

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

Writ Appeal No.1336 of 2016

JUDGMENT: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the Learned Single Judge in W.P.No.36287 of 2016 dated 08.11.2016. The Osmania University is in appeal against the order passed by the Learned Single Judge directing them to give admission to the respondent-writ petitioner by taking appropriate or additional steps required in this behalf within two weeks from the date of the order.

One seat is reserved, in the Masters Course in Physical Education, in favour of Children of Armed Personnel. The notification, in Annexure-III, stipulates that seats in Post Graduation courses shall be reserved for 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 were domiciles of TS/AP at the time of enrolment into the Armed Forces.

The notification does appear to provide reservation for Children of Ex-Servicemen belonging to both the States of Andhra Pradesh and Telangana. The fact that the respondent-writ petitioner's father is an Ex-servicemen is not in dispute. On the ground that the father of one Sri C.Venkatesh was a domicile of Telangana, the appellants herein granted admission to Sri C.Venkatesh and denied the same to the respondent-writ petitioner.

It is not in dispute that the respondent-writ petitioner secured rank No.119, while Sri C.Venkatesh secured rank No.325.

In terms of the notification, it does appear that the respondent-writ petitioner ought to have been granted admission. The fact, however, remains that there is only one seat reserved in favour of Children of Armed Personnel for admission in the Post Graduate Course in Physical Education; and, even by the time the Learned Single Judge passed the order, admission had been granted to Sri C.Venkatesh, and the sole seat had been filled up. It is only if the admission granted to Sri C.Venkatesh was cancelled, would the respondent-writ petitioner have been entitled to be admitted into the Post Graduate Course in Physical Education; and no such order of cancellation of the admission, given to Sri C.Venkatesh, could have been passed without giving him an opportunity of being heard. Without cancelling the admission of Sri C.Venkatesh, the respondent-writ petitioner could not have been directed to be admitted into the Post Graduate Course in Physical Education, as that would amount to creation of a supernumerary seat, an exercise which this Court would not, ordinarily, undertake in proceedings under Article 226 of the Constitution of India.

Sri Gajanand Chakravarthi, learned counsel for the respondent-writ petitioner, submits that the respondent-writ petitioner would now file an application to implead Sri C.Venkatetsh as a party respondent in the writ petition.

We consider it appropriate, in such circumstances, to set aside the order under appeal, and restore the writ petition to file. In case the respondent-writ petitioner makes an application to implead Sri C.Venkatesh as a respondent, the writ petition shall be heard afresh putting Sri C.Venkatesh on notice, and giving him an opportunity of being heard.

The Writ Appeal is disposed of accordingly. Miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(A.SHANKAR NARAYANA, J)

05th December, 2016

Note: Issue C.C. tomorrow.

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Date: 05.12.2016

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