

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2017

CORAM

THE HON'BLE MRS.JUSTICE **PUSHPA SATHYANARAYANA**

W.P.No.5664 of 2017 and
WMP.No.6059 of 2017

J.Rajasekar

.. Petitioner

VS

1. Pondicherry University
rep. By the Registrar,
Pondicherry University,
R.V.Nagar, Kalapet,
Puducherry.

2. The Principal,
Pondicherry Engineering College,
Pillaichavady, Puducherry.

.. Respondents

Prayer: Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the 2nd respondent to admit the petitioner to the Ph.D. Programme in the faculty of Mechanical Engineering for the year 2016-17 as per the select list with No.PU/AS/Aca-2/PEC-Ph.D.-ME/2016-17/324 dated 28.12.2016.

For Petitioner : Mr.V.Ajayakumar

For Respondents : Mr.Stalin Abhimanu for R1
Mr.J.Kumar,
AGP (Pondicherry) for R2

ORDER

The Writ Petition has been filed seeking to issue a Writ of Mandamus, directing the 2nd respondent to admit the petitioner to the Ph.D. Programme in the faculty of Mechanical Engineering for the year 2016-17 as per the selection list with No.PU/AS/Aca-2/PEC-Ph.D.-ME/2016-17/324, dated 28.12.2016.

2. The petitioner, who is a M.Tech. Degree Holder, has emerged successful in the Entrance Examination conducted on 27.05.2016 for admission to the Ph.D. Programme conducted by the Pondicherry University and he was called for the interview on 29.07.2016. Under the 15 vacancies which were notified under the Mechanical Engineering Faculty, only 13 candidates were selected and the petitioner's name is placed as first in the waiting list of 5 candidates. Further, out of the 13 candidates, only 12 candidates joined the course and one Mr.Narayanan, who was placed in the 13th rank in the selection list has not joined the course. Therefore, it is clear that 3 vacancies are available in the particular faculty. Though there is a specific column in the Selection List dated 28.12.2016 that if any

vacancy falls, the wait list will be operated, in spite of the approach by the petitioner, seat was denied to him by the 2nd respondent. Hence the present Writ Petition.

3. Denying the contention of the petitioner, the 1st respondent has filed a Counter Affidavit stating that the Pondicherry University is a Central University established in the Union Territory of Pondicherry by the Pondicherry University Act, 1985 and the 2nd respondent is governed by the provisions of the above mentioned Act and the Statutes and Ordinances framed thereunder. It is specifically stated that though the Pondicherry University vide letter dated 21.03.2017 has informed that there are three seats available, namely, one in Puducherry-SC, another in Other State-SC and yet another in OBC and the petitioner has claimed to grant admission by exchange of vacancy, it is replied that the wait list under the Pondicherry General Category cannot be granted admission to Ph.D. (Mechanical Engineering) Programme in view of the reasons that there is no vacancy under PY-General Category at present and exchange of OBC Vacancy is also not feasible as per the existing reservation rules as there are many other OBC

Candidates in the overall merit list and as regards SC Vacancies, it has been informed that in case, no eligible reserved candidate is available under SC/ST category, the vacant seats in the reserved quota shall not be filled up by any non-SC/ST candidates. Further, it is for the college to act on the wait list and University does not come into the picture and since it is the State Government run college, it follows the reservation pattern as applicable/prescribed by the State Government. Hence, any deviation or violation in the reservation has to be approved only by the State Government. Therefore, the present Writ Petition has to be dismissed.

4. Heard the learned Counsel for the petitioner, the learned Counsel appearing for the 1st respondent and the learned Additional Government Pleader for the 2nd respondent.

5. The main contention put forth by the learned Counsel for the petitioner is that since against the available seats of 15, only 13 candidates were selected and the fact that out of the 13 candidates, only 12 candidates have joined for Ph.D. in Mechanical Faculty and as per the specific column in the

Selection List dated 28.12.2016 that if any vacancy falls, the wait list will be operated, the denial of seat to the petitioner whose name is found place in the first place in the Waiting List is illegal and arbitrary. It is the further contention that one candidate by name Subramanian who secured less than the petitioner, has got admission. Therefore, the case of the petitioner needs consideration.

6. In support of his contention, the learned Counsel for the petitioner has relied on a decision of the Hon'ble Supreme Court in **Jagadish Singh vs. Punjab Engineering College** reported in **(2009) 7 SCC 300**, in which it has been observed as follows:

"3. We are told that in many of the Central Educational Institutions, the seats which are to be filled up by OBC Candidates, are still remaining vacant. These institutions may endeavour to fill up these seats by other eligible students at the earliest i.e. at least by the end of October, 2008, observing inter se merit of the candidates. All other rules and regulations regarding admissions shall be strictly followed. The application is disposed of accordingly."

