



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 16.08.2019	Pronounced on: 20.08.2019
-------------------------	---------------------------

Coram::

The Honourable Dr.Justice G.Jayachandran

Writ Petition Nos.23261, 23262 & 23264 of 2019
& W.M.P.Nos.22973, 22979, 22982 of 2019

1. P.Rajendran,
No.47, Ponnambala Mudaliar Street,
Muthialpet,
Puducherry - 605 003.
... Petitioner in W.P.No.23261 of 2019
 2. H.Balasubramanian,
M-3, Jawahar Nagar,
Boomianpet Housing Board Colony,
Nellithope (P.O),
Puducherry - 605 006.
... Petitioner in W.P.No.23262 of 2019
 3. K.N.S.Babu,
No.12, Sagayamatha Street,
V.O.C. Nagar, Muthialpet,
Puducherry - 605 003.
... Petitioner in W.P.No.23264 of 2019
- /versus/
1. The Government of Puducherry,
Rep. by its Secretary,
Department of Health & Family Welfare,
Puducherry - 605 001.
 2. Centralised Admission Committee (CENTAC),
Puducherry Engineering College Campus,
Puducherry - 605 014.
... Respondent in all cases.

Prayer in all cases: Writ Petitions are filed under Article 226 of the Constitution of India, to issue Writ of Mandamus, directing the respondent authorities to consider the petitioner's daughters/Son's candidature for allotment of a seat for M.B.B.S course in Indira Gandhi Medical College & Research Institute, Pondicherry/Government quota seats respectively against Ex-Servicemen Quota and pass orders.

For Petitioner : Mr.R.Arumugam
in all cases

For Respondents : Mr.C.T.Ramesh,
in all cases Additional Government Pleader (Pondy)

C O M M O N O R D E R

Heard the Learned Counsel for the Petitioners and the Learned Additional Government Pleader for the respondents.

2. The Government of Puducherry through the Centralised Admission Committee (CENTAC) called for applications from eligible candidates for the counselling for admission to MBBS/BDS courses for the academic year 2019-20. The information brochure issued by the CENTAC narrates the Eligibility conditions, Selection Procedure, Seat Matrix etc. The Centralised Admission Committee (CENTAC) does counselling for all the M.B.B.S/B.D.S seats in the Union Territory of Government Colleges and unaided Private Medical/Dental Colleges. They allot seats for the following categories:

- i). Seats in Government Colleges including surrendered seats from All India Quota Pool.
- ii). Self Sponsored Seats in Government Colleges.
- iii). Government Quota in Private Unaided Colleges.
- iv). Management Quota seats in Private Colleges.
- v). Minority (Management) quota in Private Minority Colleges.
- vi). NRI Quota Seats in Government/Private Colleges.
- vii). Foreign National Quota Seats in Government Colleges.

3. On 04.07.2019, before the commencement of the counselling, the seat matrix for each of the above category were made known to the public. As per the seat matrix, for the MBBS course. 1% seat is reserved for the wards of Ex-servicemen (ESM)

4. The petitioners are the parents of the candidates who applied under the ESM Quota and their names are in the Final merit list for NEET based on the UG Medical Courses released by CENTAC on 23.07.2019. The 1st candidate Sruthi S.Kurup in the

merit list of ESM was allotted seat in the Government College under General Category. The 2nd candidate P.Harshini got seat in JIPMER, Puducherry. Hence, she did not join any College under CENTAC. The 3rd candidate Harshini was allotted seat in the Government college under MBC category. The 4th candidate Harishma (W.P.No.23261 of 2019 - filed by her father P.Rajendiran) allotted seat in the Private college under ESM quota. The 5th candidate S.Kaviya given Seat in Government College under Economic Weaker Section quota. The 6th candidate Subhadra is allotted seat in a private college under ESM quota. The grievance of these petitioners is that, the candidates who have been allotted seat under the vertical reservation namely General Category/OBC/MBC/SC/ST/BCM/ EBC/BT cannot be taken into consideration as candidates of ESM, who fall under the Horizontal reservation. The second respondent ought to have allotted seat as per their ranking in the merit list issued by the 2nd respondent/CENTAC, excluding the candidates who were allotted seats as per their merit in the respective vertical reservation.

