

Chandigarh Administration and another etc. etc.

Vs

Manpreet Singh and others etc. etc.

SPL. Leave Petns. Nos. 16066, 16065 and 16451 of 1991

(P.B. Sawant, B.P. Jeevan Reddy JJ)

18.11.1991

### ORDER

1. In the Union Territory of Chandigarh, 5% of the seats are reserved in favour of sons/daughters/spouses of Military / Para-Military personnel Orders in this behalf are issued by the Administration in its memo dated 19th May, 1982 which were later modified in memo dated 6-9-1990. In accordance with the said orders, Punjab Engineering College (a College run by the Chandigarh Administration and affiliated to Punjab University) reserved 15 seats in favour of sons/daughters spouses of Military/ParaMilitary personnel. The College published a prospectus for the session 1991-92. It contains inter alia the rule governing the admission of students to the said college. So far as the reservation in favour of children and spouses of Military/ Para-Military Personnel is concerned, the rule (printed at pages 23 and 24 of the Prospectus) reads as follows:

Sons/ Daughters/ Spouses of Military'/ ParaMilitary Personnel etc.:

The Admission of the candidates against the reserved seats under this category will be made on the basis of merit list prepared according to the priorities given below in the descending order:-

1. Sons/Daughters/Spouses of defence personnel who are awardees of gallantry decorations of Paramvir/ Mahavir/ Vir Chakra in person or posthumously.

Or

Sons/daughters/spouses of defence personnel and para-military personnel like CRPF, BSF etc. who are killed or are totally incapacitated in action while in service and were wholly dependent on them.

2. Sons/daughters/spouses of defence personnel and paramilitary personnel like CRPF/ BSF etc. who die while in service and were wholly dependent on them;

3. Sons/daughters/spouses of defence personnel and paramilitary personnel like CRPF/BSF incapacitated while in service and were wholly dependent on them;

4. Sons/daughters/spouses of ex-servicemen (military and paramilitary personnel like CRPF/BSF who are wholly dependent on them;

5. Sons/daughters/spouses of serving defence personnel and paramilitary personnel

like CRPF/BSF who are wholly dependent on them.

The candidates claiming admissions under the category 1 above are required to submit the photo-copy of citation for the gallantry award, failing which the application will not be considered in this category.

The candidates claiming admission under category 1 are required to submit a certificate from the respective Headquarters regarding death/total incapacitation in action while in service.

The candidates claiming admission under category 2 and 3 are required to submit a certificate from the respective Headquarters regarding death/ total incapacitation while in service.

The candidates claiming admission under category 4 are required to submit discharge certificate from service and certificate of dependence from the district Magistrate of the district concerned.

The candidates claiming admission under category 5 are required to submit the certificate of dependence from the unit in which parent/spouse is serving.

The candidates who apply for admission against this category will also be considered for admission against the seats allocated for Chandigarh/ General Pool to which they may belong as per their merit."

2. A perusal of the rule shows that the five categories are mentioned in the order of priority in the descending order. There is no allocation of seats as between these five categories. It means that in the first instance, all the qualified and eligible candidates falling in category 1 will be given admission and if any seats are left unfilled, qualified candidates falling in category 2 will be admitted. If there are any seats still left unfilled, qualified candidates falling in category 3 will be given admission and so on. In a given year, it may well happen that all the available seats reserved for children/spouses of defence personnel are taken away by the candidates in the first or first and second categories. As a matter of fact, for the year 1990-91, only 6 candidates belonging to sub-category 4 out of 90 candidates could be admitted and not the others and category 5 went unprovided altogether. It is stated that all candidates obtaining the specified minimum marks in the common entrance test were treated as qualified for being considered for admission.

