

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 5TH DAY OF JUNE 2015/15TH JYAISHTA, 1937

W.P.(C).No.8817 of 2015 (B)

PETITIONER(S):-

DR.PRASANTH. V.K., AGED 38 YEARS, S/O.VIJAYAN,
'AMMU VAIDEHI', MOSQUE LANE 110,
KESAVADASAPURAM, PATTOM P.O., THIRUVANANTHAPURAM-695004

BY ADVS.SRI.N.N.SUGUNAPALAN (SENIOR ADVOCATE)
SRI.S.SUJIN.

RESPONDENT(S):-

1. COMMISSIONER OF ENTRANCE EXAMINATIONS,
FOR ADMISSION TO POST GRADUATE MEDICAL COURSES, 2015,
HOUSING BORAD BUILDINGS, SANTHI NAGAR,
THIRUVANANTHAPURAM-695001
2. DIRECTOR OF MEDICAL EDUCATION,
DIRECTORATE OF MEDICAL EDUCATION,
THIRUVANANTHAPURAM-695011.
3. SECRETARY TO GOVERNMENT,
HEALTH & FAMILY WELFARE DEPARTMENT,
GOVERNMENT OF KERALA, THIRUVANANTHAPURAM-695001.
4. STATE OF KERALA.
REPRESENTED BY CHIEF SECRETARY, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695001

R1 TO R4 BY GOVERNMENT PLEADER SRI.ROSHEN D.ALEXANDER.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
05-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS:-

- EXT.P1:- TRUE COPY OF THE PROSPECTUS FOR ADMISSION TO MEDICAL POST GRADUATE DEGREE/DIPLOMA COURSES 2015 ISSUED BY THE GOVERNMENT.
- EXT.P2:- TRUE COPY OF THE CERTIFICATE ISSUED BY THE OFFICE OF THE ACCOUNTANT GENERAL (A & A), KERALA, THIRUVANANTHAPURAM, DTD 30/12/2014.
- EXT.P3:- TRUE COPY OF THE RELEVANT PAGES OF NOTIFICATION DTD 20/12/2014 ISSUED BY THE 1ST RESPONDENT.
- EXT.P4:- TRUE COPY OF THE LIST OF THE CANDIDATES UNDER THE SERVICE QUOTA.
- EXT.P5:- TRUE COPY OF THE APPEAL DTD 9/3/2015 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.
- EXT.P6:- TRUE COPY OF HTE CERTIFICATE DTD 16/3/2015 ISSUED BY THE VILLAGE OFFICER, ULLOOR.

RESPONDENT(S)' EXHIBITS:-

NIL.

Vku/-

[true copy]

K. Vinod Chandran, J

W.P.(C).No.8817 of 2015-B

Dated this the 05th day of June, 2015

JUDGMENT

The petitioner challenges the non-consideration of the petitioner as a Socially and Educationally Backward Class [for brevity “SEBC”] candidate in the entrance examination for post-graduate medical courses [for brevity “PG Medical course”] conducted by the State for the academic year 2015-16. The petitioner is an in-service candidate and had made an application for the entrance examination as an in-service candidate and allegedly as a SEBC candidate also. The learned counsel for the petitioner contends that the petitioner had produced the certificates claiming the benefit as an in-service candidate; as also a SEBC candidate. The petitioner was very much aware that he would be entitled to be considered only under one category, since the benefit to each of these categories was a relaxation in the minimum requirement of marks by 10%.

2. The relaxation to the in-service candidates was interfered with by the Hon'ble Supreme Court by judgment dated 12.01.2015 in C.A.Nos.297 and 298 of 2015. In such circumstance, noticing the fact that sufficient number of in-service candidates would not be available for allotment, the Government took away the negative marking system, by a Government Order dated 03.02.2015. Hence, the candidates were aware of the fact that there would be no relaxation of minimum requirement for in-service candidates.

3. The petitioner contends that, he was made aware of the fact that he was considered as a general candidate only at the time of publication of the final results, since he was ranked under the general category of in-service candidates. Immediately on the same, he had filed a complaint before the Commissioner for Entrance Examinations as per Exhibit P5 dated 09.03.2015, which has not been considered till date. The petitioner also admits that the certificate for claiming SEBC benefit produced by him along with the application was not in the format provided for in the prospectus, since the Village Officer had refused to issue it in the said format. That was not a mistake committed by the

petitioner, is the specific argument advanced.

4. The certificate produced by the petitioner along with the application though is not available in the records, the petitioner asserts that it is similar to Exhibit P6, which the petitioner had obtained later and produced along with the complaint dated 09.03.2015, produced at Exhibit P5. The petitioner contends that he ought to have been considered by the 1st respondent under the category of "SEBC candidate" and in that event, he would have crossed the threshold eligibility, since he has obtained 44% marks in the entrance examination. Admittedly the minimum requirement for general candidates was 50% and for SEBC candidates it was 40% with relaxation of 10%. The petitioner also contends that one another candidate belonging to the same community of the petitioner, who had less marks, is shown as qualified.

5. Essentially it is to be noticed that despite a contention raised that the Village Officer has committed the mistake, the petitioner being aware of such mistake, ought to have taken legal proceedings against the certificate issued; at the appropriate time. The applications though were filed much

earlier and that the petitioner was made aware of the relaxation to in-service candidates being taken away by the Government Order dated 03.02.2015. The petitioner even then did nothing to get a proper certificate.

