

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.11.2018

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

WA.No.2439 of 2018

Mothii Aniroudh

... Appellant/Petitioner

Vs

- 1.The State of Tamil Nadu,
Rep.by its Secretary,
Ministry of Health and Family Welfare,
Secretariat, Chennai-600 009.
 - 2.Special Secretary to Government,
Public (Ex-Servicemen) Deptt and Ex-Officio Director,
Directorate of Ex-Servicemen's Welfare,
22, Raja Muthiah Salai, Choolai,
Chennai-600 003.
 - 3.The Secretary,
The Selection Committee,
Office of the Director of Medical Education,
Kilpauk, Chennai-600 010.
 - 4.Medical Council of India,
Rep.by Secretary,
Dwarka Phase, New Delhi.
- ... Respondents/Respondents

PRAYER:- Writ Appeal filed under clause 15 of the Letter Patents against the order dated 29.08.2018 made in WP.No.18286 of 2018.

Prayer in WP.No.18286 of 2018:-

Writ of Mandamus directing the Respondents to allot a seat to the petitioner for admission to MBBS Course in 2018-2019 session in any Govt.Medical college or in any of the Self Finance Medical Colleges in TamilNadu under Priority III Clause for reservation of the wards of Military Personnel DIED WHILE IN SERVICE AND DEATH ATTRIBUTABLE TO MILITARY SERVICE as per Govt of India Ministry of Defence Order NO.F.No.6(1)2017 / D(Res-II dated 21.5.2018 read with G.O.No.977 Health & Family Welfare

passed by Government of Tamil Nadu on 01.06.2008 and as prescribed in the prospectus for MBBS Course in 2018-2019 session.

For Appellant : Mr.M.Munian

For Respondents : Mr.C.Munusamy,
Special Government Pleader (Education)
for R1 to R3

JUDGMENT

[Judgment of the Court was delivered by M.SATHYANARAYANAN, J.,]

The appellant is the writ petitioner and he, through his mother and guardian, Smt.P.Jeya Sharmila, W/o. Late M.Ramesh, No.3/152, Indian Bank Colony, Narayanapuram, Madurai-625 014, has filed W.P.No.18286 of 2018, praying for a Writ of mandamus directing the respondents to allot a seat to the petitioner for admission to MBBS Course in the academic session 2018-2019 in any Government Medical College or in any of the Self Finance Medical Colleges in Tamil Nadu under Priority-III category for reservation of the wards of Military Personnel "DIED WHILE IN SERVICE AND DEATH ATTRIBUTABLE TO MILITARY SERVICE" as per Government of India, Ministry of Defence Order No.F.No.6(1)/2017/D (Res.II) dated 21.05.2018 read with G.O.No.977, Health and Family Welfare Department dated 01.06.2008 and as prescribed in the prospectus for MBBS Course for the academic session 2018-2019 and pass such further or other orders. The said writ petition, after contest, came to be dismissed, vide impugned order dated 29.08.2018 and challenging the legality of the said order, the present Writ Appeal is filed.

2. A perusal of the materials placed before this Court would disclose the following facts:

2.1. The father of the petitioner was serving in Indian Army and he was posted in a high altitude remote place at Ladhak and he died on 05.01.2004 and at the time of his demise, he was service as "Havildar" in Indian Army. At that time, the writ petitioner was aged about 3 years. The mother of the appellant/writ petitioner, with great difficulty and devotion, brought him up and gave him good education and he passed his Higher Secondary Education in the year 2017-2018 by securing the following marks in the mains subjects viz., Physics-73%, Chemistry-64% and Biology-73% under CBSE syllabus. The petitioner has also appeared in NEET (UG)-2018 examination and secured 63% marks and therefore, he claimed that he was eligible for admission to MBBS Course for the academic session 2018-2019.

2.2. It is also pointed out by the petitioner that as per Clause-36(a) of the Prospectus for Admission to MBBS/MDS Degree

Courses in Tamil Nadu Government Medical / Dental Colleges for the academic session 2018-2019, which prescribes Special Categories, seats have been reserved for the Children of Ex-Servicemen and the said reservation was with reference to the orders of the first respondent in G.O.(D).No.977/H&FW Department dated 01.06.2018. The petitioner, along with the said application, had also enclosed necessary testimonials, which include Eligibility Certificate issued by the Department of Ex-Servicemen's Welfare dated 18.06.2018 indicating that he falls under the category of Children of Ex-Servicemen Died in peacetime.