5. In short, their contention is that, some of the candidates who have secured high marks in NEET were able to get seat in their respective vertical reservation itself. Therefore, those candidates cannot be taken into account for filling up of the seats under Ex-servicemen (ESM) quota. They have given a representation to the 2nd respondent/ CENTAC, citing judgments of the Court and had requested that under Horizontal reservation for Ex-Servicemen Category, seats filed in General category not to be counted. The candidates who have secured high mark in the General Category has to give way for the candidates secured less mark in ESM quota.

6. The learned counsel appearing for the petitioners, while canvassing the merit of the individual case, based on their rank secured in NEET and their respective rank in the merit list released by the CENTAC for ESM quota submitted that, the fitment of horizontal reserved candidate into the vertical reservation is spelt out by the Division Bench of Punjab and Haryana High Court in Ajit Singh Vs. State of Haryana and others (reported in India Kanoon.org/doc/36845505). As per the Principles culled down in the said judgment, the seats equal to the number of the candidates belonging to horizontal reservation category and also falling within vertical reservation category, shall stands consumed in the vertical reserved category. The candidate lower in vertical reserved category will make way for him. In this judgment the views of the Supreme Court in (i). Indira Sawhney's Vs.Union of India, (ii). Rajesh Kumar Daria Case Vs.Rajasthan Public Service Commission (iii). A.P.Public Service Commission Vs. Balaji Badhavath & others cases are also considered.

7. The 2nd respondent/CENTAC, in the counter affidavit has stated that, reservation made on Socio, economic grounds such as SC, ST and OBC's are called vertical reservation. The Special reservations such as Ex-Servicemen, Physically Disabled, Freedom Fighter are called Horizontal reservation. The horizontal reservation will cut across vertical reservation which is called 'interlocking reservation'. The persons selected against the quota for persons with the special category have to be placed in the appropriated category viz., SC/ST/OBC/General candidates depending upon the category to which they belong in the roster meant for reservation of SCs/STs/OBCs/General.

8. In the counter as an illustration, it is stated that, in a given year if there are two seats reserved for Ex-Servicemen (ESM). Out of two Ex-Serviceman (ESM) one belongs to SC category and the other belongs to General Category. Then, the SC category candidate shall be adjusted against the SC category, the General Category candidate against General candidate the relevant point in the relevant reservation roster.

9. Relying upon the principle of interlocking of vertical and horizontal reservation explained by the Supreme Court in Indira Sawhney's case, the learned counsel for the 2nd respondent/CENTAC would state that, the allotment of seats has been done in accordance with law and as per the seat matrix. According to the 1st respondent/Department of Health & Family Welfare, communication 1% seat has to be reserved for ESM. In Puducherry, out of 180 seats in the Government College, 27 seats for All India Quota and 22 seats for Non-Resident Indian (NRI) is earmarked. In the remaining 131 seats, one (1) seat is reserved to Ex-serviceman (ESM). From three private unaided colleges, 165 seats are shared as Government Quota. One (1) seat in Government College and two (2) seats in Private unaided college were allotted to Ex-Servicemen Quota. Totally 20 candidates applied under ESM Quota for 3 seats earmarked for Ex-Serviceman (ESM) (1 in Government College and 2 in Private college). However, five candidates from ESM category were allotted seats as per their merit and choice of preference.