S.L.P. 16066/91:

The first respondent in the S.L.P. applied for admission to Punjab Engineering College under this quota. He appeared in the common Entrance Test along with other applicants. The College Authorities considered his case placing him in category 4 since his father was an Ex-serviceman. He could not, however, be given the admission because the 15 seats reserved for children and spouses of Military/ Para-Military Personnel in this College were allocated in the following manner:

a. There were three candidates falling in category 1 (i.e., children of Defence Personnel who are awardees of gallantry decoration, Paramvir Chakra/ Mahavir Chakra, in person or posthumously). All the three were given admission.

b. There were 5 candidates falling in category 2. They were admitted.

c. Only one candidate falling in category 3 appeared and was given the seat;

d. There were 90 candidates falling in category 4. But only 6 seats were available (nine seats having been taken away by subcategories a to c). These six seats were allotted on the basis of inter se merit among the candidates falling in this category. The first respondent being at a fairly lower position in this merit list could not be given the admission.

No seats were left for being allotted to candidates falling in category 5.

3. Finding that he has not been given admission in this College, the first respondent filed a writ petition in the High Court of Punjab and Haryana being C.W.P. No. 12644 of 1991. His contention was that his father Major Kuldip Singh Malik was awarded Shaurya Chakra for acts of gallantry, that Shaurya Chakra is equivalent to Vir Chakra, in all respects and, therefore, his case ought to have been considered in category 1 and not in category 4. He submitted that along with his application for admission he had enclosed a copy of the citation awarded by the President of India to his father showing that his father Major Kuldip Singh Malik was awarded Shaurya Chakra for displaying exemplary courage and leadership in the course of his duties in the Mizo Hills. He complained that two of the candidates admitted under category 1 have received less marks than he.

4. The High Court has allowed the writ petition on the following reasoning:

"According to Regulation 695 of the Defence Services Regulations relating to the Army, issued by the Ministry of Defence, Government of India, Shaurya Chakra is awardable for gallantry and comes after Ashoka Chakra and Kirti Chakra. Further according to Regulation 717, in order of precedence, this award of Shaurya Chakra's at number thirteen, that is immediately below Vir Chakra and Param Vir Chakra is at number two and Maha Vir Chakra is at number seven. Despite all this, the respondents, while considering the candidature of the petitioner, did not grant him admissions the Bachelor of Engineering Course in the current session even though he was higher in academic merit as compared to respondents Nos. 2 and 4 who have been granted such admission.

In reply, the respondents have pleaded that no doubt the father of the petitioner was decorated with Shaurya Chakra award in 1969 but it is gallantry award and is not strictly covered by the rules, regulations and the prospectus of the College, though it is admitted that both respondents Nos. 3 and 4, who have been granted admission, were lower in merit than the petitioner, so far as the academic record is concerned.

After hearing the learned counsel for the parties, we find that the approach of the respondents in rejecting the candidature of the petitioner is neither legally correct nor just and fair. However, as respondents Nos. 3 and 4 who are lower in academic merit than the petitioner, happen to be the sons of the awardees of Vir Chakra and Maha Vir Chakra respectively, it would be unfair if the admission already granted to them by the Chandigarh Administration and the Punjab Engineering College, Chandigarh, is set aside.

Resultantly, we allow this petition and issue a direction to respondents Nos. 1 and 2 to admit the petitioner against the category of sons/daughters of awardees of gallantry decorations, without disturbing the admission of respondents Nos. 3 and 4. In case no such seat is available for the

petitioner, the respondents shall create a seat for the purpose forthwith. This shall also be deemed to be a direction to the Punjab University for according necessary approval for the creation of the additional seat. There shall be no order as to costs."

5. The decision of the High Court was rendered on 28th August, 1991. The present S.L.P. was filed in this court on 7th October, 1991. In fact, it appears that having waited for one month and not having been admitted in the college in pursuance of the Judgment, the 'first respondent took proceedings for Contempt against the College Authorities. The first respondent, was admitted in the college on 28th October, 1991. It is now stated by his counsel that the first respondent has given up his seat in another college (Jamia Millia), on being admitted to this College. The writ petition came up for final hearing before us on 15-11-1991. We disposed of the SLPs on that day stating that reasons for our orders will be given today.

