before the Labour Court. It is not considered necessary to refer to other findings on merits given by the Labour Court holding the order of termination to be bad. The Labour Court was debarred to entertain the reference and its order cannot be sustained).

(10) For the reasons recorded above this writ petition is allowed. The order of the Labour Court dated April 4, 1990—Annexure P. 1 is quashed. However, there will be no order as to costs.

J.S.T.

Before Hon'ble H. S. Bedi, M. S. Liberhan, JJ.

PREM SAGAR BATRA,—*Petitioner.*

versus

MAHARSHI DAYANAND UNIVERSITY, ROHTAK AND OTHERS,—*Respondents.*

Civil Writ Petition No. 16372 *of* 1991.

March 10, 1992.

Constitution of India, 1950—*Art.* 226 & 227—*Creation of additional seats—Reservation of such seats for wards of University employees—Such reservation void—Whether additional seats deemed to lapse—Admission against such seats.*

Held, that the University had created the additional 15 seats keeping in view its resources and as such it cannot be said that on the striking down of the reservation the said seats must also be deemed to lapse.

(Para 5)

Further held, that the benefit which has to flow from the order of this Court must be confined to only such persons who have come to court to vindicate their rights.

(Para 6)

Nitin Kumar, Advocate, *for the Petitioners.*

Ashok Aggarwal, Sr. Advocate with Vikrant Sharma, Advocate, for Respondent No. 1 and 2, *for the Respondents.*

JUDGMENT

H. S. Bedi, J.

(1) *Vide* this judgment we propose to dispose of CWP Nos. 15233, 16177, 16372 of 1991 and 84 of 1992, the facts of the case having been taken from CWP 16372/1991.

(2) For the academic year 1991-92, fifty seats were advertised for admission to the 1st year of LLB. course by the respondent University in July/August, 1991. While 25 seats were left open for the general category candidates such as the petitioners who were *bona fide* residents of the State of Haryana, the balance were reserved for different categories including 3 seats for the employees of the University and their wards. It appears that the University thereafter created an additional 19 seats—15 for the reserved category alluded to above and 4 for ex-servicemen. The petitioners have filed the present writ petitions challenging the creation of the additional 15 as also against the original reservation of three seats for the category of the employees of the University and their wards.

(3) CWP 16372/1991 came up before R. S. Mongia, J. on January 6, 1992, when it was argued for the petitioners that the reservation for the employees of the University and their wards was not sustainable in view of the decisions of this court rendered in *Parveen Hans* v. *The Registrar, Panjab University, Chandigarh* (1), *Sunil K. S. Panwar* v. *The Registrar, Panjab University Chandigarh* (2), *Dr. Arappana Gill* v. *State of Punjab* (3) and *Tavinder Kumar and another* v. *The Panjab University* (4). On this basis it has been urged that the petitioners were entitled to admission against the 18 reserved seats as the candidates admitted against them were less meritorious by comparison.

(4) Counsel for the respondents, however, had argued that the 15 additional seats were created specifically for the category of the employees of the University and their wards and if this court was of the view that the reservation was not sustainable, the seats created would lapse and no candidate would be entitled to be considered for admission against them. It was also urged that even if the reservation was held to be bad, the petitioners were not *ipso facto* entitled to admission as there were persons higher in merit who had not come to court but otherwise were entitled to be offered admission on a priority basis. The learned single judge found that the matter required examination by a Division Bench and accord-

(1) 1990 (1) R.S.J. 405.

(2) 1990 (1) R.S.J. 812.

(3) 1991 (1) R.S.J. 304.

(4) 1991 (1) R.S.J. 555.

ingly referred the following two questions to the Division Bench for decision,—*vide* order dated January 6, 1992 :—

(i) If the creation of seats is for a particular category and the reservation for such a category is not sustainable, whether the creation itself will go ? and

(ii) If there are candidates higher in merit than the petitioners who have not come to court, whether such candidates are entitled to relief ?

The matter is now before us on the two points mentioned above.

