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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.08.2021

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

and

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.A. (MD) .No.610 of 2019

and

W.P. (MD) .Nos.14119 & 14128 of 2020

and

WMP (md) .nO.11772,11776,11780 OF 2020 AND

CMP (MD) .nO.3831,3832 OF 2020 & 5003 OF 2019

W.A. (MD) .No.610 of 2019

1.The Chief Secretary,
Tamil Nadu State,
Fort St. George,
Secretariat, Chennai 600 009.

2.The Principal Secretary,
Department of Health & Family Welfare,
Fort St. George,
Secretariat, Chennai 600 009.

3.The Additional Director of Medical Education,
Secretary,
Selection Committee,
162, Periyar EVR High Road,
Kilpauk, Chennai 600 010.

... Appellants / Respondent 2 to 4

-vs-

1.D.Kuralarasan (M-19)
S/o.Datchana Moorthi,
VIII, Sokkapadappu,
PO.Sooranam,
Ilayangudi Taluk,
Sivagangai District 630 713.

... Respondent / Petitioner



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

... Respondent / 1st Respondent

Prayer :

Appeal against the order dated 08.05.2019 in W.P. (MD) .No.17414 of 2018.

For Appellants : Mr.Sricharan Rangarajan,
Additional Advocate General
Assisted by Mr.M.Muthu Geethaiyan
Special Government Pleader

For Respondents : **(*)No appearance for R1**
Ms.Victoria Gowri, ASGI for R2
Assistant. By P.Subbaiah

W.P. (MD) .No.14119 of 2019

A.Priyanka,
D/o.R.Annamalai,
11/4, Narayana Sami Kovil Street,
Alvartirunagari - 628 612
Thoothukudi District

... Petitioner

-vs-

1.The Joint Secretary to the Government of India,
Ministry of Defence, Department of Ex Servicemen Welfare,
Room No.237, B Wing, Sena Bhawan,
New Delhi - 110 011.

2.The Principal Secretary,
Department of Health & Family Welfare,



Secretariat, Chennai 600 009.

3.The Additional Director of Medical Education,
Secretary, Selection Committee,
162, Periyar EVR High Road,
Kilpauk, Chennai 600 010.

... Respondents

Prayer :

Petition filed under Article 226 of Constitution of India for issuance of Writ of Certiorarified Mandamus calling for the records of the 2nd Respondent in impugned G.O.(2D).No.23 Health and Family Welfare (MCA1) Department dated 28.05.2004 and consequential G.O(D). No.977/Health and Family Welfare (MCA1) department dated 01.06.2018 and quash the same and direct the respondents No.2 & 3 to consider the Petitioner for Admission to MBBS/BDS Degree Courses in Tamil Nadu Govt., Medical/Dental Colleges, I.R.T.Medical College, Perunthurai, Erode for the academic year 2020-2021 on the basis of G.O.(Ms).No.1142 Health and Family Welfare Department dated 30.06.1979 and reiterated in Priority VII to IX in vide letter F.No.6(1)/2017/D(Res II) dated 30.11.2017 as revised on 21.05.2018 by the 1st Respondent in the category of Children of Serving Defence Personnel.

For Petitioners : Mr.K.KKannan

For Respondents : Mr.Sricharan Rangarajan,

Additional Advocate General

Assisted by Mr.M.Muthu Geethaiyan

Special Government Pleader(*)for R2& R3
Mr.P.Subbiah CGSC for R1

W.P. (MD) .No.14128 of 2020

Ms.K.Sukisha

D/o.V.Krishnasamy

... Petitioner

-vs-

1.The Joint Secretary to the Government of India,
Ministry of Defence, Department of Ex Servicemen Welfare,
Room No.237, B Wing, Sena Bhawan,
New Delhi - 110 011.



2.The Principal Secretary,
Department of Health & Family Welfare,
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Secretariat, Chennai 600 009.

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3.The Additional Director of Medical Education,
Secretary, Selection Committee,
162, Periyar EVR High Road,
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... Respondents

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For Petitioners : Mr.K.KKannan

For Respondents : Mr.Sricharan Rangarajan,

Additional Advocate General

Assisted by Mr.M.Muthu Geethaiyan

Special Government Pleader(*)for R2& R3
Mr.P.Subbiah CGSC for R1

Prayer in WP(MD). 17414/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court 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 3rd respondent and quash the same as arbitrary and consequently direct the Respondents to include the category of wards of service personnel in the prospectus of MBBS admission for ensuring years.



