
contained in the Information Brochure. If the provision contained in the Information Brochure is found to be unsustainable, the same can be struck down by this Court in exercise of the powers under Article 226 of the Constitution of India. By striking down the provision in the Brochure, the petitioner will not be getting any benefit. So this Court will have to amend the provision contained in the Brochure or in other words re-write the same. This Court is not to venture such a course of action. High Court cannot assume the role of rule making authority and re-write the rule nor can this Court in exercise of the powers under Article 226 of the Constitution substitute its views to that of the competent authority which framed the Brochure.”

(16) The observations made in the above-mentioned case have been further followed in the case of *Indu Gupta v. Director of Sports, Punjab etc.* (2).

(17) For the aforesaid reasons, we uphold the action of respondent No. 2 in granting admission to respondent No. 4. As respondent No. 2 had granted admission to respondent No. 5 in violation of the provisions contained in the Prospectus, her admission is quashed. Respondent No. 2 is directed to grant admission to the petitioner in M.B.B.S. course for the Session 2000 under the reserved Category as per his claim. This petition stands disposed of accordingly. Under the circumstances, there shall be no order as to costs.

R.N.R.

Before N.K. Sodhi and R.C. Kathuria, JJ.

MANJUSHA,—*Petitioner*

versus

M.D. UNIVERSITY AND ANOTHER,—*Respondents*

C.W.P. No. 14632 of 2000,

6th December, 2000

Constitution of India, 1950—Art. 226—Admission to B.Ed (D.E.) course on the basis of Entrance test—Rejection of application of petitioner—Petitioner eligible in terms of eligibility conditions—University contesting claim—Ground that entrance test already held—University directed to hold a test for the petitioner.

Held, that no doubt the question of eligibility for admission to a course has to be examined according to the provisions given in the Brochure/Prospectus, which has the force of law, but the construction of the qualification clause put by the respondents does not flow from it. The only requirement for the eligible candidate is that he should have studied atleast two school subjects at the first and/or second degree level and this clause does not limit that these subjects should have been learnt only in the school and not in the college. Therefore, to exclude from being eligible the students who have passed two school subjects at college level, would not only be totally unjustified but unwarranted. The petitioner fulfilled the requirements of eligibility laid down in the Brochure. She cannot be allowed to suffer on account of wrong rejection of her admission form by the respondents. Therefore, we accept this writ petition and direct the respondents to make arrangement for holding an Entrance Test for the petitioner for admission to the said course.

(Paras 7 and 13)

P.K. Mutneja, Advocate, *for the petitioner*

Vikrant Sharma, Advocate, *for the respondents*

JUDGMENT

R.C. Kathuria, J.

(1) In this petition, the petitioner has prayed for issuance of a writ of certiorari quashing the order of rejection of her application-form for appearing in Entrance Examination for admission to B.Ed. (DE) Course 2000-2002 (hereinafter referred to as 'the Course'), conveyed to her,—*vide* letter dated 11th October, 2000 (Annexure P-7). She has further sought a direction against the respondents to make arrangement to hold a fresh Entrance Test for her, or to grant admission to her in the said Course.

(2) The petitioner passed her Matriculation and 10+2 examinations which were conducted by the Board of School Education, Haryana, in March, 1988 and March 1990, obtaining 71% and 57% marks, respectively. Thereafter, she cleared her B.Com., Two Year Full Time P.G. Diploma in Human Resources Management and M.A. (English) (Distance Education) examinations in April, 1993, April, 1995 and December, 1999 from Maharishi Dayanand University, Rohtak, respondent No. 1 (hereinafter referred to as 'the University'), securing 47%, 63% and 43% marks, respectively. In order to seek admission to the said course, for which Entrance Test was held on 22nd October, 2000, she submitted her application on 29th September, 2000 stating

therein that she had taken Commerce and Accountancy at 10+2 level. In the said examination, she had secured 47% marks and was, thus, eligible to appear in the Entrance Test. To her surprise, she received letter dated 11th October, 2000 (Annexure P-7) from the Directorate of Distance Education of the University informing her that her application had been rejected on the ground that she had obtained less percentage of marks. Thereafter, on 17th October, 2000 she sent her representative to find out from the University as to how she had less percentage of marks when as per eligibility conditions laid down in the Admission Brochure, B.Ed. Two years course (Distance Education 2000-2002 issued by the Directorate of Distance Education of the University (hereinafter referred to as 'the Brochure') she fulfilled all the conditions. On 18th October, 2000, her representative was informed that she did not qualify for appearing in the Entrance Examination because the condition of 45% marks applied only to candidates who had passed B.A. and not B.Com. examination. Forced by these circumstances, she has filed the present writ petition.

