

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.16706 of 2020

in WMP. No.20714 of 2020

Bharthi.S.

... Petitioner

Vs

- 1.The Secretary to Government ... Respondents
Government of Tamil Nadu
Health and Family Welfare Department,
Secretariat, Fort.St.Geroge, Chennai-9.
- 2.The Secretary,
The Selection Committee,
Directorate of Medical Education,
No 162, Periyar EVR High Road,
Kilpauk chennai.
- 3.The National Medical Commission
Pocket- 14 Sector 8 Dwarka Phase-1,
New Delhi- 110077.

Writ Petition filed under Article 226 of Constitution of India, seeking Writ of Mandamus, directing the respondents to extend the benefit of G.O.MS.No.438, Health and Family Welfare Department dated 29.10.2020 to compete under 7.5 percentage Horizontal reservation for Admission into Medical Courses by treating the Petitioner as Student, who studied in Government School by applying the Principles of equality before law on considering her representation dated 10.11.2020.

For Petitioner : Mrs.Aananthi.T

For Respondents : Mr. E.Manoharan - R1
Special Government Pleader
Mr.Abdhul Saleem - R2
Standing Counsel
Mr.V.P.Raman - R3
Standing Counsel

ORDER

This Writ Petition has been filed for the issue of a Writ of Mandamus directing the respondents to extend the benefit of G.O.Ms.No.438, dated 29.10.2020, in favour of the

petitioner and consequently permit the petitioner to be considered under 7.5% Reservation Quota.

2. Heard Mrs.T.Aananthi, learned counsel for the petitioner, Mr.E.Manoharan, learned Special Government Pleader appearing on behalf of first respondent, Mr.Abdhul Saleem, learned Standing Counsel appearing on behalf of second respondent and Mr.V.P.Raman, learned Standing Counsel appearing on behalf of third respondent.

3. It is the admitted case of the petitioner that the petitioner studied in an Aided School upto 8th standard and thereafter, from 9th standard to 12th standard, the petitioner has studied in a Government School. The basic requirement as per the Government Order to take advantage of the 7.5% Quota is that the candidate must have studied in a Government School from 6th standard to 12th standard. The only exemption that has been given is found in the explanation to Paragraph No.6 of the Government Order. The purport of this explanation has been considered in detail by this Court in W.P.No.16321 of 2020, dated 11.11.2020.

The relevant portions in the order are extracted hereunder:

'5. The learned counsel for the petitioner brought to the notice of this Court clause-13 of the prospectus and he placed specific reliance upon clause-(c) and clause-(d), which defines 'Government Schools' and 'Students studied in Government Schools'. For proper appreciation, both these definitions are extracted hereunder, along with the explanation.

"13. COUNSELLING PROCEDURE :

(a) ...

(b) ...

(c) **"Government schools"** mean and includes Government schools, Corporation schools, Municipal schools, Adi Dravidar and Tribal Welfare schools, Kallar Reclamation schools, Forest Department schools and other schools managed by Government departments;

(d) **"Students studied in Government schools"** mean children who have studied from Sixth Standard to Higher Secondary Course in a Government school and qualified in the National Eligibility-cum-Entrance Test.

Explanation.— For the purpose of this definition, children belonging to weaker section and disadvantaged group who have studied upto eighth standard in a specified category school or an unaided school, as per clause (c) of sub-section (1) of section 12 of the Right of Children to Free and Compulsory Education Act, 2009 and studied all remaining standards up to Higher Secondary Course in a Government school

and qualified in the National Eligibility-cum-Entrance Test, shall be deemed to be 'Students studied in Government schools'

6.....
7.....
8.....

9. *Per contra*, Mr.C.Munusamy, learned Special Government Pleader appearing on behalf of the impleaded sixth respondent submitted that the explanation to Section 2(d) has two parts to it. The first limb of the explanation talks about candidates belonging to weaker section and disadvantaged group and the second limb talks about such a candidate, who have studied till 8th standard in a specified category school or an unaided school. The learned Special Government Pleader submitted that the petitioner has not satisfied the second limb of the explanation, since the petitioner did not study in a specified category school and admittedly, the petitioner had studied in an aided school. The learned Special Government Pleader further elaborated his argument to explain the term 'specified category schools'. The learned counsel submitted that the term 'specified category schools' has to be understood in terms of Section 2(p) of the Act. For proper appreciation, the definition under Section 2(p) of the Act is extracted hereunder:-

" 2(p) "**Specified Category**" in relation to a school, means a school known as Kendriya Vidyalaya, Navodaya Vidyalaya, Sainik School or any other school having a distinct character which may be specified, by notification, by the appropriate Government."

10. The learned Special Government Pleader submitted that a candidate will satisfy the requirement of studying in a specified category school only if the candidate has studied in any one of the school as specified under Section 2(p) of the Act. The learned Special Government Pleader, therefore, submitted that the petitioner, admittedly, did not fall under any of the categories of the schools mentioned in Section 2(p) of the Act.

11.....

12. This Court finds a lot of force in the submissions made by the learned Special Government Pleader appearing on behalf of the sixth respondent. When the Government confers a special reservation for a particular class of persons, the candidate, who claims to fall under the category, must satisfy all the requirements as provided under the Government Order. In the present case, even if the petitioner is taken to fulfil the first limb of the explanation by falling under the category of disadvantaged group owing to the fact that he belongs to Scheduled Caste Community, the petitioner does not

fulfil the next limb under the explanation. The petitioner admittedly had done schooling till 8th standard in an aided school. The school, in which the petitioner had studied till 8th standard, also does not fall within the category of 'specified category schools'.

13. In view of the above discussion, the relief claimed by the petitioner cannot be granted by this Court and accordingly, this Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed."

4. It is clear from the above order that a candidate, who wants to come within the explanation will have to satisfy the twin test provided in the explanation. One of the test is that the candidate should have undergone the schooling upto 8th standard either in a school which comes within the specified category or in an unaided school. In this case, the petitioner admittedly has gone through schooling upto 8th standard in an Aided School. Therefore, obviously the petitioner has not satisfied the requirements of the Government Order. An aided school is specifically dealt with under Section 2(n)(ii) of the Right of Children to Free and Compulsory Education Act, 2009. It is a separate category by itself and it does not fall within the requirements of Section 12(1)(c) of the Act.

5. This Court does not find any merits in this Writ Petition and accordingly, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

-Sd/-

Assistant Registrar (CS)

// True Copy //

Sub Assistant Registrar

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To

1. The Secretary to Government Government of Tamil Nadu
Health and Family Welfare Department,
Secretariat, Fort. St. George, Chennai-9.

2. The Secretary,
The Selection Committee,
Directorate of Medical Education,
No 162, Periyar EVR High Road,
Kilpauk, Chennai.

3. The National Medical Commission
Pocket- 14 Sector 8 Dwarka Phase-1,
New Delhi- 110077.

+1 C.C. to MR.V.P.RAMANI Advocate SR.NO.38499

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AJS (CO)
UM (16.12.2020)



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