



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.03.2021

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THE HONOURABLE MR.JUSTICE **V. PARTHIBAN**

W.P. (MD)No.5743 of 2021

and

W.M.P. (MD)No.4529 of 2021

Afroze

: Petitioner

Vs.

1.The Secretary to the Government,
Health and Family Welfare Department,
Secretariat, Chennai - 600 009.

2.The Director of Medical Education,
Kilpauk, Chennai - 600 010.

3.The Secretary,
Selection Committee,
Director of Medical Education,
Kilpauk, Chennai - 600 010.

: Respondents

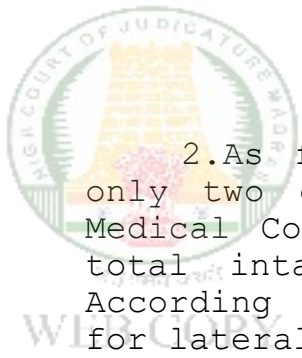
PRAYER:- Petition filed under Article 226 of the Constitution of India seeking a Writ of Mandamus, to direct the respondents to accommodate the petitioner under BCM quota in the Government College for admission in the B.Pharm lateral entry course for the academic year 2020-21.

For Petitioner : Mr.Subrith Parthasarathy
for Mr.K.Govindarajan

For Respondents : Mr.C.Ramesh
Special Government Pleader

ORDER

According to the petitioner, she is belong to Backward Class (Muslim) and has completed Diploma in Pharmacy in 2016. According to her, she belongs to first generation of completing school finally in the family. The second respondent is the authority conducting admission to B.Pharm course in the State. The course is for a period of four years and for candidates, who have completed D.Pharm, are eligible to join second year of B.Pharm course, as a lateral entry.



2.As far as the State of Tamil Nadu is concerned, there are only two colleges which conduct B.Pharm course. One is Madras Medical College and the other is Madurai Medical College and the total intake of the students in both colleges is 120 seats. According to the petitioner, 10% of the seats have been earmarked for lateral entry of the students, like the petitioner herein.

3.The second respondent invited application on 17.03.2021 for lateral entry of students in B.Pharm course and the petitioner responded to the invitation and a provisional list was published containing the eligible candidates on 06.03.2021. The petitioner appears to have secured first rank in her category, namely, Backward Class (Muslim) (BC(M)). The rule of reservation provide for vertical reservation of BC(M) category to the extent of 3.5%.

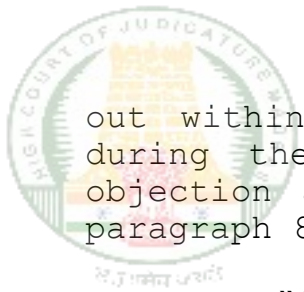
4.As far as the admission through lateral entry is concerned, nine seats have been earmarked for non service candidates. However, the grievance of the petitioner herein is that no seat has been reserved for BC(M) category, notwithstanding the vertical reservation provided for the said category, in terms of rule of reservation adopted by the State. As the petitioner secured first rank in her category, if any seat had been earmarked for BC(M) category, she would have been the automatic choice and the petitioner finding that no such reservation being provided for in the present admission, she is before this Court seeking issuance of Writ of Mandamus.

5.Mr.Subrtih Parthasarathy, learned Counsel for the petitioner reiterated the above facts and would submit that the second respondent is under a legal obligation for providing reservation for BC(M) category in the selection and on a prima facie consideration for this Court, at the time of admission, has ordered the second respondent to keep one seat of B.Pharm, unfilled till a final decision is taken in the matter.

6.Notice was ordered by this Court and in response to the same, Mr.C.Ramesh, learned Special Government Pleader entered appearance on behalf of the respondents.

7.The learned Special Government Pleader, in fact, circulated a position note highlighting the number of seats available for the non service candidates for the 2020-21 academic session. According to the statement circulated on behalf of the second respondent, as only nine seats were available for B.Pharm lateral entry, no reservation could be provided for BC(M) category in this year.

8.A counter affidavit has also been filed on behalf of the respondents. In the counter affidavit, it has been clearly explained, as to how the number of seats have been made available for lateral entry students and how the reservation has been worked



out within the constraints of the vacancies that were available during the time of admission. The sum and substance of the objection against the claim of the petitioner herein is found in paragraph 8, which is extracted hereunder:

“8.It is submitted that 9 seats are available for the non-service candidates for 2020-21 session. As per the rule of reservation, the appointments are shown below:

	OC	BC	BCM	MBC	SC	ST
PERCENTAGE	31%	26.5%	3.5%	20%	18%	1%
9 SEATS	2.79	2.385	0.315	1.8	1.62	0.09

9.Therefore, the learned Special Government Pleader would submit that no reservation could be made available for BC(M) category for this academic year.

10.The learned Counsel for the petitioner, however, reiterated his submissions that though the petitioner has secured first rank, unfortunately, in the absence of seat earmarked for BC(M) category, she could not be accommodated. The learned Counsel, however, would not dispute the statement circulated to this Court on behalf of the second respondent and also the facts stated in the counter affidavit by the respondents.

11.Although, this Court, on a *prima facie* consideration, has given an interim direction not to fill up one seat till the final decision is taken in this case, but on a consideration of the counter affidavit filed on behalf of the respondents and also on perusing the position note, this Court does not think that the prayer in the Writ Petition could be granted. The fact of the matter as established is that there are only nine seats available for the present academic year 2020-21 for lateral entry students and out of the nine seats, the quota for BC(M) category could not be extended as the vacancies were few and far between. In that circumstances, the petitioner's claim has to necessarily fail.

12.The rule of reservation is nevertheless mandatory to be applied in every selection, but, at the same time, such rules would have to be applied only on the factual matrix relating to the number of seats available and the rotation of the vacancies by applying communal roster. In this case, BC(M) quota has not been made available due to the shortage of vacancy for the present academic year. In that view of the matter, this Court does not think that the relief could be granted to the petitioner.



13. For the aforesaid reasons, this Writ Petition stands dismissed as being devoid of merits. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

To

1. The Secretary to the Government,
Health and Family Welfare Department,
Secretariat, Chennai - 600 009.

2. The Director of Medical Education,
Kilpauk, Chennai.

3. The Secretary,
Selection Committee,
Director of Medical Education,
Kilpauk, Chennai - 600 010.

+1 CC to M/s.SPL GP (SR-13302[F] dated 24/03/2021)

+1 CC to M/s.K.GOVINDARAJAN, Advocate (SR-13447[F] dated 24/03/2021)

W.P. (MD)No.5743 of 2021

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