

In the High Court of Judicature at Madras

Reserved on: 25.09.2015

Delivered on : 01.10.2015

Coram:

The Honourable Mr. Justice K.K. SASIDHARAN

AND

The Honourable Mr. Justice G. CHOCKALINGAM

W.A.No.1438 of 2015

& M.P.No.1 of 2015

1. The Secretary to Government
Education Department
Puducherry.
2. The Chairman
Centralized Admission Committee (CENTAC)
Puducherry Engineering College Campus
Puducherry.
3. The Convenor
Centralized Admission Committee
Puducherry Union Territory. ..Appellants/Respondents

vs.

Minor R. Nandhini Shree
rep. by her mother and next friend
R. Lakshmi ..Respondent/Petitioners

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 04 August 2015 in W.P.No.17947 of 2015 on the file of this Court filed under Article 226 of the constitution of India praying to issue a writ of Mandamus directing respondents 2 and 3 to accept the Petitioner's candidature for admission in professional course through CENTAL upon creating the petitioner's case as fulfilled under clause 2.5(c) of the Information bulletin CENTAC.

For Appellants	: Mrs.N. Mala Additional Government Pleader
For Respondent	: Mr.R. Krishanmurthy Senior Counsel for Mr. Swarnam Rajagopalan

JUDGMENT

Introductory:

When the prospectus contain a mandatory provision that in order to apply for admission to professional course under Puducherry Domicile Category, the employee under Central/State/Defence/paramilitary forces or public sector undertaking wholly or substantially run by the Central Government or Puducherry Union Territory Administration, should have been posted and serving in the Union Territory for at least a minimum period of one year prior to the last date of submission of applications, whether it is open to the Courts to direct the Government to consider the cases of those who have not completed the minimum period of service in the Union Territory, is the core issue that arises for adjudication in this intra-court appeal at the instance of the Government of Union Territory of Puducherry.

The Facts:

2. The father of the minor respondent was posted as Additional District Munsif-cum-Judicial Magistrate at Puducherry. He took charge on 26 June 2014. The minor respondent on the strength of clause 2.5 (c) of the Prospectus issued by the Centralised Admission Committee (hereinafter referred to as "CENTAC"), Puducherry applied for admission to the MBBS course for the academic session 2015-16. Since the minor respondent was short by 25 days to satisfy the eligibility criteria, representation was submitted by her father to grant relaxation. Thereafter writ petition in W.P.No.17947 of 2015 was filed to consider the application under the Puducherry Domicile Category. The writ petition was allowed by the learned Single Judge. Feeling aggrieved, the appellants are before us.

Submissions:

3. The learned Additional Government Pleader submitted that the father of the minor respondent joined duty only on 26 June 2014. Though he satisfied the term "posting" there was no compliance of the other condition relating to "serving for at least one year". According to the learned Additional Government Pleader, posting alone is not the criteria. It should be coupled with the service for the required period. Since there is a shortage of 25 days to satisfy the criteria the application of the minor respondent was not considered. It was contended that without considering the mandatory condition of one year minimum service in the Union Territory, the learned Single Judge issued a Mandamus to give admission.

4. The learned Senior Counsel justified the order passed by the learned Judge and submitted that the Judicial Officer was not at fault for the delay in issuing orders by the Government of Puducherry to accept the deputation. According to the learned Senior Counsel, immediately on the next day of issuing the notification by the High Court posting him at Karaikal on deputation, the Officer took charge.

It was his further contention that in a case of this nature, the word "shall" must be interpreted as "may" and admission should be given not withstanding the failure to satisfy the minimum period. The learned Senior Counsel further submitted that the learned Single Judge has passed an equitable order on the facts and circumstances of the case and the same is not liable to be interfered.

Analysis:

5. The minor respondent is the daughter of a Judicial Officer of Tamil Nadu Judicial Service. The Registrar General vide D.O. letter dated 14 May 2014 called upon the Principal Secretary, Home (Courts-I) Department, Government of Tamil Nadu to obtain the orders of the Government of Tamil Nadu for the purpose of deputing Thiru G. Radhakrishnan, Civil Judge of Tamil Nadu cadre to the Puducherry Judicial Service. Similar D.O. Letter dated 14 May 2014 was sent to the Secretary to Government, Law Department, Puducherry to obtain the orders of the Government of Puducherry for appointing the Judicial Officer as Additional District Munsif-cum-Judicial Magistrate No.II at Karaikal on deputation.