2.3. The petitioner would further aver that since nothing had happened after submission of application with enclosures, the mother of the petitioner, who is working as Tahsildar in the Tamil nadu Government service, on behalf of the writ petitioner, filed W.P.No.16148 of 2018, praying for a Writ of Mandamus directing the respondents 1 to 3 to conduct counselling for Special Category as mentioned in Clause 36 of the prospectus and by strictly adhering to the order dated 21.05.2018 passed by the Department of Ex-Servicemen Welfare, Union Ministry of Defence and to admit the petitioner on the basis of NEET marks for the first year M.B.B.S. Course, without any discrimination, for the academic year 2018-2019. The said writ petition was disposed of, vide order dated 29.06.2018, subject to certain observations made in Paragraph 6 of the said order and it is relevant to extract the same:

"6. Thus, in view of the Government Order, vide G.O. (D).No.977 and taking into account the submissions made by the learned Government Pleader, this Court finds that the rights of the petitioner's son are protected and that his case would be considered for admission by the respondents, if he is otherwise found eligible."

2.4. The mother of the appellant/writ petitioner, made personal visit to the office of the third respondent and submitted a letter dated 01.07.2018 to consider the claim of the appellant under Special category. The appellant/writ petitioner attained majority on 07.06.2018 and he filed W.P.(MD) No.14964 of 2018 on the file of the Madurai Bench of this Court and it was dismissed as withdrawn with liberty to file a writ petition and accordingly, the present writ petition is filed for the aforesaid relief.

2.5. The writ petition was entertained and notices were ordered. The Joint Director, Directorate of Ex-Servicemen's Welfare, Chennai-600 003 has filed a counter affidavit dated 26.07.2018 on behalf of the second respondent and in paragraph No.2 of the said counter affidavit, it was averred among other things that an amended certificate was produced by the appellant

after the selection process for the said category with service particulars seeking amendment as ''Acute Respiratory Syndrome'' - Attributable to and Aggravated to Military Service, on the basis of the certificate produced by the mother of the petitioner. The appellant has also filed a rejoinder to the counter affidavit of the second respondent.

2.6. The learned Judge, upon hearing the rival submissions and on going through the materials, found that no records were made available to show that the appellant has produced any valid document to prove his category under Priority No.III and further found that the appellant / writ petitioner has secured only 159 marks and whereas all the persons, who got admissions and allotments under priority VI, have secured more than 341 marks and hence, the petitioner's case cannot be entertained and accordingly, dismissed the writ petition, vide impugned order dated 29.08.2018 and aggrieved by the same, the present Writ Appeal is filed.

3. Mr.M.Munian, learned counsel appearing for the appellant, has invited the attention of this Court to Clause 36(a) of the Prospectus for Admission to MBBS/BDS Degree Courses in Tamil Nadu Government Medical / Dental Colleges and would submit that as per the said Clause, seats have been reserved for the Children of Ex-Servicemen, with reference to the orders issued by the Government of Tamil nadu prescribing priority in G.O.(D). No.977 dated 01.06.2018 and the said Government Order should be read as part and parcel of the said Clause. The learned counsel appearing for the appellant has further invited the attention of this Court to the said Government Order and would submit that Clause 6 of the said Government Order speaks about prioritization of candidates falling under the said categories and would further submit that admittedly, the appellant/writ petitioner, in the prescribed format, has got certification from the Deputy Director of Ex-Servicemen's Welfare dated 12.06.2018 stating that he is the children of Ex-Servicemen died during peacetime and subsequently, applied for Eligibility Certificate and it was issued stating that the petitioner falls under Category-VI and having found that it was not correct, the mother of the petitioner has re-submitted the same and vide, countersignature dated 23.06.2018, the Senior Record Officer for O/C Records has given certification that the death of the petitioner's father was due to ''Acute Respiratory Distress'' and it is declared as attributable to and aggravated by military service in peace and in the light of the said endorsement, there cannot be any difficulty to give appointment to the appellant under priority Category-III and therefore, prays for appropriate orders.

4. Per contra, Mr.C.Munusamy, Special Government Pleader appearing for the respondents 1 to 3 has invited the attention of this Court to Page Nos.14 and 17 of the typed set of documents and would submit that as per the Eligibility Certificate found in page No.14 of the typed set, the appellant/writ petitioner was categorized under Priority Category No.VI and whereas in Page No.17 of the typed set, the prioritization of the appellant has been indicated as Priority Category No.III and there was some suspicion developed on account of the said alternation. It is the further submission of the learned Special Government Pleader appearing for the respondents 1 to 3 that admittedly, counter signature of the Senior Record officer for O/C Records has been obtained in the original certificate on 23.06.2018 and whereas the last date for submission of the application form is upto 5 p.m. On 19.06.2018 and on that ground also, the appellant herein was not entitled to any admission under Special Category and would further add that the learned Judge, after due consideration of the entire materials, has rightly reached the conclusion to dismiss the writ petition and prays for dismissal of this Writ Appeal.

