



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 30.04.2019

Pronounced on: 08.05.2019

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CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD) No.17414 2018

D.Kuralarasan

... Petitioner

Vs.

1.The Joint Secretary,
Government of India, Ministry of Defence,
Department of Ex Servicemen Welfare,
Room No.237, B Wing, Sena Bhawan,
New Delhi-110011.

2.The Chief Secretary, Tamil Nadu State
Fort St George,
Secretariat, Chennai-600009.

3.The Principal Secretary,
Department of Health & Family Welfare,
Fort St George,
Secretariat, Chennai-600009.

4.The Additional Director of Medical Education,
Secretary, Selection Committee,
162, Periyar EVR High Road,
Kilpauk, Chennai-600010.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to publish the G.O.(D).No.977, Health and Family Welfare (MCA1) Department dated 01.06.2018 issued by the third respondent and quash the same as arbitrary and consequently, direct the respondents to include the category of wards of serving personnel in the prospectus of MBBS admission for ensuing years.

For Petitioner : Mr.L.Rajiah

For R1 : Mr.K.Ashok Kumar Ram

For R2 to R4 : Mr.M.Rajarajan
Government Advocate



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Priority V: Wards of Ex-Servicemen and serving personnel who are in receipt 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.

Priority VI : Wards of Ex-Servicemen

Priority VII: Wives of :

i) defence personnel disabled in action and boarded out from service.

ii) defence personnel disabled in service and boarded out with disability attributable to military service.

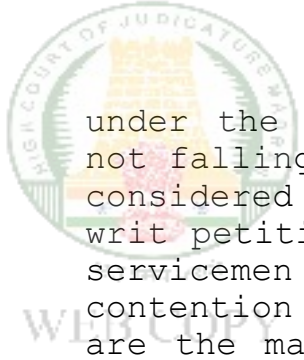
iii) ex-servicemen and serving personnel who are in receipt of Gallantry Awards.

Priority VIII: Wards of Serving Personnel.

Priority IX: Wives of Serving Personnel."

7. Such communications are periodically issued with the approval of the competent authority. This communication was followed by a subsequent communication dated 21.05.2018. In both the communications, the petitioner comes under Priority VIII. The grievance of the writ petitioner is that while issuing the impugned Government Order dated 01.06.2018, the Government of Tamil Nadu had left out three categories, namely, Priorities VII to IX. As a result of the omission of the last three categories, the petitioner is unable to avail the benefit of reservation meant for defence personnel. The Government of Tamil Nadu had issued G.O.Ms.No.1142 dated 30.06.1979 indicating that the reservation is for Ex/Deceased/Serving defence personnel. There is nothing on record to indicate that this G.O has been repealed. Thus, even though in the subsequent G.Os, it has been mentioned that the quota is for the wards of Ex-Servicemen, it should be read as quota meant for defence personnel.

8. This stand of the Writ petitioner is contested by the respondents 2 to 4. They would contend that the writ petitioner is not justified in placing reliance on a 1979 G.O. A new policy had been put in place by the year 2004 vide G.O.Ms.No.23 Health and Family Welfare, dated 28.05.2004. The number of special categories under special reservation for M.B.B.S./B.D.S. course has been reduced to 4, namely, Physically Handicapped, Eminent Sports persons and children of Freedom Fighters and children of Ex-servicemen. Though the number of seats reserved for children of Ex-servicemen was originally 2 for M.B.B.S. and 1 for B.D.S. Course, this was enhanced from 2 to 5 in the year 2015 and further enhanced to 10



under the impugned Government Order. Since the Writ petitioner is not falling under any of the priority categories, he will have to be considered only under the general category. It is obvious that the writ petitioner is not eligible under the quota for children of Ex-servicemen as per the impugned Government Order. The pointed contention raised by the learned Government Advocate is that these are the matters of governmental policy and the scope for judicial review is highly limited. He would further contend that in the very nature of things, a provision enabling the Government to confer the benefit of reservation cannot be so construed as to constitute a duty to reserve for a particular category.