6. The Government of Tamil Nadu as per order in G.O.(D).No.388 dated 28 May 2014 issued its concurrence for deputation. The Government of Puducherry on its part issued an order in G.O.Ms.No.16/2014-LD, Law Department dated 2 June 2014 conveying approval for such deputation. Thereafter the Registrar General issued a notification bearing No.93 of 2014 dated 23 June 2014 transferring and posting Thiru G. Radhakrishnan as Additional District Munsif-cum-Judicial Magistrate No.II at Karaikal. The Judicial Officer took charge on 26 June 2014.

7. The minor respondent submitted application for admission to the MBBS course pursuant to the admission notification issued by the CENTAC constituted by the Government of Puducherry. She wanted her application to be considered under the category of children of Central/State Government employees. In order to consider her application under the said category, she produced a certificate dated 19 May 2015 issued to her father by the District Judge at Karaikal certifying that Thiru G. Radhakrishnan is presently officiating as Additional District Munsif-cum-Judicial Magistrate No.II at Karaikal by transfer on deputation basis in Puducherry Judicial Service since 26 June 2014.

8. Since the father of the minor respondent had not served in Puducherry the minimum period of one year as prescribed in clause 2.5 (c) of the Prospectus, the Judicial Officer submitted a representation to the Lieutenant Governor, Puducherry and Chief Secretary, Government of Puducherry on 6 June 2015. The last paragraph of the representation reads thus:

"6. I humbly request your goodself to pass suitable orders by relaxing the period of 25 days

of fall short in service prescribed in Clause 2.5 (c) of Information Bulletin to meet the ends of Justice and consider my daughter's candidature pursuant to professional courses through CENTAC"

9. The prospectus does not contain any provision to relax the mandatory condition. The representation was therefore not considered favourably by the Government of Puducherry.

10. The minor respondent thereafter through her mother filed a writ petition in W.P.No.17947 of 2015 for issuing a writ of Mandamus to the appellants herein to accept her candidature for MBBS admission through CENTAC upon treating her case as fulfilled under clause 2.5 (c) of the Information Bulletin.

11. The learned Single Judge interpreted clause 2.5(c) of the Prospectus as one requiring posting only and not actual service. Paragraph 6 of the order reads thus:

"6. A reading of Clause 2.5(c) of the Information Bulletin would show that it primarily deals with posting. For posting, a person concerned will have to be served. Once a person is posted, then he becomes an officer in that place. The period of actual serving becomes immaterial in that event. A procedural delay cannot be a ground to deny the benefit, which is sought to be given. Even, while serving, a person concerned may not work continuously without taking periodical leave and the entire period has to be taken cumulatively. It is not as if the petitioner's father has not served at all and in that case, the situation will be different. Considering the above, this Court is of the view that it is a fit case where the petitioner will have to be considered for a seat in MBBS course in any one of the private colleges through Central Admission Committee (CENTAC).

12. The learned Judge allowed the writ petition and a writ of Mandamus was issued to provide a Medical seat to the minor respondent.

13. The core question is whether the condition "posted and serving" under clause 2.5(c) would be one of posting alone or it should be coupled with actual service for a minimum period of one year.

14. Clause 2.5 of the prospectus deals with Domicile Criteria for Union Territory of Puducherry .

"2.5 A candidate is considered to belong to the UT of Puducherry, if he/she satisfies at least one of the following domicile criteria (Refer Annexure-III) for the Format of Certificates):

a) The candidates or whose parent (either mother or father or both) or Guardian (in the case of children who have lost both the parents) has been residing continuously in this Union Territory for at least five years immediately preceding the date of application.

b) Those who have passed SSLC/HSC or any other public examination and for that purpose had undergone academic studies continuously for five successive classes immediately preceding the qualifying examination (including the year of the qualifying examination) in recognized education institution(s) located in Puducherry Union Territory and having their residence in the Puducherry Union Territory for 5 years continuously during that period.

c) Children of Central/State Government Servants/Defense Personnel/ Central Paramilitary Forces/Employees of Public Sector Undertakings wholly or substantially run either by the Central Government or by the Puducherry UT Administration posted and serving in the Puducherry UT for at least a minimum period of one year prior to the last date of submission of application.

d) Children of Natives of UT of Puducherry who have declared any place in the UT of Puducherry as their home town (Father & Mother) and so certified by their respective Heads of Office. (Applicable only for Government employees).