S.L.P. No. 16065/91

6. Respondents 1 and 2 in this S.L.P. also applied for admission to Punjab Engineering College as children of serving Defence Personnel. They too appeared for the common Entrance Test along with other applicants. Since the parents of the two respondents were serving Defence Personnel, their case was considered under category 5. As stated hereinbefore, no seats were left for being allocated to candidates falling in category 5. Respondents 1 and 2 were, therefore, not given admission in this College whereupon they approached the Punjab and Haryana High Court by way of a writ petition being C.W.P. No. 12485 of 1991. Their case was that the categorisation of Defence Personnel was unjust and unreasonable inasmuch as while the children and spouses of serving Defence Personnel are placed in category 5, children and spouses of Ex-servicemen are placed above them in category 4. According to the respondents, children of serving Defence Personnel must be preferred over the children of Ex-servicemen. In a short order, the High Court allowed the writ petition and directed that category 5 should be treated as category 4 and category 4 should be treated as category 5. The Court directed that admissions for the current year (1991-1992) shall be made accordingly. The order of High Court is a short one and may be set out in its entirety:

"After hearing the learned counsel for the parties and having gone through their pleadings, we are of the considered view that subcategories Nos. 1, 2 and 3 deserve to be retained at their appropriate present places. So far as sub-categories Nos. 4 and 5 i.e. relating to the sons, daughters and spouses of the ex-service personnel as well as the sons, daughters and spouses of service Defence personnel are concerned, we find that the ends of justice would be adequately met and the object for which the reservation has been provided would be achieved if the sons, daughters and spouses of serving Defence personnel are placed at sub-category No. 4 i.e. above the category of Ex-servicemen. This conclusion has been arrived at by us after considering the circumstances that the wards and spouses of serving Defence personnel are at a disadvantage in the absence of their guardians serving at far off/distant places defending the country vis-a-vis who have retired from the military and are now living with their wards. Keeping these considerations in view, we dispose of this writ petition by issuing a direction to the respondent Union Territory Chandigarh and Principal, Punjab Engineering College, to go ahead with the admission of this reserved category. Therefore, so far as such categories 1, 2 and 3 are concerned, there shall not be any change. However, we direct that so far as sub-category No. 4 is concerned, persons covered in this' shall be considered at No. 5 and those covered in sub-category 5 are concerned, shall be considered at No. 4. The admissions, which

are going to be finalised tomorrow, shall not be made in accordance with these directions. A copy of the order be supplied Dasti also to the learned counsel for the parties."

7. This order was made on 30th August, 1991 whereas the present SLP was filed in this Court on 7th October, 1991. These respondents too took proceedings for contempt against the college for not implementing the direction of the High Court. They were admitted on 28th October, 1991. These respondents also say that on being admitted to this college they have given up their admission in other Colleges. This SLP was heard along with SLP No. 16066 of 1991 on 15-11-91.

S.L.P. No. 16451 of 1991

8. This petition for Special Leave is directed against the order dated 9th October, 1991 passed by a Division Bench of the Punjab and Haryana High Court dismissing the writ petition filed by the petitioner. The petitioner (writ petitioner) applied for admission to the Punjab Engineering College for the year 1991-92 under category 4 being the son of an Ex-serviceman. By virtue of the directions given by the High Court in its order dated 30-8-1991 in C.W. P. No. 12485 of 1991, category 4 became category 5 and category 5 became category 4 and admissions were being made on that basis. The petitioner who fell in category 4 (as per the prospectus of the College) and which was now converted to category 5 by virtue of the decision of the High Court aforesaid applied to the High Court to consider his case in category 4 itself and grant him admission. His writ petition was dismissed by the High Court on 9th October, 1991 under a short order which reads this :

"Admissions are being done as per the directions issued in Civil Writ Petition No. 12485 of 1991, decided by the Division Bench on August 30, 1991. In view of the said decision, we do not find any merit in the contentions raised by the learned counsel for the petitioner. The Writ petitions dismissed. A copy of this order be given dasti."

