixed up with the valid portion of the rule and, accordingly, the entire rule requires to be struck down. Our attention has, however, been drawn to a later decisions of this Court in B. Prabhakar Rao v. State of Andhra Pradesh (1985 Supp SCC 432 : 1986 SCC (L&S) 49). In this case, a bench of three Judges of this Court struck out the word 'not' from the provisions of Clause 3(1) of Ordinance 24 of 1984 and Section 4(1) of the Act 3 of 1984 so as to bring those provisions to conform to the requirements of Article 14 of the Constitution. We do not think we should try to bring the impugned rule in conformity with the provision of Article 14 of the Constitution by putting a full stop after the words "regular employees" and striking down the remaining part of the impugned rule on the basis of the same principle as in Prabhakar Rao case (1985 Supp 432 : 1986 SCC (L&S) 49). For, it has been stated by Mr. P. P. Rao,

learned counsel for the respondents, that the respondents will frame a fresh rule for admission in the evening classes in conformity with and in the light of the decision of this Court in the instant case.

25. But, the next important question is even if the restriction from the impugned rule is removed and the admission to evening classes is made open to regular or bona fide employees including government and non-government employees, whether reservation of cent per cent seats in the evening classes for the employees will be justified and reasonable. It has been urged by Mr. Kapil Sibal, learned counsel appearing on behalf of the appellants, that reservation of 100 per cent seats in an educational institution for a specified class of persons is not at all permissible. The University, being an autonomous body, must be accessible, and such access must be based on the principle that those who are the most meritorious must be preferred to those who are less meritorious. This principles is, however, subject to the provisions of Article 15 of the Constitution of India which allows positive discrimination, despite the merit principle, on the basis that the equality clause will not be meaningful unless equal opportunity is given to such classes enumerated by Article 15 by giving them preferential treatment. Apart from the provision of Article 15, reservation may be made on the basis of doctrine of source only with a view to giving equal opportunity to some disadvantaged classes for their education but, learned counsel submits, whether the reservation is made under Article 15(4) of the Constitution or otherwise on the theory of identification of source, in any event, such reservation cannot be 100 per cent at the cost of merit.

26. In our opinion, the above contention is not without force. In this connection, we may refer to a decision of this Court in M. R. Balaji v. State of Mysore (1963 Supp 1 SCR 439 : AIR 1963 SC 649). In that case, the State of Mysore passed an order reserving 68 per cent of seats in the engineering and medical colleges and other technical institution for the educationally and socially backward classes and Scheduled Castes and Scheduled Tribes, and left only 32 per cent of seats for the merit pool. In striking down such reservation, it was observed by this Court that it would be extremely unreasonable to assume that in enacting Article 15(4), Parliament intended to provide that where the advancement of the backward classes or the Scheduled Castes and Scheduled Tribes was concerned, the fundamental rights of the citizens constituting the rest of the society were to be completely and absolutely ignored. Speaking generally and in a broad way, it was observed by this Court that a special provision should be less than 50 per cent and the actual percentage must depend upon the relevant prevailing circumstances in each case. Thus, the provision of Article 15(4) does not contemplate to reserve all the seats or the majority of the seats in an educational institution at the cost of the rest of the society. The same principle should also apply with equal force in the case of cent per cent reservation of seats in educational institutions for a certain class of persons to the exclusion of meritorious candidates.

27. In Pradeep Jain v. Union of India ((1984) 3 SCC 654 : (1984) 3 SCR 942), the question of reservation of seats in medical colleges for MBBS and post-graduate medical courses on the basis of domicile or residential qualification and institutional preference, came to be considered by this Court. Bhagwati, J. (as he then was) speaking for the court observed that the effort must always be to select the best and most meritorious students for admission to technical institutions and medical colleges by providing equal opportunity to all citizens in the country and expressed an opinion that such reservation should, in no event, exceed the outer limit of 70 per cent which again needs to be reduced.

28. In Pradeep Jain case ((1984) 3 SCC 654 : (1984) 3 SCR 942), no reason appears to have been given for the observation relating to the reservation of 70 per cent of seats. In a later decision of this Court in Nidamarti Maheshkumar v. State of Maharashtra ((1986) 2 SCC 534), a more or less

similar question regarding regionwise reservation of seats in medical colleges for admission to MBBS Course also came to be considered, and this time Bhagwati, C.J., speaking for the court, gave the reasons for reservation of 70 per cent of seats. It was observed by the learned Chief Justice as follows : (SCC pp. 546-47, para 7)