Note: Nativity Certificate in the prescribed format has to be enclosed along with the admission application:

e) Children of Defense Personnel who were killed or disabled in action and children of Central Government Servants/Puducherry UT Government Servants/Defense Personnel/Employees of Public Sector undertaking as referred in category (c) who died while in service in the Puducherry UT.

f) French Nationals residing in the Puducherry UT and covered by the terms of the "Treaty of Cession" shall be treated on par with the candidates who produce the prescribed Puducherry UT residence certificate. Such French Nationals will not be required to produce

residence certificate instead they should produce a certificate of registration issued for this purpose from the French Consulate at Puducherry.

Note: Children of these French Nationals shall not be considered for admission under the quota of non-residents.

g) All the above certificates will be scrutinized first by a committee appointed by the Secretary (Revenue), before final merit list is prepared. Tahsildars of various Taluks and Revenue Officers will be the members of this Committee."

15. The domicile criteria clearly shows that five years residence is the mandatory requirement to consider a person as a resident of Puducherry for the purpose of making application under the Domicile category. Clause (c) is an exception. It provides that the officer must have been posted and serving in the Union Territory at least for a period of one year prior to the last date for submission of application. The provision is very clear that posting alone is not sufficient. He should have actually served for a period of one year. Since the word used is "serving" he should also be in service as on the date of making the application for admission.

16. In case the reasoning of the learned Judge is accepted, it would lead to a situation where even a person not serving in Puducherry though posted before one year, is entitled to get admission for his children as he would satisfy the eligibility criteria regarding posting.

17. The prospectus contain the policy of the Government in the matter of admission to the professional institutions. In case admission is secured under the domicile category, the student is entitled to full fee concession. The prescription that the Government servant must be serving in the Puducherry Union Territory at least a minimum period of one year clearly shows that the condition is mandatory. There is no power conferred on the authorities to relax the mandatory period.

18. Now let us take the case of the respondent to decide as to whether the Judicial Officer satisfied the eligibility criteria.

(a) The decision taken by the High Court to depute Thiru G.Radhakrishnan to the Puducherry Judicial Service as indicated in the D.O. Letter dated 14 May 2014 would not amount to posting. Since it is a case of deputation, both the lending as well as borrowing State must take a decision. The Government of Tamil Nadu took a decision agreeing to send the Judicial Officer on deputation to Puducherry Judicial Service and issued the Government Order in G.O. (D) No.338 on 28 May 2014. The Government of Puducherry through G.O.Ms.No.16 dated 2 June 2014 agreed to take the officer on

deputation. Thereafter the High Court issued a notification bearing No.93/2014 on 23 June 2014 transferring and posting Thiru G. Radhakrishnan at Karaikal. Therefore, for all practical purposes, the date of posting should be taken as 23 June 2014. Even if the date of posting is taken as a the crucial date to calculate the mandatory period of one year, still the minor respondent is short by 22 days.

(b) The Officer in this case joined duty only on 26 June 2014. His service in the Union Territory of Puducherry therefore would commence only from 26 June 2014. No other interpretation is possible in this case in view of the plain language used in clause 2.5 (c) of the Prospectus.

19. It is not as if the Judicial Officer is not aware of this position. The representation submitted by him requesting relaxation of the period of one year clearly shows that his subsequent claim to count the period from the date of posting was an after thought.

20. The terms and conditions of the prospectus are binding on candidates as well as the Government. The right to claim admission would arise only in case the candidate satisfies the eligibility criteria. There is no question of granting relaxation during midstream as it would violate the equality clause inasmuch as there would be many others similarly situated, who have not submitted applications on account of their failure to satisfy the eligibility criteria.

21. The learned Additional Government Pleader, Puducherry by producing a chart submitted that clause 2.5 (c) is often misused by getting transfer to Puducherry just one year prior to the admission and re-transfer to the Home State, after securing admission for their ward in Puducherry. According to the learned Additional Government Pleader, even during this academic year, a total number of 15 employees secured admission by making use of this provision. According to her Bank Officials and officers/men of paramilitary forces, would come to Puducherry by request transfer only for getting admission to their children in Medical College and would leave Puducherry on re-transfer, the moment admission is secured, as there is no such condition that they should continue to serve here for a particular period. It was contended that for others minimum period of five years residence in Puducherry is necessary to make them eligible to apply under Puducherry domicile category.