9. The petitioner is in fact questioning the correctness of the directions given by the High Court in C.W.P. NO. 12485 of 1991 disposed of on August 30, 91.

10. Counsel for Chandigarh Administration and the College (petitioners in SLP's 16066 and 16065 of 1991) contended that the High Court has exceeded its jurisdiction in granting the impugned directions. He submitted that High Court, while exercising the writ jurisdiction conferred upon by Article 226 of the Constitution of India, does not sit as an Appellate Authority over the rule-making authority nor can it re-write the rules. If the rule or any portion of it was found to be bad, the High Court could have struck it down and directed the rule-making authority to reframe the rule and make admissions on that basis but the High Court could not have either switched the categories or directed that Shaurya Chakra should be treated as equivalent to Vir Chakra. By its directions, the High Court has completely upset the course of admissions under this reserved quota and has gravely affected the chances of candidates falling in category 4 by downgrading them as category 5 without even hearing them. These(There) are good reasons for the categorisation done by the Administration which was adopted by the College. He submitted that while Paramvir Chakra, Mahavir Chakra and Vir Chakra are awarded for gallantry in war, Ashok Chakra, Kirti Chandigarh Administration v. Manpreet Singh Chakra and Shaurya Chakra are awarded for gallantry otherwise than in war. Shaurya Chakra was awarded to the father of the first respondent in SLP No. 16066 of 1991 for his gallant conduct in counter-in-surgency operations in Mizo Hills. It was not a war. He placed, before us, the true extract of order of precedence of awardees. It reads thus:

TRUE EXTRACT OF ORDER OF PRECEDENCE OF AWARDS.

717. Order of Precedence of Awards-

The order of precedence of various awards is as follows:-

Bharat Ratna

Param Vir Chakra

Ashoka Chakra

Padma Vibhushan

Padma Bhushan

Param Vishisht Seva Medal

Maha Vir Chakra

Kirti Chakra

Padma Shri

Sarvottam Jeevan Raksha Padak

Ati Vishisht Seva Medal

Vir Chakra

Shaurya Chakra

The President's police and Fire Service Medal for gallantry.

Sena/Nao Sena/Vavu Sena Medal Vishisht Seva Medal

The Police Medal for gallantry

Uttam Jeevan Raksha Padak

Wound Medal

The General Service Medal 1947 Samar Seva Star 1965

Poorvi Star

Paschimi Star

Raksha Medal 1965."

11. Counsel says that by its directions contained in the two orders impugned herein, the High Court has exercised a jurisdiction, which really did not belong to it. We are inclined to agree with him.

12. Counsel for the petitioner in S.L.P. No. 16451 of 1991 supported the aforesaid arguments.

13. On the other hand, the counsel for respondents (writ Petitioners in the High Court) in the first two SLPS. supported the order of the High Court and submitted further that since the said respondents have given up their seats in other colleges and have been admitted in the Punjab Engineering College, any order throwing them out from the Punjab Engineering College, at this juncture would cause them irreparable prejudice. They submitted that the Chandigarh Administration and the College authorities have been sleeping over the matter until a contempt petition was filed and that they moved this Court only after they were summoned in the contempt proceedings. They should be held disentitled to any relief on account of laches, submitted the counsel.

14. We are of the considered opinion that the orders of High Court are wholly unsustainable. We shall consider both the directions separately. Let us first consider SLP 16066 of 1991, arising from C.W.P. 12644/ 91.

