

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.06.2016
Delivered on : 24.06.2016

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.18820 of 2016

and WMP.No.16427 of 2016

J.Jayashree rep. by her Father and Natural Guardian
N.Jothigangadharan ... Petitioner

Vs.

1.The Coordinator (Admission),
The Government of Puducherry,
Centralized Admission Committee (CENTAC),
Pondicherry Engineering College Campus,
Puducherry-605 014.

2.The Secretary to Government,
Higher and Technical Education,
Secretariat, Puducherry. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondents to admit the petitioner on merits in any of the Professional Courses conducted by the CENTAC (Centralized Admission Committee) under the Domicile Category of UT of Puducherry without reference to Clause 2.5 (C) (i) and (ii) of the Information Bulletin -2016-2017 and to allow her to continue and complete the same.

For Petitioner : Mr.L.Chandrakumar

For Respondents: Mr.M.Govindaraj,
Government Pleader (Puducherry)
assisted by
Mrs.Reena Iswariya
Additional Govt. Pleader (Pondicherry)

O R D E R

The petitioner, being a minor, is represented by her father and natural guardian and he has sworn to the affidavit on behalf of his daughter/petitioner. It is stated in the affidavit filed in support of this petition that the father of the petitioner was appointed as Inspector of Central Excise during April 1994 and was promoted as Superintendent during the year 2013 and he continues to hold the said post as on date. Though the petitioner and her father belongs to Scheduled Caste community, they are being considered only under General Category, because as per the prevailing law, on the basis of origin and migrant, the Scheduled Caste will not be considered under Scheduled Caste category. The petitioner would further state that earlier position was that the Central Government employees who had put in service at least for a minimum period of one year, his ward/child is entitled for submitting application in respect of Centralized admission conducted by the first respondent.

2. The petitioner would further state that her father continued to discharge duties in the Union Territory of Puducherry between June 1999 and except for a short duration at Nagapattinam between 2012 and 2013, has been continuously discharging duties in the office of the Assistant Commissioner of Central Excise, Puducherry, Karaikal, Nagapattinam and at present, serving at Karaikal from 19.12.2013. The petitioner had undergone Higher Secondary Course at Yagappa Matric Hr. Seconday School, Thanjavur and secured 1091 marks out of 1200 marks and she sought admission to professional courses through Centralized Admission Committee (CENTAC) under the domicile of the Union Territory of Puducherry. However, to the shock and surprise of the petitioner, as per the Information Bulletin 2016-17 released by the first respondent, a new set of guidelines has been given with regard to domicile criteria for Union Territory of Puducherry and it is relevant to extract Clause 2.5 of the same:

"2.5. Domicile criteria for UT of Puducherry

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) Those 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 5 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) (i) Children whose parents are Central Government Servants, State Government Servants, Defence Personnel, Central Paramilitary Forces, Employees of Public Sector Undertakings wholly or substantially run either by the Central Government or by the Puducherry Union Territory administration, posted and serving in the Puducherry Union Territory for at least a minimum continuous period of three years immediately prior to the last date of submission of application.

(ii) Children of the above said employees should have studied in the Higher Secondary Course of two years in any of the schools in the U.T. Of Puducherry and should have also passed the Higher Secondary Examination from the same school [G.O.Ms.No.04, Puducherry, dated 09.02.2016 of the Chief Secretariat (Hr. & Tech. Edn.) Puducherry]."

3. It is the stand of the petitioner that she had undergone Higher Secondary Course outside the Union Territory of Puducherry and all of a sudden there is a change in criteria prescribing that Children whose parents are Central Government Servants serving in the Puducherry Union Territory for at least a minimum continuous period of three years immediately prior to the last date of submission of application, the children of the above employees should have studied in the Higher Secondary Course of two years in any of the schools in the Union Territory of Puducherry and should have also passed the Higher Secondary Examination from the same school in terms of G.O.Ms.No.04, Higher and Technical Education Department, Puducherry dated 09.02.2016 and thereby depriving the petitioner from participating in the Centralized admission process conducted by the first respondent and technically the said

condition is having retrospective effect and therefore, came forward to file this writ petition directing the first respondent to consider her application without taking into consideration Clause 2.5 (C) (i) and (ii) of the Information Bulletin 2016-17 released by the first respondent.

4. Mr.L.Chandrakumar, learned counsel appearing for the petitioner has drawn the attention of this Court to the materials placed before it and would submit that as per the Information Bulletin for the previous academic year 2015-16 released by the first respondent, the eligibility criteria is that the children of Central Government servants..... posted and serving in the Puducherry Union Territory for atleast a minimum period of one year immediately prior to the last date of submission of application and it has been altered and modified in the Information Bulletin for the academic year 2016-17 by increasing the continuous period of residence from one year to three years and an additional condition has also been put stating that the children of the above said employees should have studied Higher Secondary Course in any one of the schools in the Union Territory of Puducherry and should have also passed Higher Secondary Examination from the same school and thereby, depriving the wards of Central Government servants who served in the Union Territory of Puducherry and completed the studies outside the Union Territory of Puducherry from participating in the selection process conducted by the first respondent and thereby impliedly directing such kind of students to undergo Higher Secondary Course once again in any such of the schools located in the Union Territory of Puducherry and the said condition is in gross violation of Articles 14 and 21 of the Constitution of India and is not in consonance with the object sought to be achieved and it is also retrospective in nature and therefore, prays for appropriate orders.