C O M M O N O R D E R

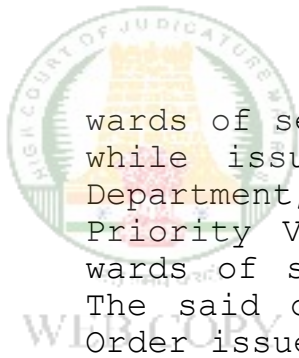
(Order of the Court was delivered by **N.KIRUBAKARAN, J**)

Scorching Sun and Freezing Cold do not deter our border forces from safeguarding our nation. Our forces spend sleepless nights in the borders to make us sleep safely and securely inside our homes. They are separated from their families for months together and some time years together in the interest of the nation. That apart, they are martyred by enemy countries or extremists on daily basis. Sometimes they are killed in groups by our enemies. When such is the selfless sacrifice being made by the serving defence personnel, it is shocking and surprising to note that the Government of Tamil Nadu omitted the special reservation for wards of serving defence personnel for admission to medical courses. The omission of wards of serving personnel in the special reservation for medical admission is the subject matter of this appeal.

2.The first respondent's father is a Junior Commissioned Officer in the Indian Army. The first respondent cleared NEET in the year 2018 and applied for MBBS seat in one of the Government colleges in Tamil Nadu. However, he was denied admission as no such reservation was available for wards of serving defence personnel as per G.O.(D).No.977, Health and Family Welfare (MCA-1) Department, dated 01.06.2018. Hence, the first respondent challenged the aforesaid G.O. to the extent it excluded the wards of serving defence personnel and further directed the appellants to include the wards of serving defence personnel under special reservation in the prospectus of MBBS admission for ensuing years. The said representation, on contest, was allowed by the learned Single Judge against which the present appeal has been filed.

3.Heard Mr.Sricharan Rangarajan, learned Additional Advocate General, Ms.Victoria Gowri, learned Assistant Solicitor General of India and Mr.K.K.Kannan, learned counsel for the petitioner in the Writ Petitions.

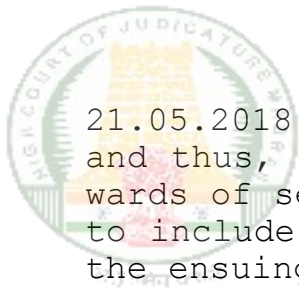
4.The case of the first respondent before the learned Single Judge was that as per G.O.Ms.No.1142, Health and Family Welfare Department, dated 30.06.1979, seats were reserved for children of ex/deceased/serving defence personnel. Subsequently, the wards of serving personnel has been deleted and only reservation has been made available for the wards of ex-servicemen. The notification issued by the Government of India, Ministry of Defence dated 21.05.2018 gives inter-se priority for reservation/preference to the wards of Armed Forces Personnel by States / Union Territories for admission to Medical / Professional / Non-Professional Courses and it gives waterfall reservation giving preferences from Priority I to Priority IX. Though Central Government notification speaks about



wards of serving personnel as Priority VIII, the State of Tamil Nadu while issuing G.O.(D).No.977, Health and Family Welfare (MCA-1) Department, dated 01.06.2018 retained the priority list only upto Priority VI and deleted the other three categories including the wards of serving personnel which has been given as Priority VIII. The said deletion is arbitrary and is contrary to the Government Order issued by the Government of India,

5.The State Government contested that even though the wards of serving defence personnel were included in G.O.Ms.No.1142, Health and Family Welfare Department, dated 30.06.1979, a new policy has been taken through G.O.(2D).No.23, Health and Family Welfare (MCA-1) Department, dated 28.05.2004 and the special reservation is confined only to Physically Handicapped, Eminent Sports persons, Children of Freedom Fighters and Children of Ex-servicemen. Though 6 seats were originally reserved for ex/deceased/serving defence personnel through G.O.Ms.No.1142, Health and Family Welfare Department, dated 30.06.1979, the same has been reduced to 4 seats as per G.O.(2D).No.23, Health and Family Welfare (MCA-1) Department, dated 28.05.2004 and the remaining seats have been added to the General Pool. In the year 2015, the number of seats given to Army Personnel has been enhanced to 10 as per impugned Government Order in G.O.(D).No.977, Health and Family Welfare (MCA-1) Department, dated 01.06.2018. The deletion of the serving defence personnel is as per the five Judges Bench of this Court made in the case of **M.Arthi (Minor) v. State of Tamil Nadu and two others** in W.A.No.3221 of 2002, wherein the larger bench observed that other than the reservation in Tamil Nadu Act 45 of 1994, what is permissible is only for Physically Handicapped, Eminent Sportsmen, Children of freedom fighters and Children of Ex-servicemen being horizontal reservation and not vertical and the Government has to be borne this in mind in future. Moreover, it was argued that reservations are matters of Government policy and the scope of judicial review was very limited.