6. It is also submitted by the learned Government Pleader that the eligibility of each candidate appears in the website on the applications being processed and the petitioner cannot contend that the petitioner was not aware of his being considered under the general category alone. The petitioner, however, would refute such contention and rely on the decision in ***Aebrin K.Paul v. State of Kerala and Others* [2013 (2) KHC 361]** to contend that a Division Bench of this Court has held that a candidate is not expected to go to the website of the Commissioner for Entrance Examinations periodically. This Court is not convinced that the afore-cited decision has any application to the case of the petitioner. That was a case where the Commissioner for Entrance Examinations had issued a prospectus, which contained a condition that any modification would be uploaded in the website; directing the candidates to verify the website, to know of such modifications. The Division

Bench held that a candidate cannot be expected to visit the website regularly to know of any additional requirements.

7. In the present case, there is no question of any additional requirement being mandated by the 1st respondent. Having applied under the in-service quota as also allegedly under the SEBC quota, the applicant ought to have ensured that his application was categorised as one coming under SEBC quota, especially when the benefit to an in-service candidate was taken away. The learned Government Pleader submits that the status of each candidate is uploaded and it was incumbent upon the petitioner to have verified of his categorisation at least on the relaxation available to in-service candidates having been taken away. At least at that point of time, the petitioner could have taken up the issue of the wrong format in which the certificate was issued, before the higher authorities or before this Court. The petitioner slept over the issue and filed a representation dated 09.03.2015, as evidenced at Exhibit P5, before the 1st respondent and then approached this Court with the above writ petition.

8. When the matter is taken up for hearing, the entire allotment is said to be over. The Health Service Quota, in which the petitioner is borne, would have been either filled up, or conceded to another service and if not even then filled up, allotted to the General Quota. The contention is that if the petitioner had approached this Court earlier, the petitioner's allotment could have been atleast, considered. In any event, it is evident that the petitioner had not applied under the SEBC category with the certificate as required in the prospectus.

9. There is also a further dispute raised by the learned Government Pleader as to the petitioner's eligibility for being considered under the SEBC quota for reason of clauses 6-5.3 and 6-5.4 in the prospectus. It is the submission of the learned Government Pleader that the petitioner's income is also to be considered and in any event, he would not have been eligible to be considered under the SEBC category. The learned counsel for the petitioner, based on a Government Order, would contend that considering the reservations under the SEBC and the Creamy Layer; the income of the candidate is not to be reckoned. It is also alternatively contended that unless the

petitioner comes under the Creamy Layer, no certificate can be issued by the Village Officer; which contentions are mutually destructive.

10. As has been rightly pointed out by the learned Government Pleader, the question as to whether the income of the candidate has to be taken into consideration as per the afore-mentioned clause of the prospectus was considered by a learned Single Judge in W.P.(C).No.7501 of 2014 dated 13.06.2014. Therein, a challenge was raised by certain members of the SEBC communities, challenging the said prescription which challenge was negated by the aforesaid judgment. The contention taken by the petitioners therein, who appealed against the said judgment with respect to the notification G.O.(P) No.81/2009/SC/ST dated 26.09.2009 was specifically considered by the Division Bench in W.A.No.927 of 2014 and connected matters, in the judgment dated 04.11.2014. Paragraph 18 is extracted hereunder:

“Appellants in WA Nos.927 and 928/14 contended that they belong to Araya/Dheevara community. According to the learned counsel, in view of the provisions contained in **Ext.P8 G.O.(P) No.81/09/SCSTDD dated 26th of**

September, 2009, the concept of creamy layer is inapplicable to candidates belonging to Araya/Dheevera communities. Therefore, according to him, even if the appellants' family annual income is above ₹6 lakhs, since the concept of creamy layer itself is inapplicable to their community, they were entitled to have been granted admission treating them as candidates belonging to SEBC category. **This contention also cannot be accepted for the simple reason that a reading of Ext.P8 Government Order itself would show that the said Government Order is inapplicable only for the purposes of employment in public service and not for admission to educational institutions”.**

11. It is pertinent that the certificate produced by the petitioner along with the application and an identical one produced as Exhibit P6, is one issued under the said Government Order and the same is not applicable to admission to the PG Medical courses, as has been held by the Division Bench.

12. In such circumstance, the petitioner's contention that the issuance of the certificate in the manner it was issued by the village Officer was a mistake cannot be countenanced. The petitioner had applied for the examination allegedly under the

SEBC quota with a certificate which was not in the form that was prescribed in the prospectus. The petitioner never challenged the issuance of such a certificate in a wrong format. The certificate, in any event, is not one entitling the petitioner to be treated as a SEBC candidate under Exhibit P1 prospectus in the teeth of clause 6.5.3. Further, though the petitioner refers to another SEBC candidate with less marks than the petitioner; in the writ petition none of the candidates who were ranked in the SEBC list are impleaded herein. Hence, the writ petition is bad for non-impleadment of necessary parties, too.

For all the above reasons, the writ petition would stand dismissed.

Sd/-
K.Vinod Chandran
Judge.

vku/-

[true copy]