10. Heard the Counsels and perused the records.

11. The point under consideration is whether the procedure adopted by the CENTAC for fitment of horizontal reservation candidates (ESM) within the vertical reservation is in tune with the observations and principles laid down by the

Supreme court in its judgments. For the said purpose, the context under which those observations were made by the Apex Court are to be read and understood. Hence the relevant portion of the judgments are extracted under:-

(i). Indira Sawhney Vs. Union of India (AIR 1993 SC 477 = 1992 Suppl. (3) SCC 217)

"95. We are also of the opinion that this rule of 50% applies only to reservations in favour of backward classes made under Article 16 (4). A little clarification is in order at this juncture: all reservations are not of the same nature. There are two types of reservations, which may, for the sake of convenience, be referred to as 'vertical reservations' and 'horizontal reservations'. The reservations in favour of Scheduled Castes, Scheduled Tribes and other backward classes [under Article 16(4)] may be called vertical reservations whereas reservations in favour of physically handicapped [under Clause (1) of Article 16] can be referred to as horizontal reservations. Horizontal reservations cut across the vertical reservations that is called inter-locking reservations. To be more precise, suppose 3% of the vacancies are reserved in favour of physically handicapped persons; this would be a reservation relatable to Clause (1) of Article 16. The persons selected against this quota will be placed in the appropriate category; if he belongs to S.C. category he will be placed in that quota by making necessary adjustments; similarly, if he belongs to open competition (O.C.) category, he will be placed in that category by making necessary adjustments. Even after providing for these horizontal reservations, the percentage of reservations in favour of backward class of citizens remains - and should remain - the same. This is how these reservations are worked out in several States and there is no reason not to continue that procedure."

"In this connection it is well to remember that the reservations under Article 16(4) do not operate like a communal reservation. It may well happen that some members belonging to, say Scheduled Castes get selected in the open competition field on the basis of their own

merit; they will not be counted against the quota reserved for Scheduled Castes; they will be treated as open competition candidates."

"All reservations are not of the same nature. There are two types of reservations, which may, for the sake of convenience, be referred to as 'vertical reservations' and 'horizontal reservations'. The reservations in favour of Scheduled Castes, Scheduled Tribes and other backward classes [under Article 16(4)] may be called vertical reservations whereas reservations in favour of physically handicapped [under Clause (1) of Article 16] can be referred to as horizontal reservations. Horizontal reservations cut across the vertical reservations that is called inter-locking reservations. To be more precise, suppose 3% of the vacancies are reserved in favour of physically handicapped persons; this would be a reservation relatable to Clause (1) of Article 16. The persons selected against this quota will be placed in the appropriate category; if he belongs to S.C. category he will be placed in that quota by making necessary adjustments; similarly, if he belongs to open competition (O.C.) category, he will be placed in that category by making necessary adjustments. Even after providing for these horizontal reservations, the percentage of reservations in favour of backward class of citizens remains - and should remain - the same"

(ii). R.K.Sabharwal Vs. State of Punjab reported in (1995 (2) SCC 745)

"5. When a percentage of reservation is fixed in respect of a particular cadre and the roster indicates the reserve points, it has to be taken that the posts shown at the reserve points are to be filled from amongst the members of reserve categories and the candidates belonging to the general category are not entitled to be considered for the reserve posts. On the other hand the reserve category candidates can compete for the non-reserve posts and in the event of their appointment to the said posts their number cannot be added and taken into consideration for working out the percentage of reservation.

(iii). Ritesh R.Sah Vs. Dr.Y.L.Yamul and others

reported in (AIR 1996 SC 1378)

In view of the legal position enunciated by this Court in the aforesaid cases the conclusion is irresistible that a student who is entitled to be admitted on the basis of merit though belonging to a reserved category cannot be considered to be admitted against seats reserved for reserved category. But at the same time the provisions should be so made that it will not work out to the disadvantage of such candidate and he may not be placed at a more disadvantageous position than the other less meritorious reserved category candidates. The aforesaid objective can be achieved if after finding out the candidates from amongst the reserved category who would otherwise come in the open merit list and then asking their option for admission into the different colleges which have been kept reserved for reserved category and thereafter the cases of less meritorious reserved category candidates should be considered and they will be allotted seats in whichever colleges the seats should be available. In other words, while a reserved category candidate entitled to admission on the basis of his merit will have the option of taking admission to the colleges where a specified number of seats have been kept reserved for reserved category but while computing the percentage of reservation he will be deemed to have been admitted as a open category candidate and not as a reserved category candidate.