(3) On notice of motion to the respondents, they filed their reply. While controverting the stand of the petitioner, it has been pleaded by them that though the petitioner had passed her B.Com. examination securing 842 out of 1800 marks (46.77%) and M.A. (English) examination securing 341 out of 800 marks (42.63%), but her case was not covered by the guide-lines/instructions issued by the National Council for Teachers Education because it has been provided in the said instructions that the qualification for being eligible to take the Entrance Test for the said Course is Graduate/Post Graduate Degree from a recognised University with atleast 45% marks (44.5% will be rounded to 45%) provided the applicant has offered atleast two school subjects at the first and/or second degree level. It has been further provided in the said instructions that this condition shall not be applicable to the candidates possessing 50% or more than 50% marks in Graduate and Post Graduate Degree. As the petitioner had secured 46.77% marks in aggregate in B.Com. examination, therefore, her case was not covered under the category of 45% marks at Graduate/Post Graduate Degree level, the reason being that she had not studied atleast two school subjects in her B.Com. examination. On these premises, the rejection of her application-form was justified.

(4) We have heard the learned counsel for the parties and perused their pleadings.

(5) The sole question which has arisen in this writ petition is whether the petitioner fulfils the criterion laid-down in the Brochure for seeking admission to the Course. Therefore, it is a pre-requisite to

notice the essential provision contained in a Brochure and the same read as under :

**“CHAPTER-V
ELIGIBILITY CONDITIONS**

The eligibility conditions for admission to B.Ed. course will be as under :

1. **Qualifications :** A candidate who possesses the following qualification shall be eligible to join the course.

Graduate/post-graduate degree from a recognised university with atleast 45% marks (44.5% will be rounded to 45%) “provided the applicant has offered atleast two school subjects at the first and/or second degree level”. This condition will not be applicable to the candidates possessing 50% or more than 50% marks in graduate and post-graduate degree.

In case of SC/ST candidates minimum Pass Marks in the qualifying examination are required.

2. **Teaching Experience :**

Only regular teachers serving in recognised schools (Primary, Secondary and Higher Secondary levels) within the jurisdiction of the University with a minimum of two years of teaching experience, upto the last date of submission of application will be eligible. The teaching experience certificate (s) on the prescribed proforma (Appendix-A) signed by the Headmaster/Principal of the School and countersigned by the concerned District Education Officer/ Sub-divisional Education Officer/District Primary Education Officer/Desk Officer in case of Schools recognised by C.B.S.E. is required to be furnished by the candidate. No separate Teaching Experience Certificate will be accepted. In case a candidate has served in more than one school he/she should use the photocopy of the enclosed Teaching Experience Certificate Proforma.

xx xx xx xx xx.”

(6) In order to show that the petitioner fulfils the above-stated eligibility, she has placed on record copies of Matriculation Examination (Annexure P-1), Senior Secondary Certificate Examination (Annexure P-2), Result-cum-Detailed Marks Cards of B.

Com. Part-I, Part II and Part-III Examinations (Annexure P-3), Result-cum-Detailed Marks Card of M.A. (Final) English Examination (Annexure P-4) and Result-cum-Detailed Marks Card of Post Graduate Diploma in Human Resources Management (Annexure P-5). It is clear from the certificate (Annexure P-2) that the petitioner had taken Mathematics, Commerce and Accountancy in addition to Hindi Core and English Core as subjects in Senior Secondary Examination. In B.Com. Part-I Examination, she had also taken Financial Accounting, Business Mathematics and Computer Awareness and Principles of Economics besides other subjects. In B.Com. Part-II Examination, she had taken the subjects of Mercantile Law, Company Law, Money and Banking, Business Statistics and Higher Accountancy. In B. Com. Part-III Examinations, the subjects taken by the petitioner were Cost and Management Accountancy, Business Taxation Law, Indian Economic Problems and Financial Management besides other subjects.

(7) On the basis of the above data, two-fold submission has been made from the side of the respondents to support their stand for rejecting the application-form of the petitioner for the said Course. Firstly that the petitioner had passed her Senior Secondary Examination from Hindu Girls College, Sonapat, as is evident from the certificate (Annexure P-2) issued by the Board of School Education, Haryana and for that reason it cannot be said that she had passed the examination with Mathematics, Commerce and Accountancy as school subjects. Secondly that the Result-cum-Details marks Cards of B.Com. Part-I and Part-II examinations further show that the petitioner had not taken two subjects out of Mathematics, Commerce and Accountancy and, therefore, it has to be taken that she has not studied two school subjects at first or second year degree level. The submission, in our considered view, merits rejection outrightly. No doubt the question of eligibility for admission to a course has to be examined according to the provisions given in the Brochure/Prospectus, which has the force of law, but the construction of the qualification clause put up by the learned counsel representing the respondents, does not flow from it. The only requirement for the eligible candidate is that he should have studied atleast two school subjects at the first and/or second degree level and this clause does not limit that these subjects should be taught only in the School and not in the College. During the course of arguments, it was not disputed by the learned counsel for the respondents that in some schools. education upto 10+2 level is imparted due to the availability of necessary infrastructure and for want of recognition or on account of non-availability and for want of recognition or on account of non-availability of necessary infrastructure in other schools, education upto 10+2 level is imparted in the Colleges. The

words 'school subjects' as such have not been defined or explained in the Brochure. According to Chambers English Dictionary, the word 'school' mean a place for instruction; an institution for education, esp. primary or secondary, or for teaching of special subjects; a division of such an institution'. The respondents cannot put the construction to the words 'school subjects' in a manner to deprive admission to the eligible candidates. Factually, it would be significant to note that Matriculation and Senior Secondary Examinations had been conducted by the Board of School Education, Haryana, as is evident from the copies of the certificates Annexures P-1 and P-2 placed on record by the petitioner. This further indicates that Senior Secondary Examination falls within the province of school subjects and for that reason the authorities had entrusted the task of conducting the examination to the Board of School Education, Haryana. Therefore, to exclude from the eligibility clause the students who have passed two school subjects at College level, would not only be totally unjustified but unwarranted under the circumstances of the case.