15. The rule as framed by the Chandigarh Administration and as published by the College in its prospectus in the year 1991-92 placed in category I children and spouses of only those Defence Personnel who were awardees of gallantry decorations of Paramvir Chakra, Mahavir Chakra or Chakra in person or posthumously. It did not include Ashok Chakra, Kirti Chakra or "Shaurya Chakra. The validity of the rule was not expressly questioned before the High Court. Assuming that it was so questioned and assuming that the High Court was satisfied that the rule was discriminatory and bad for the reason of not including Ashok Chakra etc, the only course open to it was to strike down the offending rule. It could also have directed the authorities to reframe the rule and to make admissions accordingly. High Court however did not choose to do so. It merely directed that since Shaurya Chakra is immediately below Vir Chakra in the order of precedence and since respondents 3 and 4 in the writ petition admitted under sub-category 1 have obtained lesser marks than the writ petitioner, he should be given admission without disturbing the admission given to respondents 2 and 3 in that writ petition. The entire reasoning of the High Court has been extracted by us hereinabove. It shows that absolutely no reason is assigned for granting the said direction. All that it says is that since Shaurya Chakra is also awardable for gallantry and is placed immediately below Vir Chakra, the writ petitioner should be granted admission. If really the High Court was of the opinion that Shaurya Chakra is equivalent to Vir Chakra and should be treated on the same par as Vir Chakra then it should be spelt out the position also of Ashok Chakra and Kirti Chakra, which are above Shaurya Chakra.. According to the Rules notified children/ spouses of Ashok Chakra, Kirti Chakra and Shaurya Chakra awardees did not fall under category 1 nor under categories 2 or 3. They would fall under category 4 or category 5, as the case may be, depending upon whether their parent/ spouse was an ex-service person or a serving person. There may have been other candidates who are the children/ spouses of Shaurya Chakra awardees and for that matter, Ashok Chakra and Kirti Chakra awardees who may have obtained more marks than the writ petitioner (first respondent in SLP 16066 of 1991) but who did not claim a seat under category 1 nor were considered as such. They may not have stated that fact of their parent/ spouse being a Ashok Chakra/ Kirti Chakra/Shaurya Chakra awardee, nor filed the relevant citation, since it was not relevant as per the published Rules. Had the proper course been followed, all of them could have applied properly and could have been considered. By saying this we do not mean to say that the Rule is bad. We do not mean to say so at all. There may be good reasons for the Rule as published - or there may not be. That is not the issue. What we are saying is that if the High Court was of the opinion that all the gallantry awardees (including Ashok, Kirti and Shaurya Chakra) should be placed in category 1, it should have said so, struck down the category and, may be, directed reframing of rule and

admissions made on that basis.

16. Coming to SLP 16065 of 1991, the position appears to be even worse. Without assigning any reason the High Court has directed that category 4 should be made category 5 and category 5 should be made category 4. In short, it has switched these two categories. Again, we must say that if the High Court thought that this categorisation was discriminatory and bad it ought to have struck down the categorisation to that extent and directed the authority to reframe the rule. It would then have been open to the rule making authority either to merge these two categories or delete one or both of them, depending upon the opinion they would have formed on a review of the situation. We must make it clear again that we express no opinion on the question of validity or otherwise of the rule. We are only saying that the High Court should not have indulged in the exercise of 'switching' the categories, and that too without giving any reasons thereafter. Thereby, it has practically assumed the role of rulemaking authority, or, at any rate, assumed the role of an Appellate Authority. That is clearly not the function of the High Court acting under Article 226 of the Constitution of India. Now, let us notice the implications and consequences of the said 'switching'.

17. By directing that category 4 should be treated as category 5 and conversely category 5 should be treated as category 4, the High Court has prejudicially affected the rights of candidates falling under category 4 without even hearing them. It must be remembered that these categories are mentioned in the order of priority as emphasised hereinbefore. A rule-making authority need not observe the rule of hearing, but the High Court exercising its judicial power cannot dispense with the requirement and that is precisely the grievance of the petitioner in S.L.P. 16451/911 arising from V.W.P. 14606 of 1991. He was entitled to be considered under category 4 (as per the prospectus) whereas by virtue of the High Court's order his category has become category 5, the result of which is that no seat may be left for his category, whereas the said category was entitled to some seats at least according to the Rules as framed and published by the Administration and College. Suffice it to say that giving the said direction, while the admissions were in progress, the situation has been confounded beyond recall.