(iv). Rajesh Kumar Daria Vs. Rajasthan Public Service Commission reported in (AIR 2007 SC 3127)

"9. In this case, the number of candidates to be selected under general category (open competition), were 59, out of which 11 were earmarked for women. When the first 59 from among the 261 successful candidates were taken and listed as per merit, it contained 11 women candidates, which was equal to the quota for 'General Category - Women'. There was thus no need for any further selection of woman candidates under the special reservation for women. But what RPSC did was to take only the first 48 candidates in the order of merit (which contained 11 women) and thereafter, fill the next 11 posts under the general category with woman candidates. As a

result, we find that among 59 general category candidates in all 22 women have been selected consisting of eleven women candidates selected on their own merit (candidates at Sl.Nos.2, 3, 4, 5, 9, 19, 21, 25, 31, 35 & 41 of the Selection List) and another eleven (candidates at Sl.Nos.54, 61, 62, 63, 66, 74, 75, 77, 78, 79 & 80 of the Selection List) included under reservation quota for 'General Category-Women'. This is clearly impermissible. The process of selections made by RPSC amounts to treating the 20% reservation for women as a vertical reservation, instead of being a horizontal reservation within the vertical reservation."

(v). A.P.Public Service Commission Vs. Baloji Bdhavath and others reported in (2009 (5) SCC 1)

"One other aspect of the matter must be kept in mind.

If category-wise statement is prepared, as has been directed by the High Court, it may be detrimental to the interest of the meritorious candidates belonging to the reserved categories. The reserved category candidates have two options. If they are meritorious enough to compete with the open category candidates, they are recruited in that category. The candidates below them would be considered for appointment in the reserved categories. This is now a well-settled principle of law as has been laid down by this Court in several decisions. [See for example, Union of India and Anr. V. Satya Prakash and Ors. (2006) 4 SCC 550, para 18 to 20, Ritesh R. Shah v. Dr. Y.L. Yamul (1996) 2 SCR 695 at 700-701, R.K. Daria v. Rajasthan Public Service Commission, (2007) 8 SCC 785.

Reservation of women, handicapped etc. is on a horizontal basis. Reservation to the category of candidates has to be given irrespective of the class or category of candidates. A final selection has to be made. If such a procedure, as directed by the High Court, is to be taken recourse to, the same would give rise to a complexity."

(vi). Ajit Singh Vs.State of Haryana and others (Division Bench - Punjab & Haryana High Court):-

In view of the judgments referred to above, the following principles can be culled down:

(i) The reservations for Physically Handicapped, Ex-servicemen, dependants of freedom fighters and women etc. are the horizontal reservations.

(ii) The candidates belonging to horizontal reservations will cut across the vertical reservations in the following manner:

(a) Firstly the seats for Open Category candidates will be filled up on the basis of merit;

(b) Secondly, the seats meant for vertical reserved categories will be filled up on the basis of merit in their own quota;

(c) Thirdly, the seats equal to the number of the candidates belonging to horizontal reserved category and also falling within vertical reserved category, shall stand consumed in the vertical reserved category. The candidate lower in vertical reserved category will make way for him;