9.I carefully considered the rival contentions.

10.The learned Government Counsel would place reliance on the decision reported in (2010) (1) SCC 477 (*Gulshan Prakash (Dr) vs. State of Haryana*). The question that arose in the said case was whether non provision of any reservation of seats for Scheduled Castes / Scheduled Tribes candidates by the State of Haryana in the post-graduate medical courses was unconstitutional. Negating the challenge, the Hon'ble Supreme Court held that Article 15(4) of the Constitution is only an enabling provision. It does not make any mandatory provision for reservation and the power to make reservation under Article 15(4) is discretionary and no writ can be issued to effect reservation. It is for the respective States either to enact a legislation or issue an executive instruction providing reservation in postgraduate courses. The State Government is the best Judge to decide in the matter. So holding, the Hon'ble Supreme Court refused to issue any mandamus.

11.The learned Government Counsel also drew my attention to the decision reported in (2017) 3 SCC 504 (*Union of India vs. M.Selvakumar*). It was argued therein that when the attempts of physically challenged candidates belonging to General category was increased from 4 to 7 in the civil services examination, there must be proportionate increase in the attempts taken by physically challenged candidates belonging to OBC category also. The challenge was sustained by the Madras High Court and the Delhi High Court. But then, the Hon'ble Supreme Court reversed the said decisions by holding that horizontal reservation is a matter of governmental policy and that it is not in the domain of the courts to embark upon an inquiry as to whether a particular public policy is wise and acceptable or whether better policy can be evolved.

12.No doubt, the scope for judicial review in such matters is highly limited. But then, it is not ruled out altogether. Even in *M.Selvakumar's* case, the Hon'ble Supreme Court held that courts can interfere if the policy framed is absolutely capricious and not informed by reasons, or totally arbitrary, offending the basic requirement of Article 14 of the Constitution.

<https://hcservices.ecourts.gov.in/hcservices/>

13.In *Ugar Sugar Works Ltd vs. Delhi Administration*. (2001) 3 SCC 635, the Hon'ble Supreme Court held as follows :



"18...It is well settled that the courts, in exercise of their power of judicial review, do not ordinarily interfere with the policy decisions of the executive unless the policy can be faulted on grounds of mala fide, unreasonableness, arbitrariness or unfairness etc. Indeed, arbitrariness, irrationality, perversity, and mala fide will render the policy unconstitutional...."

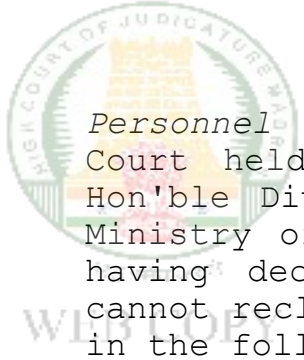
14. In *State of M.P vs. Mala Banerjee* (2015) 7 SCC 698, the Hon'ble Supreme Court quoting an earlier precedent observed that where a policy is contrary to law or is in violation of the provisions of the Constitution or is arbitrary or irrational, the courts must perform their constitutional duties by striking it down.

15. A situation similar to the case on hand arose before the Hon'ble Delhi High Court in *Sukhanshu Singh vs. Delhi Technological University* (ILR (2011) 1 Del 572). The learned Judge allowed the writ petition filed by a student and faulted the university for not adhering to the parameters laid down by the Sainik Board. My job would have been easier had this decision of the learned Single Judge not been reversed by the Division Bench of the Delhi High Court in LPA No.786 of 2010 dated 12.11.2010.