(8) Coming to the other stand from the side of the respondents, it is manifest that the petitioner had taken the subjects of Mathematics, Commerce and Accountancy in the Senior Secondary Examination. As stated above, in B.Com. Part-I Examination, she had also taken the subjects of Financial Accounting, Business Mathematics and Computer Awareness and Principles of Economics besides other subjects. Therefore, the subjects of Mathematics and Accountancy are covered in B.Com. Part-I Examination. Even in B.Com. Part-II Examination, the petitioner had studied the subjects of Mercantile law, Company Law, Money and Banking, Business Statistics and Higher Accountancy, which are the components of the subjects of 'Commerce'. At the higher level of education, these components of the subjects of 'Commerce' have been bifurcated so as to impart specialised and advanced teaching. Therefore, it cannot be doubted that the petitioner had not studied the subjects of commerce and accountancy in B.Com. Part-I and Part-II. Thus, she fulfilled the requirements of eligibility laid-down in the Brochure.

(9) Despite the fact that it is established on record that the petitioner had been wrongly denied admission to the course, an effort was made to deny the benefit of admission to her on the ground that the University has already conducted the Entrance Test and as the petitioner has come to the court after the examination, therefore, she is not entitled to the relief claimed in the petition. The learned counsel for the petitioner, while controverting the said stand of the respondents, urged that the Court should come to the rescue of the petitioner as the

action of the respondents in rejecting her admission-form was not only against the provisions of the Brochure, but was also arbitrary. He has placed reliance on *Pardeep Satija and another v. Himachal Pradesh University* (1) *C. Tulasi Priya v. A.P. State Council of Higher Education and Ors.* (2) and *M. Sreedevi v. University of Medical Sciences, A.P. and Ors.* (3).

(10) In *Pradeep Satija's case* (supra), the petitioners were not allowed to appear in the Entrance Test as the last date for application-form according to which petitioners had sent their applications was said to have been wrongly published in newspaper. A corrigendum was also issued, but it appeared in the newspaper after actual last date for submission of application-forms had already expired. Under these circumstances, it was held that the petitioners should not suffer for carelessness and negligence of the University and a direction was issued that they be allowed to appear in the Entrance Examination.

(11) In *C. Tulasi Priya's case* (supra), the appellant had appeared for the Engineering, Agriculture and Medical Common Entrance Test (EAMCET). She was given an objective type question paper. After about 20 minutes, the invigilator discovered that wrong paper had been given and for that reason the paper was changed. No extra time was given and the candidate, thus, had only 2-1/2 hours to answer the paper. She answered 170 out of 200 questions securing 94.55% marks. Taking into account the facts and circumstances of the case, a direction was given that the appellant should be considered for admission on the basis of 94.55% marks.

(12) In *M. Sreedevi's case* (supra) the candidates from Scheduled Castes, Scheduled Tribes and Backward Classes, who were meritorious, were not considered against reserved quota. A division bench of the High Court took notice of this fact and observed that, concedingly, if this principle had been followed, the appellant would have got admission in the course and she had suffered on account of the conduct of the University in not following the settled principle of law laid down by the Apex Court, but the necessary consequential relief was not granted. When the appeal was taken to the Apex Court, the order of the High Court was set aside and it was observed in para 3 of the judgment as under :

“3. If it was the fault of the University, as the division bench found, it was proper to direct the University to make due

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- (1) A.I.R. 1984 NOC 19 (Him. Pra.)
(2) J.T. 1998(5) S.C. 246
(3) J.T. 2000(8) S.C. 314

amends. Our attention has been drawn to the judgment and order of this Court in *C. Tulasi Priya v. A.P. State Council of Higher Education and Ors.* (JT 1998 (5) SC 246 = 1998 (6) SCC 284) where also the University had committed a mistake to the detriment of the student and this Court directed that the student should be considered for admission to a medical college in the State in a seat from the quota of that State the academic year in question upon the correct and not mistaken basis."

(13) Following the dictum of law laid-down in the above-mentioned cases, the petitioner cannot be allowed to suffer on account of wrong rejection of her admission-form by the respondents. Therefore, I accept this writ petition and direct the respondents to make arrangement for holding an Entrance Test for the petitioner's admission to the said Course. In case she clears the same and obtains position in merit, she be granted admission.

S.C.K.