22. Sub-clause (a) of clause 2.5 provides that candidate or parent must have been residing in the Union Territory of Puducherry for at least five years preceding the date of admission to satisfy the eligibility criteria. Sub-clause (b) provides that those who have passed SSLC/HSC and undergone studies continuously in the Union Territory of Puducherry and having their residence in Union Territory of Puducherry for five years continuously during the said period are

also entitled to apply under Puducherry Domicile category. However, for those who are covered under sub-clause (c) of clause 2.5, only one year service alone is prescribed. The provision is silent as to whether they should actually reside in the Union Territory of Puducherry during the period of their one year service. Clause 2.5 (c) is therefore discriminatory in nature by providing that the natives or permanent residents of Puducherry must have five years continuous residence and others who are posted in Puducherry and serving must have only one year service and not even actual residence for the said period. This is a clear case of violation of equality clause as provided under Article 14 of the Constitution of India. The Government of Puducherry must therefore deliberate on this issue and take a decision as to whether a provision like clause 2.5 (c) is necessary.

23. Even according to the appellants, clause 2.5 (c) is misused by taking transfer to Puducherry just one year prior to the medical admission and by returning to the parent State after obtaining medical seat. This situation is the creation of the appellants only. Nothing prevented them from making a provision to extend the benefit to the Government/Public Sector employees, only in case they resided and served in the Union Territory of Puducherry for a period of five years like others. In any case, it is for the authorities to take a decision in the matter. We direct the Secretary to Government (Education), Puducherry to consider this issue and take a decision forthwith.
Conclusion:

24. The minor respondent is short by 25 days to satisfy the eligibility criteria. She is therefore not entitled to make an application for admission under Puducherry Domicile category. The learned Single Judge proceeded as if prescription of one year is only procedural in nature. The period prescribed vide clause 2.5 (c) is mandatory in nature, as the term used is "serving" and "atleast a minimum period of one year". We are therefore of the view that the impugned order passed by the learned Single Judge is liable to be set aside. The appellants are entitled to succeed. The order dated 4 August 2015 in W.P.No.17947 of 2015 is set aside.

25. In the upshot, we allow the intra court appeal. Consequently, the connected Mp is closed. No costs.

Sd/-
Asst.Registrar (CS III)

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Sub Asst. Registrar

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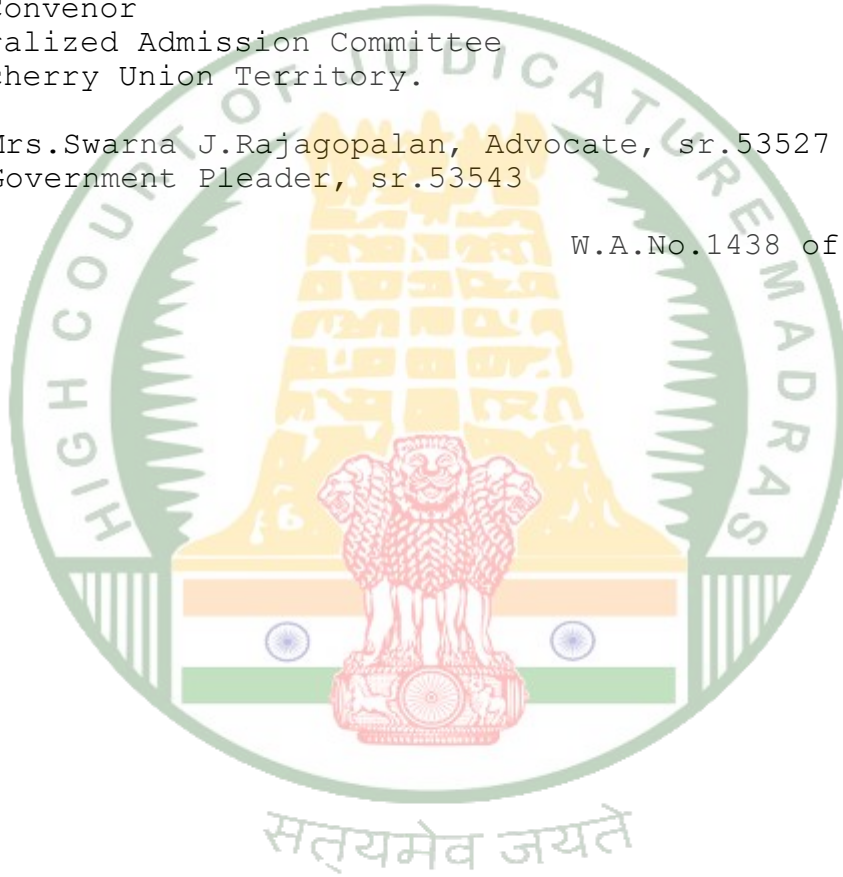
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+1 cc to Mrs.Swarna J.Rajagopalan, Advocate, sr.53527

+1 cc to Government Pleader, sr.53543

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