

THE HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.36287 of 2016

ORDER:

Heard Mr. Gajanand Chakravarthi for petitioner and Mr. Ch. Jagannatha Rao for respondents.

2. Petitioner prays for Mandamus declaring the action of the respondents in not considering the candidature of petitioner for admission into M.P.Ed course under the quota earmarked for Children of Armed Personnel (CAP) as illegal, arbitrary, unjust and consequently, direct respondents to grant admission to petitioner under Serving Armed Personnel quota.

3. The circumstances relevant for disposal of the writ petition are in a very narrow compass. The petitioner is daughter of one Penumur Raddyappa serving in 21 Field Ammunition Depot located in Counter Insurgency/OP – Rakshah Area in Jammu and Kashmir. The petitioner completed Bachelor of Physical Education in the year 2015 and is eligible to seek admission into M.P.Ed course. The respondents issued OUCET notification on 07.05.2016 for admission into M.P.Ed course in the colleges under the jurisdiction of first respondent. On 03.09.2016, the written test was conducted and the petitioner secured 119th rank. The petitioner expected consideration of her case under CAP quota and admission into M.P.Ed course. Since the petitioner has not been considered for admission, the present writ petition is filed by complaining that under CAP, by ignoring the better rank of petitioner, the respondents have proceeded with admission to M.P.Ed under CAP.

4. At request of respondents, time was granted on 26.10.2016 till date for filing counter. Respondents filed counter affidavit.

5. This Court considers briefly the reasons for not giving admission to petitioner. The first respondent admits that the petitioner applied under CAP along with one C. Venkatesh with rank No.325. On 04.10.2016, counseling was held for M.P.Ed course and in respect of NCC, NSS, Sports and CAP counseling was held on 19.10.2016. Two candidates were selected under the reservation of NCC and CAP. Therefore, by the time the writ petition is filed, the admissions are over. The first respondent relies upon G.O.Ms.No.20 Higher Education (TE/A2) Department dated 08.07.2015 and contends that along with OUCET guidelines the first respondent is bound by the Government orders issued from time to time and according to G.O.Ms.No.20 dated 08.07.2015, the candidate to be eligible for consideration under CAP must qualify the following conditions:

“(2) Children of Armed Forces (CAP) – 2% (two percent) for the children of armed personnel i.e., Ex-Servicemen, Defence Personnel including the Children of Border Security Force and Central Reserve Police Force who are Domiciled in Telangana based on the Permanent address / Home town declared by them while joining the service and as recorded in their Service Register”.
(emphasis added)

6. Admittedly, since the petitioner is not a native of State of Telangana and does not satisfy the requirement of domicile, the petitioner is not preferred and the first respondent admitted one C. Venkatesh, who has secured 325th rank. Therefore, it is submitted no illegality or irregularity in refusing admission to petitioner.

7. I have perused the material available on record and taken note of submissions of the learned counsel for the parties. Now the short point for consideration is whether by reference to G.O.Ms.No.20 dated 08.07.2015, the denial of admission to petitioner for M.P.Ed course in OUCET-2016 under CAP is tenable or not.

8. It is not the case of the first respondent that the petitioner does not come under CAP. The reason is that the petitioner does not satisfy the requirement as set out in G.O.Ms.No.20 dated 08.07.2015, the admission is denied. To appreciate the infirmity in approach, the dates chronologically are restated to bring home the point. On 07.05.2016, OUCET-2016 notification is issued. On 03.09.2016, the entrance test was conducted. In the OUCET notification, issued by respondents, annexure III provides for filling up seats for widow/children of armed personnel and reads thus:

ANNEXURE-III

SEATS FOR WIDOW/ CHILDREN OF ARMED PERSONNEL

Seats in Post Graduation courses shall be reserved for the Widows / children of Ex-servicemen and serving defence personnel of the three wings of the Armed Forces i.e., Indian Army, Navy and Air Force who are domiciles of TS/AP at the time of enrolment into the Armed Forces. Such Defence services personnel should have been born and studied upto 12th standard in TS/AP prior to joining Armed Forces and should have settled down in TS/AP on completion of pensionable service with the Armed Forces. The requirement of studies for four years in TS/AP for widow/children of servicemen/Ex-servicemen is not mandatory due to operational requirements; however, such widows/children of servicemen/Ex-servicemen of TS/AP should have qualified in the entrance examination. The four priorities are mentioned below:

ORDER OF PREFERENCE

- a) Priority I – Widow / Children of Armed Forces Personnel killed in action.
- b) Priority II – Widow/Children of Armed Forces Personnel disabled in action and invalidated out of service on medical grounds and in receipt of disability pension.
- c) Priority III – Widow/Children of Serving Armed Forces Personnel/Ex-Servicemen who are in receipt of Gallantry award, the order of merit for consideration of the Gallantry awards as given below:

1) Param Vir Chakra, 2) Ashoka Chakra, 3) Sarvotham Yudh Seva Medal, 4) Mahavir Chakra, 5) Kirti Chakra, 6) Uttam Yudh Seva Medal, 7) Vir Chakra, 8) Shourya Chakra, 9) Yudh Seva Medal, 10) Sena/Nao Sena/Vayu Sena Medal (Gallantry), 11) Mention in Despatches.

Note: Sena Medal/Nao Sena Medal/Vayu Sena Medal (Devotion to duty) is not a gallantry award hence not eligible under Priority III

- d) Priority IV: Widow/Children of all other categories of eligible Ex-servicemen and serving personnel.

9. A bare reading of the above annexure clearly shows that the requirement now followed by respondents is not a condition for consideration for filling seats under CAP pursuant to OUCET. G.O.Ms.No.20 dated 08.07.2015 shows that it is confined to MBA/MCA professional courses. The rules of subject entrance test were accordingly not amended. If the amendment referred to in G.O.Ms.No.20 dated 08.07.2015 is applicable to OUCET as well, the notification issued on 07.05.2016 ought to contain the amended position as well. The respondents are under obligation to take up admission as per the notified rules and guidelines set out in the notification but not by reference to G.O.Ms.No.20 dated 08.07.2015 and change the rules half way through. This Court is of the view that the denial of seat to petitioner, though the petitioner has acquired 119th rank, is illegal, arbitrary and unconstitutional. In between students under CAP quota, this Court is not inclined to further ensue competition or deny seat to already admitted student.

10. The overlooking of petitioner's rank by first respondent is not for justifiable reasons. The explanation offered by respondents cannot and could not be accepted to refuse admission to petitioner. In other words, the deprivation of seat to petitioner is unconstitutional and contrary to explicit rules of admission of OUCET – 2016. The reservation of seats for admission under CAP is also for the reason that the parent of the ward in the cause of patriotism serves the nation. The authorities while implementing such reservation ought not to take parochial perspective or be guided by uninformed reasons. The illegality or denial of admission to petitioner is due to arbitrary and unconstitutional approach of respondents and they must be made responsible for the action complained in the writ petition. Respondents 1 and 2 are directed to give admission to petitioner as well by taking appropriate or additional steps required in this behalf within two (2) weeks from today.

The writ petition is ordered. As a sequel, the miscellaneous applications pending, if any, shall stand closed. There shall be no order as to costs.

November 8, 2016

Note: Furnish C.C. by 10.11.2016.

(B/o) DSK

S. V. BHATT, J