In the first place it would cause a considerable amount of hardship and inconvenience if students residing in the region of a particular university are compelled to move to the region of another university for medical education which they might have to do if selection for admission to the medical colleges in the entire State were to be based on merit without any reservation or preference regionwise. It must be remembered that there would be a large number of the students who, if they do not get admission in the medical college near their residence and are assigned admission in a college in another region on the basis of relative merit, may not be able to go to such other medical college on account of lack of resources and facilities and in the result, they would be effectively deprived of a real opportunity for pursuing the medical course even though on paper they would have got admission in the medical college. The opportunity for medical education provided to them would be illusory and not real because they would not be able to avail of it. Moreover some difficulty would also arise in case of girls because if they are not able to get admission in the medical college near the place where they reside they might find it difficult to pursue medical education in a medical college situated in another region where hostel facilities may not be available and even if hostel facilities are available, the parents may hesitate to send them to the hostels. We are therefore of the view that reservation or preference in respect of a certain percentage of seats may legitimately be made in favour of those who have studied in schools or colleges within the region of a particular university, in order to equalise opportunities for medical admission on a broader basis and to bring about real and not formal, actual and not merely legal, equality. The only question is as to what should be the extent of such reservation or preference. But on this question we derive considerable light from the decision in Pradeep Jain case ((1984) 3 SCC 654 : (1984) 3 SCR 942) where we held that reservation based on residence requirement or institutional preference should not exceed the outer limit of 70 per cent of the total number of open seats after taking into account other kinds of reservations validly made and that the remaining 30 per cent of the open seats at the least should be made available for admission to students on all-India basis irrespective of the State or the university from the which they come. We would adopt the same principle in case of regionwise reservation or preference and hold that not more than 70 per cent of the total number of open seats in the medical college or colleges situated within the area of jurisdiction of a particular university, after taking into account other kinds of reservations validly made, shall be reserved for students who have studied in schools or colleges situate within that region and at least 30 per cent of the open seats shall be available for admission to students who have studied in schools or colleges in other regions within the State.

29. In Pradeep Jain case ((1984) 3 SCC 654 : (1984) 3 SCR 942), although it was stated that the outer limit of such reservation should not exceed 70 per cent of the total number of open seats after taking into account other kinds of reservation validly made, yet the court expressed the view that this outer limit of 70 per cent needs to be reduced. In the instant case, the respondents have reserved 64 seats out or 150 seats for Scheduled Castes, Scheduled Tribes, backward classes etc. In our opinion, out of the remaining 86 seats, reservation of seats for regular or bona fide employees for admission to evening classes shall, in no event, exceed the limit of 50 per cent. The admission to the remaining 43 seats will be open to the general candidates on merit basis. Thus, while the respondents will be at liberty to reserve seats for regular or bona fide employees for admission to evening classes such reservation shall not exceed 50 per cent after deduction the number of seats reserved for Scheduled Castes, Scheduled Tribes, backward classes, etc.

30. The only question which remains to be considered is whether the appellants are entitled to any relief. It has been already noticed that the appellant, Deepak Sibal, was refused admission on the ground that he was an employee of a Public Limited Company which did not fall within the exclusive categories, as mentioned in the impugned rule, to which admission to the evening classes was restricted. The appellant was appointed on probation for a period of six months in Agro Chem Punjab Ltd. with effect from June 2, 1988. In proof of his appointment, the appellant produced before the respondents a certificate of employment dated June 1, 1988 issued by the Director of Agro Chem Punjab Ltd. According to the respondents, the certificate of employment produced by the appellant is not a genuine one inasmuch as the appellant was admitted to the first semester in the LL.B. Course of the Himachal Pradesh University at Simla on July 12, 1988. We fail to understand how it can be said that the certificate of employment of the appellant in Agro Chem Punjab Ltd. was not a genuine certificate, simply because the appellant was admitted in the first semester of the LL.B. Course of the Himachal Pradesh University on July 12, 1988. It is common knowledge that a candidate very often seeks admission in more than one college or university. The appellant also made an application for admission to the LL.B. Course in Himachal Pradesh University and he was admitted. It may be that after the respondents refused to admit the appellant in the evening classes, the appellant had to join LL.B. Course of the Himachal Pradesh University after giving up his service in Agro Chem Punjab Ltd. But, when the appellant made the application for admission in the evening classes of the Law Department of the Punjab University, he was in employment of Agro Chem Punjab Ltd. We do not find any reason to doubt the genuineness of the certificate of employment in Agro Chem Punjab Ltd. It is the case of the appellant that to prosecute his studies in LL.B. Course in Himachal Pradesh University will put him to great hardship and inconvenience and it will be convenient for him to prosecute his studies in the University of Punjab. Similarly the other appellant, Miss Ritu Khanna, was refused admission by the respondents on the ground that her appointment was purely temporary, although her position was 19 in the merit list.

31. It has been already found that the impugned rule is discriminatory and is violative of Article 14 of the Constitution and, as such, invalid. The refusal by the respondents to admit the appellants in the evening classes of the three year LL.B. Degree Course was illegal. The appellants are, therefore, entitled to be admitted in the evening classes. It is, however, submitted on behalf of the respondents that all the seats have been filled up and, accordingly, the appellants cannot be admitted. As injustice was done to appellants, it will be no answer to say that all the seats are filled up.

32. For the reasons aforesaid, the judgment of the High Court is set aside and the impugned rule for admission in the evening classes is struck down as discriminatory and violative of Article 14 of the Constitution and, accordingly, invalid. We, however, make it clear that the striking down of the impugned rule shall not, in any manner whatsoever, disturb the admissions already made for the session 1988-89. The respondents are directed to admit both the appellants in the second semester which has commenced from January 1988 and shall allow them to complete the three year LL.B. Degree Course, if not otherwise ineligible on the ground of unsatisfactory academic performance. As was directed by this Court in Ajay Hasia v. Khalid Mujib Sehravardi ((1981) 1 SCC 722 : 1981 SCC (L&S) 258 : (1981) 2 SCR 79), the seats allocated to the appellants will be in addition to the normal intake of students in the college.

33. Both the appeals are allowed. There will, however, be no order as to costs.

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