7. The learned Counsel has also placed reliance on yet another decision of the Hon'ble Supreme Court in **Faiza Choudhary vs. State of Jammu and Kashmir and another** reported in **(2012) 10 Supreme Court Cases 149** in which the petitioner therein has claimed admission by applying the carry forward principle in filling up the vacant reserved seat of previous year from the waiting list in the absence of any statutory provision. But, the said Appeal was dismissed holding that a seat which fell vacant in a particular year cannot be carried forward or created in a succeeding year, in the absence of any rule or regulation to that effect. Though, this decision is relied on by the learned Counsel for the petitioner, it will not come to the rescue of the petitioner because the claim of the petitioner therein was rejected by the Supreme Court.

8. Per contra, the learned Counsel for the 1st respondent would submit that the University accorded approval of admission of 13 candidates vide letter dated 28.12.2016 with a wait list of five candidates. The University also instructed vide

letter dated 28.12.2016 that the wait list can be operated in the order of merit, if the selected candidates do not turn up for admission. Though the 2nd respondent informed vide letter dated 21.03.2017 that there are 3 vacancies other than PY-General Category and the petitioner has claimed to grant admission by exchange of vacancy, he cannot be granted admission because there is no vacancy under PY-General Category to which the petitioner belongs. Further, since the College is run by the State Government, it follows the reservation pattern of the State Government and for deviating the same, the college should get approval from the State Government and even if the other State OBC is converted into General Category, there are already two other State General Category candidates in the Waiting List with higher marks than the petitioner who has secured only 29 marks.

9. I have considered the above submissions and I have gone through the decisions relied on by both sides.

10. By citing the decisions of the Hon'ble Supreme Court in **Jagadish Singh vs. Punjab Engineering College** reported in **(2009) 7 SCC 300**, the learned Counsel for the petitioner

seeks a positive direction from this Court in the matter of giving admission to the petitioner in the 2nd respondent college. In response to the same, the respondent side has relied on a decision of the Hon'ble Supreme Court in **Dr Santosh Kumari (MRS) vs. Union of India and others reported in 1995 (1) SCC 269**, wherein in an identical circumstance, the Hon'ble Supreme Court has held as follows:

"...It does not depend upon who comes to court and who does not. The matter is one of principle and should not depend upon who comes to the court. A more deserving candidate may not have the means to approach the court. Be that as it may be, even the Division Bench of the Rajasthan High Court has not directed that the said seat should be given to the third respondent (appellant before them). On the other hand, they have directed the official respondents to consider the candidature of the petitioner (third respondent in this appeal) or any other candidate who may deserve the admission to the said post. The Division Bench has further directed that "proper notice on the Notice Board may

be affixed by the respondents in all the colleges giving 15 days' time for making applications and the said seat may be allotted to the meritorious candidate"

11. In the instant case, out of 13 candidates along with their position in the respective category of reservation along with the wait listed candidates was sent to the first respondent. The 1st respondent also approved a list of 13 candidates for admission of Ph.D. Programme in Mechanical Engineering Branch at the 2nd respondent college. Among the 13 selected, only 12 candidates joined. The 2 seats unfilled were one reserved for SC/ST candidate and another seat was reserved for OBC (Other State) candidate whereas the petitioner belonged to General Category from Pondicherry though first in the wait listed candidates. It is stated by the Counsel for the 1st respondent that the list of candidates approved for admission by Pondicherry University follows the sequence of categorization of reservation as follows:

1. Puducherry

... (General)

- | | |
|-----------------|---------------|
| 2. Puducherry | ... (MBC) |
| 3. Puducherry | ... (OBC) |
| 4. Puducherry | ... (SC) |
| 5. Other States | ... (General) |
| 6. Other States | ... (OBC) |
| 7. Other States | ... (SC/ST) |

12. It is submitted that the above sequence of categorization applies to wait listed candidates also and the sequence of overall merit ranking does not apply. Hence, it appears that filling up of vacant seat in the order of merit can be made on the basis of vacancy and merit in the respective category of reservation. It is also pointed out that there are candidates with higher marks in the list of wait listed candidates when compared with the marks secured by the petitioner. Following the above pattern one seat in the reserved category is not being transferred and filled by candidates belonging to other categories. The college is run by the State Government and it follows the reservation pattern as applicable/presented by the Government. Conversion of other State OBC is also not possible in this case because already two other State General Category

candidates are in the waiting list with higher marks than the petitioner.

13. In view of all the foregoing reasons, the Writ Petition fails and the same is accordingly dismissed. No costs. Consequently, connected M.P. is closed.

05.06.2017

Note : Issue order copy on 07.06.2017

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To

1. The Registrar,
Pondicherry University,
R.V.Nagar, Kalapet,
Puducherry.
2. The Principal,
Pondicherry Engineering College,
Pillaichavady, Puducherry.

PUSHPA SATHYANARAYANA,J.,

tsi

W.P.No.5664/2017

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