

Archana Saxena v. Maharshi Dayanand University and Others
(M. M. Punchhi, J.)

(10) Consequently, I allow this writ petition and declare that the petitioner was illegally denied appointment to the 6th post out of 41 posts of A.D.As Grade II, which ought to have been reserved for ex-servicemen. I further declare that the appointment of respondent No. 3 against the 4th post reserved for ex-serviceman is illegal and *ultra vires* the provisions of rule 4 of the Rules. Respondents Nos. 1 and 2 are directed to appoint the petitioner to the Service as A.D.A. Grade II within two months from today. He shall, however, be not entitled to any emoluments from the date the other selected candidates were appointed till the date of his appointment in pursuance of this order, but it is made clear that the year of appointment of the petitioner shall be treated to be the year 1985.

(11) Before parting with this judgment, I further make it clear that in case the candidate who stood at No. 6 in the merit list, when offered appointment does not respond to the same, respondent No. 3 being son of an ex-serviceman may be retained in service. This would avoid hardship to him which results from this judgment.

(12) The petitioner shall be entitled to recover costs from respondents Nos. 1 and 2 which are assessed at Rs. 500.

R.N.R.

Before M. M. Punchhi and Amarjeet Chaudhary, JJ.

ARCHANA SAXENA,—Petitioner.

versus

MAHARSHI DAYANAND UNIVERSITY AND OTHERS,
—Respondents.

Civil Writ Petition No. 6663 of 1988

August 22, 1988.

Constitution of India, 1950—Art. 226—Writ jurisdiction—Admission in M.Phil course—Institutional preference—University providing 5 per cent weightage on total marks allotted—Weightage of 5 per cent on obtained percentage in another course of the University—Whether the court can interfere in writ jurisdiction.

Held, that it is obvious that weightages are given by the University to its students to further institutional preference—a phenomenon which has come to stay. Yet the principle of fairness cannot be overlooked despite the element of competition existing in determining the added weightage. Both the contended principles, as it appears to us, are equally sound. There is something to say in favour of weightage on the obtained percentage and equally there is something to be said in favour of the principle of percentage on total marks. If out of the two sound principles the University in its view has specifically chosen to opt for one (in its own way sounder) we see no room to interfere in the matter, all the more under Article 226 of the Constitution of India, 1950.

(Para 4)

Petition under Articles 226/227 of the Constitution of India praying that a writ in the nature of Certiorari thereby declaring the provisions of contained in Clauses 5.1(c) and 3(b) ibid thereby providing reservation/weightage of marks to the wards of the University Employees and a writ in the nature of Mandamus thereby ordaining Respondents No. 1 and 2 to make selection of the candidates for being admitted in M.Phil Course on the strength of their merit, which may be determined on the basis of marks obtained by them in Master's degree examination and any other writ, order or direction deemed fit and proper in the circumstance of the case may very kindly be issued and costs of this writ petition may also be awarded to the petitioner.

It is further prayed that pending final disposal of this writ petition, holding of an interview of the candidates fixed for 11th August, 1988 may very kindly be ordered to be stayed.

It is still further prayed that issuing and serving of notices of stay/motion on the respondents and filing of originals/certified copies of the documents marked as Annexures P/1 to P/4 may very kindly be ordered to be dispensed with.

R. P. Bali, Advocate, for the Petitioner.

J. L. Gupta, Senior Advocate with Jaswant Singh, Advocate, for Respondents No. 1 & 2.

JUDGMENT

M. M. Punchhi, J. (oral)

(1) The petitioner was a student of the Maharshi Dayanand University, Rohtak. She applied for admission in the M.Phil Course floated by the said University for the academic year 1988-89. Initially, she rubbed shoulders with respondent No. 3 claiming that

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she had a better right for admission in the said Course. Respondent No. 3 had sought admission on strength of being a ward of a University employee. That status gets weightage of 5 per cent. A candidate who has passed the qualifying examination from the said University also gets a weightage of 5 per cent. Respondent No. 3 on the basis of these two weightages was being preferred over the petitioner. But as the return of the respondent-University goes, respondent No. 3 has not been given admission. So, the dispute regarding admission of respondent No. 3 is purely academic and we drop it at that.

(2) In the return, however, it has been stated that one Kapoor Singh is being admitted on strength of his being a Sportsman. Being a Sportsman also, one fetches weightage of 5 per cent. The attack is thus transferred on Kapoor Singh on the same premises and now the dispute is what is the principle of computation of percentage.

(3) According to Mr. R. P. Bali, learned counsel for the petitioner, 5 per cent weightage is to be given on the obtained percentage of marks in the qualifying examination. But according to Mr. J. L. Gupta, learned counsel for the University-respondent, 5 per cent marks are to be given on the total marks allotted in the qualifying examination. Mr. Bali supports his argument on the parallel available in the Diploma in Pharmacy Course in Medical College, Rohtak, affiliated to the M. D. University. Further, he says that giving weightage on the obtained percentage was sound as compared to the giving of 5 per cent weightage on the total marks.

(4) It is obvious that weightages are given by the University to its students to further institutional preference—a phenomenon which has come to stay. Yet the principle of fairness cannot be overlooked despite the element of competition existing in determining the added weightage. Both the contended principles, as it appears to us, are equally sound. There is something to say in favour of weightage on the obtained percentage and equally there is something to be said in favour of the principle of percentage on total marks. If out of the two sound principles the University in its view has specifically chosen to opt for one (in its own way sounder) we see no room to interfere in the matter, all the more under Article 226 of the Constitution. Inevitably, we have to reject the contention of the petitioner despite the illustration given of following the other principle in a college affiliated to the University.

(5) Lastly, it was contended by Mr. Bali that 10 per cent reservation for the teachers of the Colleges affiliated to the University in Haryana was bad. We are not called upon on the present set of facts to determine that question academically.

(6) For the foregoing reasons, this petition fails and is hereby dismissed. There shall be no order as to costs.

R.N.R.

Before M. M. Punchhi and Ujagar Singh, JJ.

MANU BHANDARI,—Petitioner.

versus

PANJAB UNIVERSITY,—Respondent.

Civil Writ Petition No. 6460 of 1988

September 6, 1988.

Constitution of India, 1950—Art. 14—Admission to LL.B. course—10 per cent weightage to candidates graduating from same University—Institutional preference—Such weightage—Whether can be given.

Held, that varied methods can be devised by a particular institution to preferentially cater to the needs of the students living in that area coming out from the same University or the Institution. This precisely has been done in the instant case. The measure of grant of 10 per cent weightage in such circumstances by the Punjab University is an instance of institutional preference and yet all the seats have remained open to everyone. It does not lie in the mouth of the petitioner now to suggest that there was some reservation, for had there been any, he would not have been considered at all. Hence, it has to be held that such weightage on the basis of institutional preference can be validly given.

(Para 3).

Petition under Articles 226 of the Constitution of India praying that:—

- (a) *that a writ of Mandamus may be issued directing the respondent to admit the petitioner in LL.B. First Year morning Course in the Panjab University and the respondent*