

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SMT JUSTICE ANIS

WRIT PETITION No. 25769 of 2016

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ORDER: (*Per VRS,J*)

The petitioner appeared for EAMSET-2016 for admission to under-graduate medical courses. She secured a rank of 28227. Apart from being a candidate belonging to the Scheduled Caste, she is also suffering from hearing disability to the extent of 53%. Therefore, she has come up with the above writ petition seeking a direction to the respondents to treat her under 3% quota reserved for physically handicapped for admission to under-graduate medical courses.

2. Heard Mr. Naram Nageswara Rao, learned counsel for the petitioner, and Ms. P. Sarada, learned standing counsel, appearing for the respondents 3 and 4.

3. The Persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation) Act, 1995, contains two independent Chapters, one on education and another on employment. In so far as employment is concerned, Section 33 of Act 1 of 1996 provides for a

reservation of not less than 3% for persons with disability, of which 1% each shall be reserved for persons suffering from (i) blindness or low vision, (ii) hearing impairment, and (iii) locomotor disability or cerebral palsy, in the posts identified for each disability.

4. But, in so far as Chapter-V, which deals with education, is concerned, the Act requires the appropriate Governments and local authorities to provide children with disabilities, free education, until the child attains the age of 18 years. Chapter-V also mandates the appropriate Governments to make schemes and programmes for non-formal education. Unfortunately, Chapter-V does not contain any provision for reservation of any of the seats in educational institutions. There is no provision in Chapter-V, which is similar to Section 33 in Chapter-VI of the Act.

5. However, by way of affirmative action, the Regulatory Bodies, such as, the Medical Council of India as well as the State Governments, have come up with schemes for reservation of certain seats for physically disabled. The MCI regulations contain a provision for reservation of 3% of the seats, for differently abled. Appendix-II to the prospectus issued by Sri Venkateswara Institute of Medical Sciences, Tirupati, contains the

provisions regarding the reservation of seats for physically handicapped.

6. It is seen from the above that hearing impairment is not included as one of the categories eligible for reservation under the above quota. It is true that Part-B, dealing with reservation for physically handicapped under Appendix-II, is divided into two sections, the first listing out the persons who were entitled for reservation and the second listing out the persons who shall not be treated as being eligible under the category. In the second part, candidates, who were deaf and dumb, are excluded from the benefit of reservation. It does not mean that they are automatically included in the first part. Therefore, the contention of the learned counsel for the petitioner that it is only a combination of speech and hearing impairment that is excluded but not one of the two, cannot be accepted.

7. If the case of the petitioner will not fall under one of the categories listed in Clauses (i) to (vi) of Part-B of Appendix-II to the prospectus and if the case would not fall under the regulations of the Medical Council of India for the grant of the benefit, the petitioner cannot seek the benefit of reservation. Therefore, the Writ Petition is dismissed. However, if the petitioner is entitled to

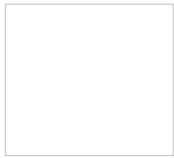
selection on her own merit under the quota reserved for Scheduled Caste, the same shall not be effected, merely because she also claimed the additional benefit.

Consequently, miscellaneous petitions if any pending in the writ petition shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

ANIS, J.

4th August, 2016
cbs



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