16. A Division Bench of the Madras High Court in the decision reported in MANU/TN/0047/ 1986 : [1986]159 ITR 646 (Mad) observed that as far as possible that there must be uniformity of construction and if the provision of law which falls for consideration before the Court has already been construed by another High Court, normally that construction should be accepted. But then the Honourable Division Bench also added a caveat that if there are compelling reasons to depart from the view taken by the other High Court, the said construction need not be accepted. I am of the considered opinion that there are compelling reasons to depart from the view taken by the Division Bench of the Delhi High Court in LPA No.786 of 2010 dated 12.11.2010.

17. This is all the more so because the said Hon'ble Division Bench decision was doubted by a subsequent Division Bench in *Sivam sresthi* case. The matter was referred to the Full Bench. But, when the case came up for hearing before the Full Bench, the case itself was withdrawn and the reference was never answered. These subsequent developments are referred to by His Lordship Mr. Justice Rajiv Sahai Endlaw himself in another case.

18. I take inspiration from another Division Bench decision of the Hon'ble Delhi High Court reported in (2016) 160 DRJ 268 (*Master Harshil Anand vs. Union of India*). The issue that arose was whether the university can tweak the terms of the category formulated by the Sainik Board. In the communication of the Ministry of Defence, Priority II has been defined as "Wards of disabled in action and boarded out from service". But, in the Bulletin of Information published by the University of Delhi, Faculty of Medical Sciences for admission to Under-graduate Degree Courses (MBBS/BDS) for the Academic Session 2016-17, this was defined as "Wards of serving



Personnel and Ex-Servicemen disabled in action". The Delhi High Court held that such tweaking was impermissible in law. The Hon'ble Division Bench held that while the recommendations of the Ministry of Defence cannot be treated as binding, the University having decided to grant reservation to the particular category cannot reclassify or alter the category. The question was framed in the following terms :

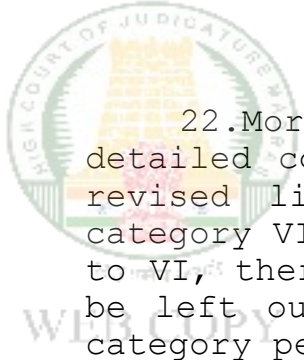
"Whether the University, having accepted the recommendation for reservation under CW Category and having granted the reservation in terms thereof, can be allowed to amend or alter the categories as stipulated by Kendriya Sainik Board which in turn would result in enlarging/restricting the scope of the categories."

The Hon'ble Division Bench answered the issue in favour of the student and against the University.

19.This Court is only extending the logic propounded in Harshil Anand case. The Government of Tamil Nadu having chosen to refer to the communication of the Ministry of Defence and adopted the same cannot be allowed to restrict its scope. While it may be open to the Government of Tamil Nadu to have its own policy of reservation with regard to the defence personnel/ex-servicemen, having granted reservation in terms of the communication dated 30.11.2017 issued by the Ministry of Defence, the Government cannot be allowed to minimise its sweep. This is primarily because no reason has set forth for such restriction. The counter affidavit is also totally silent as to why categories 7 to 9 have given omitted. When the Government of Tamil Nadu is adopting a communication issued by the Ministry of Defence, it is obliged to state the reasons for retaining only six categories and omitting the remaining three set out therein.

20.This Court has to interfere in this case principally for the reason that earlier G.O.Ms.No.1142, Health and Family Welfare Department, dated 30.06.1979 does not appear to have been superseded. The writ petitioner has not only enclosed the copy of the same in the typed set of papers but also made a pointed reference to it in his affidavit. This court repeatedly called upon the learned Government Advocate to respond to this stand. Except stating that this is an old G.O of the year 1979, there is no other rebuttal.

21.Therefore, I have to necessarily hold that G.O.Ms.No.1142, Health and Family Welfare, dated 30.06.1979 is still holding the field. In other words, the policy of the Government of Tamilnadu is to extend the benefit of reservation in MBBS/BDS course not only to the children of ex/deceased Army personnel but also to the children of serving defence personnel. If this policy laid down in the 1979 G.O is to be departed from, certainly grounds will have to be made out. In this case, no such reason has been indicated.