(5) It has been admitted before us by the counsel for the respondent-University that the reservation for the employees of the University and their wards is not sustainable in view of the judgments of this court referred to above. He also conceded that the University has in accordance with the judgments aforesaid taken a decision not to make such a reservation in the ensuing academic years. The counsel for the petitioners, has, in this admitted position urged that as the reservation in the present case is unsustainable, the petitioners are entitled to get admission against the seats which have been wrongly filled up from that category, if necessary by quashing the selection of those admitted. It has been urged that the very creation of the additional 15 seats is indicative of the fact that there was a fair capacity available with the Department of Laws to accommodate these seats and the University could not be allowed to take advantage of its own wrong by asserting that as the seats had been created for a particular category, they should be deemed to lapse on account of the reservation having been found to be improper. We find merit in this argument. We are of the view that it would be unjust and unfair to accept the stand of the University and hold that the petitioners, though successful, must yet get no relief from this court on a hyper-technical argument. We are of the view that the University had created the additional 15 seats keeping in view its resources and as such it cannot be said that on the striking down of the reservation, the said seats must also be deemed to lapse. The challenge, it is to be noted, is to the reservation for the employees of the University and their wards and not to the creation of the additional seats. The University cannot be allowed to act like a sullen and graceless litigant, who having lost, must yet endeavour to deny the fruits of victory to the parties succeeding.

(6) It has been urged by the counsel for the petitioners on the second point referred to the Division Bench that the benefit which

has to flow from the order of this Court must be confined to only such persons who have come to court to vindicate their rights. Reliance for this proposition has been placed on *Miss Neelima Shangla* v. *State of Haryana* (5) and *Paramjit Singh* v. *Guru Nanak Dev University and others* (6). In *Neelima Shangla's case* (supra) which was followed in *Paramjit Singh's case* (Supra), this is what the Supreme Court had to say :—

> "But having regard to the facts that most of the others have not chosen to question the selection and the circumstances that two years have elapsed we do not propse to make any such general order as that would completely upset the subsequent selection and create confusion and multiplicity of problems. The cases of any other candidate who may have already filed a writ petition in this court or the High Court will be disposed of in the light of this judgment. Those who have not so far chosen to question the selection will not be allowed to do so in the future because of their laches."

It will be seen from the paragraph quoted above that these observations were made with reference to an appointment to a civil service where a delay of two years between the selection and the order of the Supreme Court was held to be fatal with respect to those persons who had not come to court. We are of the view that in the case of admission to an educational institution, the rule would be far more rigid—the duration of the courses being limited—and as such the affected persons must come to court immediately after the selection that has been impugned, failing which the court would be interfere.

(7) Mr. Ashok Aggarwal, learned counsel for the respondents-University, has, in reply, made two points. Relying on *Chandigarh Administration* v. *Manpreet Singh* (7), he has urged that once the reservation is held to be bad, the seats which are thereby thrown open must be given to candidates according to merit whether they have come to court or not. He has also urged that as a matter of fact, a number of civil suits have also been filed in which the relief that has been sought in these writ petitions has been claimed and as such the rights of the plaintiffs in these suits cannot be ignored. We have examined these arguments in the light of facts and circumstance

(5) A.I.R. 1987 S.C. 169.
(6) 1989 (2) C.L.J. 383.
(7) 1991 (4) J.T. 436.

of the case. The first argument of Shri Aggarwal is not supported by the judgments he has cited and as such is of no avail to him. In that case the provisional admission had been granted by the High Court before the High Court decided the matter in favour of the petitioners. The Supreme Court while allowing the appeal directed that admission of those left out on the basis of merit. It will be noticed however that in the case before us, the successful challenge has been made by the petitioners to the very reservation itself and they alone must get the benefit. Moreover, the Supreme Court did not as a matter of law lay down what Mr. Aggarwal wants us to hold We are, however, of the opinion that the plaintiffs in the civil suits and the writ petitions before us having come to court are entitled to be considered as one category and as such must succeed.

(8) In view of what has been recorded above, these writ petitions are allowed. The reservation of seats for the employees of the University and their wards is held to be bad but keeping in view the facts and circumstances of the case the admission given to the private respondents is not disturbed. It is also directed that the writ petitioners, as also the plaintiffs in the civil suits, will be given admission in the present academic year and if the rules permit will be allowed to take the examination. The entire exercise will be completed within a period of two weeks after a copy of this order is received by the respondents. The costs of the writ petitions are assessed at Rs. 1,000 each to be recovered from Respondent No. 1 and 2 only. Copy of the judgment be given to the petitioners Dasti.

S.C.K.

Before Hon'ble V. K. Bali and A. L. Bahri, JJ.

S. R. BUILDERS LIMITED AND ANOTHER,—*Petitioners.*

versus

CHANDIGARH ADMINISTRATION AND OTHERS,—*Respondents.*

Civil Writ Petition No. 11280 of 1991.

February 12, 1992.

Constitution of India. 1950—*Art. 226 and 227—Mandamus—Punjab Municipal Act (III of* 1911)—*Ss. 231 to 240—(Chapter VII)—Petitioner seeking* mandamus *to direct respondents to handover*