6.The learned Single Judge after hearing both the parties found that G.O.Ms.No.1142, Health and Family Welfare Department, dated 30.06.1979 is still holding the field and there is no reason given to depart from the reservation already provided through the aforesaid Government Order. Moreover, there was nothing on record to show that G.O.Ms.No.1142, Health and Family Welfare Department, dated 30.06.1979 has been superseded. Further, the learned Single Judge found that the revised list of priorities has been issued by the Government of India vide notification issued by the Ministry of Defence dated 21.05.2018, in which the wards of serving defence personnel has been retained as Priority VIII and there is no occasion for the State Government to deviate from the same. Hence, the learned Single Judge held that the omission of Priority VII to



21.05.2018 in the impugned Government Order is irrational, arbitrary and thus, quashed the Government Order to the extent it omitted the wards of serving defence personnel and directed the State Government to include the wards of serving defence personnel for MBBS / BDS in the ensuing years from the current academic year.

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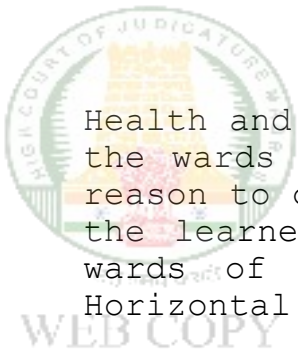
7. After hearing the arguments and after perusing the records, it is very clear that vide G.O.Ms.No.1142, Health and Family Welfare Department, dated 30.06.1979, the Government of Tamil Nadu very fairly took care of the reservation for children of ex/deceased/serving defence personnel by providing two seats for each category in the medical admission from July 1977 session onwards.

8. Though the State Government would argue that because of the larger bench judgment in the case of **M.Arthi (Minor) v. State of Tamil Nadu and two others** in W.A.No.3221 of 2002, the Government is not in a position to extend the reservation benefits to the children of serving defence personnel, a detailed analysis of the said judgment would reveal that the question before the Court in that case was with regard to the reservation made to the children born of inter-caste marriage. In paragraph 26 of the aforesaid judgment, it was specifically stated that the only issue which was dealt with was regard to the Horizontal reservation made in respect of the children born out of inter-caste marriage and the other categories of reservation were not opened. Therefore, the decision of the State Government to delete the reservation given to the children of serving defence personnel is not sustainable.

9. Reliance has been placed by the State Government on the observation made in Paragraph 19 of the said judgment. However, the said observation is only recommendatory in nature and not directory and no positive direction has been given. The larger bench had categorically stated in paragraph 26 that the Court was not making any pronouncement with regard to the validity of those categories for which special reservation had been made. A comprehensive reading of larger bench judgment would make it very clear that there is no positive direction to omit the reservation given to the children of serving defence personnel.

10. Therefore, this Court upholds the order of the learned Single Judge by which the relevant portion of the impugned Government Order is quashed denying the benefits of special reservation to wards of serving defence personnel.

11. That apart, the original Government Order in G.O.Ms.No.1142,
<https://hcservices.ecourts.gov.in/hcservices/>



Health and Family Welfare Department, dated 30.06.1979, took care of the wards of ex/deceased/serving defence personnel and there is no reason to depart from the said Government Order. As rightly found by the learned Single Judge, no reason has been given as to why the wards of serving defence personnel have been deleted from the Horizontal reservation.

12. When the Government of India, after detailed consideration, laid various parameters and revised the list of priority and included the wards of serving defence personnel in Priority VIII in the revised priority given by the Central Government dated 21.05.2018, there is no occasion for the State Government to delete Priority VII to IX and there is no justification for total omission of the wards of serving defence personnel.

13. No doubt, it is the policy of the Government to give benefits by way of special reservation. When reservation is given to wards of ex-service personnel, there is no occasion to delete the wards of serving defence personnel. Thus, omitting Priority VII to IX is clearly arbitrary, irrational as found by the learned Single Judge, as it violates Article 14 of the Constitution. There is no doubt with regard to the dictum laid down by the Hon'ble Apex Court in **Union of India v. M.Selvakumar** reported in **(2017) 3 SCC 504**, in which it was held 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 a better policy can be evolved. However, the way in which the wards of serving defence personnel who have been given equal treatment by providing two seats by virtue of G.O.Ms.No.1142, Health and Family Welfare Department, dated 30.06.1979 has been deleted without any cause or reason in the impugned Government Order is absolutely capricious and not supported by reasons violating Article 14 of the Constitution of India.

14. The Hon'ble Apex Court in the decision made in the case of **Ugar Sugar Works Ltd vs. Delhi Administration** reported in **(2001) 3 SCC 635** held that if the policy decision can be faulted on the grounds of mala fide, unreasonableness, arbitrariness or unfairness, it is always open to the Court to interfere in those circumstances. Similar view has been taken in the decision made in the case of **State of Madhya Pradesh v. Mala Banerjee** reported in **(2015) 7 SCC 698**.