12. From reading of the judgements of the Apex Court, it is unambiguously clear that, when the reservation for weaker sections based on Socio, economic reasons it falls under Article 16(4). The categories like OBC, SC and ST fall under vertical reservation and they are water tight compartments. The left over portion in the vertical division is open category. If a meritorious candidate who is able to get seat without the advantage of reservation based on his Socio economic backwardness, his seat cannot be accounted under the reserved category to which he belongs. The same analogy is not applicable if the reservation is for any other special reasons like Freedom fighter, Ex-servicemen, eminence in Sports etc., Reservations for these Special Categories is horizontal reservation. The preferential treatment given to these candidates must fit within the quota of the respective vertical reservation category. This is because the quota for these Special Category is not exclusive of the seats under the vertical reservation but inclusive of it. They have to cut across the vertical reservation at a particular roster point. While filling the seat, as per vertical reservation, if there is shortage of candidates under the horizontal reservation, then the shortfall has to be filled up in their respective vertical category like General, OBC and SC. In the said circumstances, the last in the vertical reservation has to give way to the preferential candidate in the horizontal reservation.

13. The seat matrix, published by the CENTAC is as below:

Name of the Medical Colleges	No. of seats	Vertical Reservation								Horizontal Reservation			
		Gen (50 %)	OBC (11 %)	MBC (18 %)	SC (16 %)	ST (.5 %)	BCM (2 %)	EBC (2 %)	BT (5 %)	FF (4 %)	PH (5 %)	EXM (1 %)	MSP (1 %)
PIMS	55	28	06	10	09	00	01	01	00	02	03	01	01
SVMC&H	55	28	06	10	09	00	01	01	00	02	03	00	01
SVMCH & Rc	55	27	06	10	08	01	01	01	01	02	02	01	00
Total	165	83	18	30	26	01	03	03	01	06	08	02	02

14. This gives a clear picture, that out of 165 seats shared from the 3 private unaided College, under vertical reservation all 165 seats are distributed among the eight categories (General, OBC, MBC, SC,ST, BCM, EBC and BT) under the vertical reservation. From among these 165 seats, 18 seats are curved out for horizontal reservation. Out of 18 seats, 2 seats are reserved for Ex-Serviceman (ESM). These two seats has to be accommodated in any of the 8 categories mentioned in the seat matrix under the heading Vertical reservation.

15. The merit list for Ex-Serviceman (ESM) published by the CENTAC shows the name of the candidates their NEET Score, the category under which they fall in vertical reservation and the Special category, which they fall in horizontal reservation. The petitioners stand 4th, 7th and 8th rank in merits among the candidates applied under Ex-Serviceman (ESM) quota. Their score and category is extracted below:

Name	Rank in ESM Quota	NEET Score	NEET Rank	Applied Category	Special Category	W.P.Nos.
R.Harishma	4 th	368	164244	General	ESM	23261 of 2019
B.Mangayarka rasi	7 th	292	270692	MBC	ESM	23262 of 2019
B.Harri Haran	8 th	284	284346	OBC	ESM	23264 of 2019

16. In the counter affidavit the 2nd respondent/CENTAC, has stated though the horizontal reservation for ESM was only 3 seats, 5 candidates were given seat under Ex-serviceman (ESM)

quota. According to the 2nd respondent/CENTAC, the Names, NEET Score and College allotted are extracted:

Sl.No .	Name	Merit in ESM	NEET Score	Category	College in which admitted
1.	Sruthi S Kurup	1	515	General/ESM	IGMC&RI
2.	Harshini	3	390	MBC/ESM	IGMC &RI
3.	S.Kaviya	5	252	General/EWS/ESM/M SP	IGMC & RI
4.	R.Harishma	4	368	General/ESM	PIMS
5.	Subhadra M.G	6	300	OBC/ESM	SVMC & H

17. The petitioners had misconstrued the observations made by the Supreme court in cases where the attempt to set off seats given to meritorious students under General Category, even otherwise they were entitled to get seat under their respective communal reservation under Article 16(4). They have failed to note that the said observation is not applicable to Special Reservations provide by virtue of Article 16(1). This distinction has been well explained by the Constitution bench of the Apex Court in Indra Shewney Vs. Union of India, case as well in the later judgement rendered in Rajesh Kumar Daria Case (cited supra) and A.P.Public Service Commission case (cited supra).