5. This Court has considered the rival submissions and also perused the entire materials placed before it.

6. A perusal of Clause 36(a) of the Prospectus for Admission to MBBS/BDS Degree Courses in Tamil Nadu Government Medical / Dental Colleges for the academic session 2018-2019 would indicate that seats have been reserved for the children of Ex-Servicemen and the said Clause is to be read along with g.O.(D). No.977 of the first respondent dated 01.06.2017. It is relevant to extract Paragraph Nos.6 and 7 of the said Government Order:

''6. The Government after detailed examination have decided to enhance the number of seats reserved under Ex-Servicemen quota from 6 to 11 seats (i.e., 10 seats for MBBS and 1 seat for BDS) in Government Medical and Dental Colleges from the academic year 2018-2019 on the priorities of reservation, listed out by the Government of India, Ministry of Defence. The Government, accordingly do and hereby direct that the number of seats reserved under Ex-Servicemen quota from 6 to 11 seats (i.e., 10 seats for MBBS and 1 seat for BDS) in Government Medical and Dental Colleges from the academic year 2018-2019 be enhanced, on the priorities of reservation, listed out by the Government of India, Ministry of Defence on the following manner with a provision that the number of eligible candidates in Ex-Servicemen category.

Priority-I Windows/ Wards of Defence personnel killed in

action.

Priority-II Wards of disabled in action and boarded out from service.

Priority-III Widows / Wards of Defence personnel who died while in service with death attributable to military service.

Priority-IV wards of disable in service and boarded out with disability attributable to military service.

Priority-V Wards of Ex-Servicemen who are in respect of Gallantry Awards

- (i) Param Vir Chakra
- (ii) Ashok Chakra
- (iii) Sarvottam Yudh Seva Medal
- (iv) Maha Vir Chakra
- (v) Kirti Chakra
- (vi) Uttam Yudh Seva Medal
- (vii) Vir Chakra
- (viii) Shaurya Chakra
- (ix) Yudh Seva Medal
- (x) Sena, Nau Sena, Vayu Sena Medal
- (xi) Mention-in-Despatches.

7. A perusal of the materials placed in the form of typed set of papers would indicate that the father of the appellant, died in service on account of 'Acute Respiratory Distress' and according to the learned counsel appearing for the respondents, some doubt had developed as to the priority category given in Clause 4 of the Eligibility Certificate No.2357/A8/A5 dated 18.06.2018 found in Page Nos.14 and 17 of the typed set of documents and this Court has also perused the same. In the Eligibility Certificate found in Page no.14 of the typed set, the priority category of the appellant was given as Priority-VI and whereas in Page No.17 of the typed set, the priority category of the appellant was given as Priority-III. It is also very pertinent to point out at this juncture that the Senior Record Officer for O/C Records has countersigned in the Eligibility Certificate dated 18.06.2018, vide endorsement dated 23.06.2018 and it is relevant to extract the same:

'The death of No.9512172X Late Hav Ramesh.M of Army Educational Corps on 05 Jan 2004 due to 'Acute Respiratory Distress' is declared as attributable to and aggravated by military service in peace'.

Therefore, there cannot be any doubt that the appellant / writ petitioner falls under Priority Category-III as per paragraph 6

of the above said Government Order. However, after obtaining countersignature of the Senior Record Officer for O/C Records, the Eligibility Certificate was submitted on behalf of the appellant, by his mother only on 26.06.2018 well after the last date for submission of application form i.e., upto 05.00 p.m on 19.06.2018.

8. At this juncture, the learned counsel appearing for the appellant has invited the attention of this Court to the judgement dated 28.08.2018 made in W.A.No.1788 of 2018 [K.Nandinee V. The Government of Tamil Nadu rep. By its Secretary, Health and Family Welfare Department, Chennai-9 and two others] and would submit that in similar facts and circumstances, a positive direction has been given by directing the respondents to admit the appellant therein in M.B.B.S. Degree Course for the academic year 2018-2019, without insisting her to undergo the NEET Examination, if the candidate is found otherwise eligible on merit for that academic year.

9. In response to the said submission, the learned Special Government Pleader appearing for the respondents 1 to 3 would submit that increase of seats for the M.B.B.S. Degree course falls within the exclusive domain of the Medical Council of India and as per various orders of the Hon'ble Supreme Court, time schedule for admission to M.B.B.S. Degree Course ended on 31.08.2018 for this academic year and this Court may not issue positive direction.

10. Though this Court is of the considered view that the claim of the appellant / writ petitioner falls under Priority-III Category in terms of paragraph 6 of the above said Government Order is not inclined rather to issue any positive direction to admit the appellant in the M.B.B.S. Degree Course for the academic session 2018-2019, for the reason that the admission process has already been over and as per the various orders of the Hon'ble Supreme Court, this Court, in exercise of its power under Clause 15 of the Letters Patent, cannot extend the time schedule for M.B.B.S Admissions.