5. Per contra, Mr.M.Govindaraj, learned Special Government Pleader assisted by Mrs.Reena Iswariya, learned Additional Government Pleader (Pondicherry) appearing for the respondents has drawn the attention of this Court to the counter affidavit of the respondents and would submit that the status of Migrant Scheduled Caste came up for consideration in W.A.No.1438 of 2015 wherein this Court while upholding the order passed by the learned Single Judge, after taking note of earlier Clause 2.5(c) and found that it is discriminatory in nature by providing that the natives of Puducherry must have continuous residence of 5 years and others must have only one year and not even actual residence for the said period and it is in violation of Article 14 of the Constitution of India and therefore, felt necessary to adapt Clause 2.5. The second respondent in compliance of the order, took a decision to pass G.O.Ms.No.04 dated 09.02.2016 and

it was also incorporated in Clause 2.5. of the Information Bulletin of the first respondent for the academic year 2015-2016. It is the further submission of the learned Additional Government Pleader that justification for incorporating the clause is that out of 85% of the seats available for the students of Puducherry, wards of the Central and State Government servants are taking considerable number of seats and the said tendency is also on the increase and the observations of this Court in the above cited order was an eye opener and accordingly, the second respondent took a decision to pass the said Government Order and it was also adopted by the first respondent. It is also contended by the learned Government Pleader that the petitioner is also categorized as Scheduled Caste community even in the State of Tamil Nadu also and nothing prevented her from applying for professional courses in the said State and therefore, pray for dismissal of this writ petition.

6. This Court paid its best attention to the rival submissions and also perused the materials placed before it.

7. In *Joshi DP v. State of Madhya Pradesh* [AIR 1955 SC 334], preferential treatment of residents of Madhya Bharat was upheld by the Hon'ble Supreme Court of India and in the said judgment, it was observed that the object of the classification underlying the impugned rule was clearly to help to some extent students who are residents of Madhya Bharat in the prosecution of their duties and it cannot be disputed that it is quite a legitimate and laudable objective for a State to encourage education within its borders and education is a State subject and one of the directive principles is that the State should make effective provisions for education within the limits of its economy.

8. In *Kumari Chitra Ghosh v. Union of India* [AIR 1970 SC 35], challenge was made to the rule of admission in and by which 25% of the seats were reserved for the residents of Delhi and it is relevant the observations made in the said judgment:

(1) The Central Government by virtue of bearing the financial burden could determine the eligibility criteria

(2) It was not possible to throw the admission open to students from all over the country.

(3) The Government could decide on the sources from which the admission must be made and this is a question of policy.

(4) If the sources were properly classified whether on territorial, geographical or other reasonable basis, the Courts should adopt a hands-off approach.

9. In *Pradeep Jain, Dr. v. Union of India* [AIR 1984 SC 1420], where reservation of 212 out of 262 open category seats for applicants to the MBBS Course from within the State was put to challenge and the said position was upheld. However, in the above said judgment, the Hon'ble Supreme Court of India had balanced the reservation for local residents with the right of outsiders and held cent percent reservation for 'sons of the soil' or cent percent reservation based on an institutional basis to be unconstitutional.

10. In the light of the above cited judgments, the policy of the Union Territory of Puducherry to provide reservation on the basis of residence, cannot be faulted with.

11. The respondents, in para 11 of the counter affidavit has furnished the following details of M.B.B.S. seats allotted to wards of Central/State Government Servants etc.,

Sl.No.	Academic Year	No. of candidates	Mode of getting
1	2013-2014	07	Based on Service Based Certificate Issued by Head of the Institution. (Upon completion of atleast one year service in Puducherry
2	2014-2015	11	
3	2015-2016	16	

As per the above said table, out of 85% of the seats available to students of Union Territory of Pondicherry, wards of Central/State Governments are taking considerable number of seats and tendency is also on the increase according to the respondents. The respondents, taking advantage of the observations made in the judgment dated 01.10.2015 made in W.A.No.1438 of 2015 reported in (2015) 6 CTC 418 [The Pondicherry Scheduled Caste People's Welfare Association and Others v. Union of India and Others], thought fit to pass an order in the form of G.O.Ms.No.04 dated 09.02.2016 and it is also adopted by the first respondent.

12. Admittedly, the petitioner did not challenge either the said Government order or Clause 2.5 of the Information Bulletin of the first respondent for the academic year for centralized admission. The petitioner, even at the time of applying to Centralized Admission conducted by the first respondent is put on notice and as rightly contended by the learned Government Pleader, the petitioner, being a candidate belonging to Scheduled Caste community in the State of Tamil Nadu, is entitled to participate in the selection process for admission to professional courses in that State itself under the said category and therefore, she cannot say that she is put to prejudice and further that incorporation of the said Clause cannot also said to be retrospective.

13. In the light of the reasons assigned above, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

- 1.The Coordinator (Admission),
The Government of Puducherry,
Centralized Admission Committee (CENTAC),
Pondicherry Engineering College Campus,
Puducherry-605 014.
- 2.The Secretary to Government,
Higher and Technical Education,
Secretariat, Puducherry.

+1cc to M/S.L.Chandrakumar, Advocate Sr.35366
+1cc to the Government Pleader Sr.35641

W.P.No.18820 of 2016

Mp[co]
srg 14/07/2016