22. More than anything else, the Government of India after a detailed consideration of the various parameters had laid down the revised list of priorities. The serving personnel come under category VIII. When the impugned G.O. chooses to adopt categories I to VI, there is no reason as to why the categories VII to IX should be left out. The object is to accord reservation to the Defence category personnel. We have to recognize their valor and sacrifice. Of course, there can be a distinction between the wards of Ex-serviceman and the wards of serving personnel. The wards of Ex-serviceman deserve a better preferential treatment as they are out of service. That is why, the competent authority has accorded them priority No. VI while granting priority VIII to the wards of serving personnel. But then there is no justification for totally omitting the wards of serving personnel.

23. The issue can be approached from another perspective. The Sainik Board has listed the order of preference. There are totally 9 categories. The Government of Tamil Nadu has chosen to retain the first VI categories and leave out the rest. The policy of the Government of Tamil Nadu is to confer benefit to the defence personnel though it is styled as Ex-servicemen quota. By incorporating the remaining three categories, the order of preference is not going to be changed. The wards of the serving personnel can claim the benefit of reservation only if there are surplus seats available after exhausting the claimants under the categories 1 to 6. If there are surplus seats and there are only 6 categories, then the surplus seats will go to the general category. Thus, by not including the wards of serving personnel, the policy of the Government to benefit the defence personnel will be defeated. Including the wards of serving personnel alone would ensure that the quota is filled up. Therefore, this Court comes to the conclusion that omission of categories 7 to 9 is clearly arbitrary and irrational. Anything that is arbitrary and irrational can only be said to be offending the mandate enshrined in Article 14 of the Constitution of India.

24. In *Union of India and Ors. vs. C.S. Sidhu* ((2010) 4 SCC 563, the Hon'ble Supreme Court observed that the army personnel who are bravely defending the country even at the cost of their lives are not being treated properly. There is an elaborate discussion on this aspect in the decision reported in 2006 (8) SCC 399 (*Confederation of Ex-Servicemen Associations and Ors. Vs. Union of India (UOI) and Ors.*). I do not want to burden this order by copiously quoting from them. It may then look like an overladen city bus. But, I cannot resist recalling a case that came up before me last month. A Kargil war hero who lost a hand and a leg had passed away. In the death certificate, the usual address of the deceased was not given. Instead his father's address was mentioned. The poor widow had to run from one jurisdictional Tahsildar to another for getting legal heir certificate. I lamented that it did not occur to the Tahsildar to discharge his duties proactively the moment he noted that the application involved the family of a



deceased army man.

25.I hold that the impugned G.O. suffers from the vice of arbitrariness and is irrational and violates Article 14 of the Constitution of India to the extent it omits the wards of serving personnel. It is plainly unreasonable. G.O.(D)No.977, Health and Family Welfare (MCA-1) Department dated 01.06.2018 is quashed to the extent it omits the wards of serving personnel. Therefore, this Court directs the respondents 2 to 4 to include the wards of serving personnel under the reservation category in the prospectus of MBBS/BDS for ensuing years from the current academic year. The writ petition is allowed. No costs.

Sd/-

Vacation Officer

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Sub Assistant Registrar(CS)

To

- 1.The Joint Secretary, Government of India, Ministry of Defence,
Department of Ex Servicemen Welfare,
Room No.237, B Wing, Sena Bhawan, New Delhi-110011.
- 2.The Chief Secretary, Tamil Nadu State
Fort St George, Secretariat, Chennai-600009.
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- 4.The Additional Director of Medical Education,
Secretary, Selection Committee,
162, Periyar EVR High Road,
Kilpauk, Chennai-600010.

+1cc to Mr.K.ASHOKKUMAR RAM, Advocate, SR.No.65526

+1cc to M/s.Special Government Pleader, SR.No.65615

W.P. (MD) No.17414 2018
08.05.2019

SKM

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