18. The candidates claiming protective discrimination under Article 16(4) and candidates claiming preferential treatment under Article 16(1) cannot be treated at par. The later has to get encompassed with the former. The Theory of cutting across and interlocking has to be applied without any detrimental to Article 335 of the Indian Constitution. The candidate lower in vertical reserved category giving way for horizontal reserve category will arise only if adequate candidates are not selected to extent of seats reserved for Ex-serviceman (ESM). If the submission of the petitioners is accepted, then candidates under horizontal reservation will be accommodated over and above the extent of seats reserved, at the cost of meritorious candidates likely to be accounted under vertical reservation. This will amount to horizontal reservation overriding vertical reservation or in the other words, giving predominance to Article 16(1) as against article 16(4). This will defeat the true intention of the reservation for Socio economic backward class.

19. Hence, the Writ Petitions are dismissed as devoid of merits. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

bsm

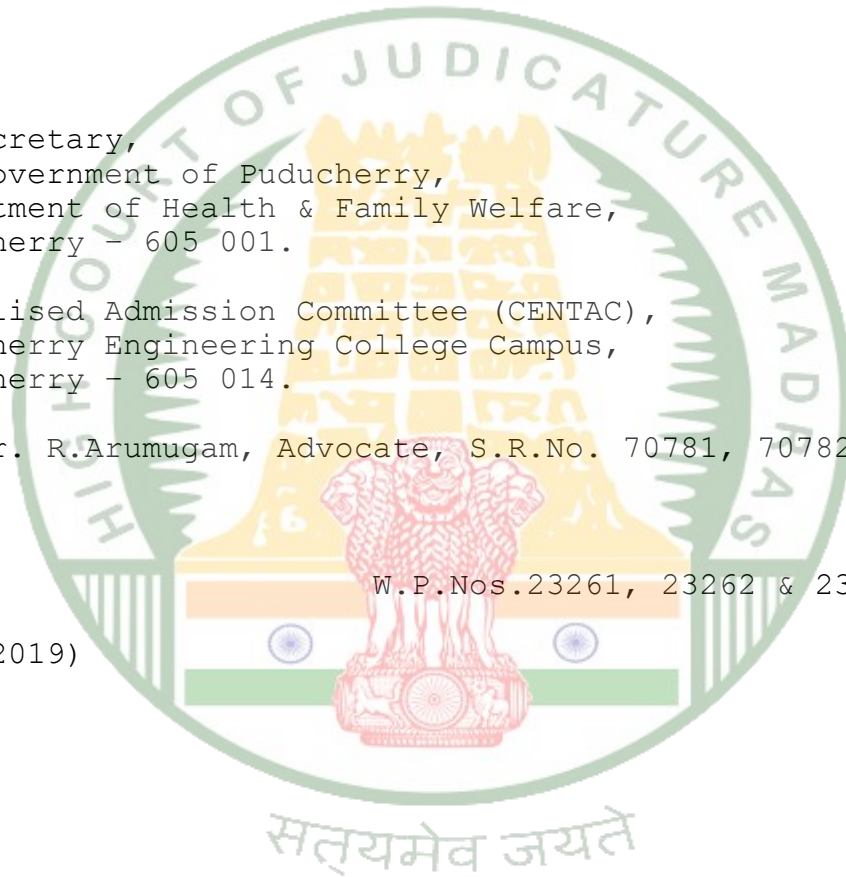
To,

1. The Secretary,
The Government of Puducherry,
Department of Health & Family Welfare,
Puducherry - 605 001.
2. Centralised Admission Committee (CENTAC),
Puducherry Engineering College Campus,
Puducherry - 605 014.

+3cc to Mr. R.Arumugam, Advocate, S.R.No. 70781, 70782, 70783

W.P.Nos.23261, 23262 & 23264 of 2019

MR (CO)
GN (20/08/2019)



WEB COPY