18. Article 226 of the Constitution of India empowers the High Court to issue to any person or authority (including the Government) directions, orders or writs including writs in the nature of Habeas Corpus, mandamus, Prohibition, quo warranto and certiorari, or any of them for the enforcement of any of the rights conferred by Part III and for any other purpose.

19. Though the Article itself does not contain any restrictive words, the Courts have, over the years, evolved certain self-constraints though, we are not bound by the procedural technicalities governing these high prerogative writs in English law. As observed by a Constitution Bench in *Basappa v. Nagappa*, (1955) 1 SCR 250 at p. 256: (AIR 1954 SC 440 at p. 443):

"In view of the express provisions in our Constitution we need not now look back to the early history or the procedural technicalities of these writs in English law, nor feel oppressed by any difference or change of opinion, expressed in particular cases of English Judges. We can make an order or issue a writ in the nature of certiorari in all, appropriate cases and in appropriate manner, so long as we keep to the broad and fundamental principles that regulate the exercise of jurisdiction in the matter of granting such writ in English law."

20. While this is not the place to delve into or detail the self-constraints to be observed by the Courts while exercising the jurisdiction under Article 226, one of them, which is relevant herein, is beyond dispute viz., while acting under Article 226, the High Court does not sit and/ or act as an

Appellate Authority over the orders/ actions of the Subordinate Authorities/ Tribunals. Its jurisdiction is supervisory in nature. One of the main objectives of this jurisdiction is to keep the Government and several other authorities and Tribunals within the bounds of their respective jurisdiction. The High Court must ensure that while performing this function it does not overstep the well recognized bounds of its own jurisdiction.

21. Though we are satisfied that the orders and directions made by the High Court are totally unsupportable in law, the subsequent developments dissuade us from allowing these SLPs. As stated above, the three respondents writ petitioners (first respondent in SLP 16066/ 91 and respondents 1 and 2 in SLP 16065/91) have been admitted into this college (Punjab Engineering College) on 28th October, 1991, whereupon they have given up the seats which they had obtained in other colleges. This statement of theirs is not disputed either by the Chandigarh Administration or the college authorities. Depriving the said respondents of their admission in this college at this stage would result in grave and irreparable prejudice to them. We think that the Administration and College authorities ought to have acted with more alacrity and approached this Court earlier than they did. By the time, these SLPs were taken up by us and stay granted, the said respondents were already admitted into the College and, they say, they had given up their seats in the other colleges. On this score alone, we decline to interfere with the orders in C.W.P. 12644/ 91 and 12485/91.

22. Now coming to SLP 16451 of 1991, the situation is this: By virtue of the orders of the High Court, three students who were not entitled to admission according to rules have been given admission against the three vacancies which had arisen since the finalisation of the admissions. The college authorities say that but for the orders of the High Court, these three vacancies would have gone to the first three candidates in the waiting list. The petitioner in SLP 16451 of 1991 says that he is one such person in the waiting list and he would have obtained admission but for the admission given to the three candidates in pursuance of the High Court orders. We do not know whether the petitioner's case is true. All the same, we think it appropriate to make the following direction: the college authorities shall create three more seats in the said course and admit the first three available students in the waiting list against those seats. The Chandigarh Administration shall pass the necessary orders in this behalf. Action in terms of this direction shall be taken forthwith by the Chandigarh Administration and the college authorities.

23. Before we part with this case we wish to make an observation. In matters of this nature where the High Court directs students to be admitted in Educational Institutions, it would be advisable if the High Court stays the operation of its order for a period of about 3 to 4 weeks, if a request therefor is made by the Educational Institution or the State, as the case may be.

24. SLPs disposed of accordingly.

Order accordingly.

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