11. As rightly pointed out by the learned Special Government Pleader appearing for the respondents, the power to increase the seats falls within the exclusive domain of the Medical Council of India and this Court cannot issue any positive direction to the said authority to increase the seats.

12. It is also very pertinent to point out at this juncture that Clause 36 (a) of the Prospectus for Admission to MBBS/BDS Degree Courses in Tamil Nadu Government Medical / Dental Colleges for the academic session 2018-2019 are loosely worded and so also the Certificate required from the concerned

candidate as to the prioritization category and especially in the light of paragraph 6 of the Government Order of the first respondent in G.O.(D) No.977 dated 01.06.2018, it is advisable for the concerned authorities to make it clear as to the details of such categorization both in the prospectus as well as to the certificate required as to the eligibility of candidates concerned, for admission in M.B.B.S. Course.

13. In the light of the fact that the Eligibility Certificate of the appellant with counter signature obtained from the Senior Record Officer for O/C Records dated 23.06.2018, came into being well after the closure of the last date for submission of application i.e., upto 05.00 p.m. On 19.06.2018 and that for the current academic session, admissions are already over and classes have started and also in the light of various orders of the Hon'ble Supreme Court, fixing the time schedule for admission to M.B.B.S. Courses and the power to increase the seats also falls within the exclusive domain of the Medical Council of India, this Court is not inclined to give any positive direction. However, the appellant is always at liberty to apply for admission to M.B.B.S. Degree course for the next academic session under the above said Special Category under Priority-III, subject to fulfilment of all other eligibility criteria including NEET examination requirement.

14. This Writ Appeal is dismissed, subject to above observations. No costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

jvm

To

- 1.The Secretary,
Ministry of Health and Family Welfare,
Secretariat, Chennai-600 009.
- 2.Special Secretary to Government,
Public (Ex-Servicemen) Deptt and Ex-Officio Director,
Directorate of Ex-Servicemen's Welfare,
22, Raja Muthiah Salai, Choolai,
Chennai-600 003.
- 3.The Secretary,
The Selection Committee,

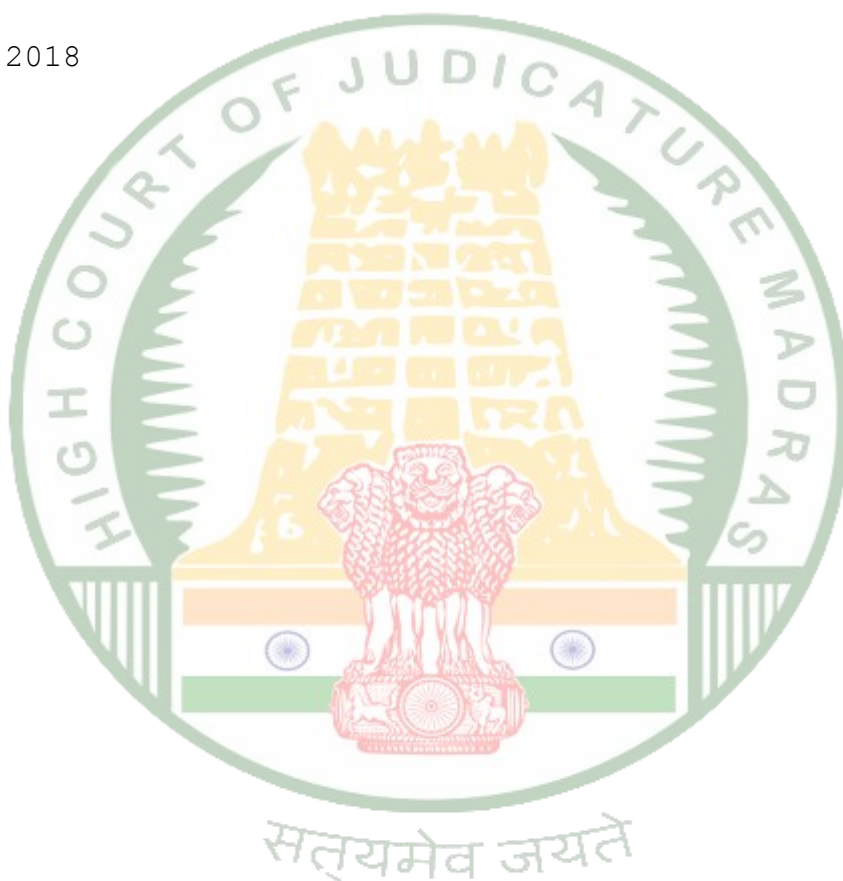
Office of the Director of Medical Education,
Kilpauk, Chennai-600 010.

4.The Secretary,
Medical Council of India,
Dwarka Phase, New Delhi.

+1 cc to Mr.M.Manian, Advocate Sr.No.77970
+1 cc to The Government Pleader, Sr.No.77997

WA.No.2439 of 2018

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