15. The learned Single Judge also relied upon the Division Bench Judgment of the Delhi High Court made in the case of **Master Harshil Anand v. Union of India** reported in **(2016) 160 DRJ 268** to hold that <https://hcservices.ecourts.gov.in/hcservices/> cannot reclassify or alter the category of



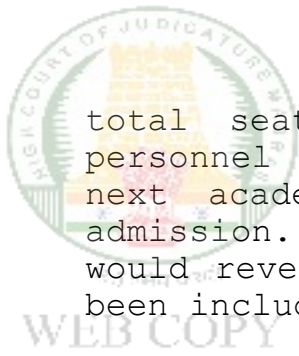
reservation which has been recommended by the Ministry of Defence, having accepted to implement it. Therefore, the Government of Tamil Nadu cannot restrict any category of persons who are eligible for reservation as per the Communication dated 30.11.2017.

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16. It is the policy of the Government to give special reservation as approved by the Hon'ble Apex Court in the case of **Union of India v. M.Selvakumar** reported in **(2017) 3 SCC 504**. The policy as spelled out in G.O.Ms.No.1142, Health and Family Welfare Department, dated 30.06.1979 gives equal preference to the children of ex/deceased/serving defence service personnel by providing two seats for each category in the year 1979. The aforesaid policy is very reasonable and fair giving equal opportunity to students belonging to all the three categories, however the reservation for the children of serving personnel has been deleted through G.O.(2D). No.23, Health and Family Welfare (MCA-1) Department, dated 28.05.2004 and the special reservation is confined only to Physically Handicapped, Eminent Sports persons, Children of Freedom Fighters and Children of Ex-servicemen. Further, vide G.O.(Ms). No.16, Health and Family Welfare (MCA-1) Department, dated 22.01.2015, the Government enhanced the number of MBBS seats earmarked for the children of ex-service personnel from 2 to 5 seats from the year 2015-16 and again the same has been enhanced to 11 seats through G.O.(D).No.977, Health and Family Welfare (MCA-1) Department, dated 01.06.2018 from the year 2018-19 which is impugned before this Court. When the total number of seats were in 100's during the year 1979, 6 seats were given to the children of ex-service personnel, whereas every year, new medical colleges are being established in Tamil Nadu and at present, Tamil Nadu has about 26 medical colleges having 3650 seats in Government medical colleges and 1147 Government quota seats in private medical colleges, totalling 4797 medical seats, out of which 15% is reserved for Central Government quota and the balance is left to the State quota. Therefore, 11 seats available for the children of defence personnel are inadequate and the same is required to be increased as has been done by other States namely, Karnataka, Telangana, Punjab, Kerala and Andhra Pradesh.

17. In Andhra Pradesh, 1% of total medical seats available is allotted to Children of Armed Forces personnel. In Karnataka, 10% of seats under the defence quota is earmarked for serving defence personnel. In Kerala, 2 MBBS and 1 BDS seats are earmarked for serving defence personnel. In Telangana, 1% of the seats is earmarked for defence quota which would come around 49 MBBS seats.

18. Taking into consideration, the allocation of more number of seats by the other States, this Court expects that at least 1% of the



total seats would be made available to the wards of defence personnel in recognition of their services to the nation, from the next academic year onwards in medical admission including BDS admission. A perusal of the prospectus issued by the State of Punjab would reveal that even the wards of serving defence personnel have been included in the special reservation under the defence quota.

19.As stated above, the policy expressed by the State in G.O.Ms.No.1142, Health and Family Welfare Department, dated 30.06.1979 is capable of doing justice to all sections of defence personnel namely, ex/deceased/serving.

20.In view of the abovestated position, this Court agrees with the reasoning given by the learned Single Judge. Therefore, this Court finds no illegality or infirmity in the order passed by the learned Single Judge and hence, the Writ Appeal stands disposed of with a direction to the Central Government to revisit the priority list giving equal importance to all persons by distributing the available seats uniformly, so that all sections would be benefitted. The said exercise has to be carried out within a period of 12 weeks from the date of receipt of a copy of this order.

21.As far as the case of the petitioners in W.P.Nos.14119 and 14128 of 2020 are concerned, the respondents are directed to consider the case of the petitioners in the light of the observations made above in the WRIT APPEAL. Thus, the Writ Petitions are disposed of in the above terms.

Connected miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar (P&A)

**(*) Amended as per letter dated 27.10.2021 of Mr.P.Subbiah,
Advocate, CGSC, Madurai Bench of Madras High Court.**

Sd/-

Assistant Registrar (P&A)

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/ /2021

Sub Assistant Registrar(CS)

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To

(*) to be substituted the order already despatched on 20.09.2021

1.The Joint Secretary to the Government of India,
Ministry of Defence, Department of Ex Servicemen Welfare,
Room No.237, B Wing, Sena Bhawan,
New Delhi - 110 011.

2.The Principal Secretary,
Department of Health & Family Welfare,
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162, Periyar EVR High Road,
Kilpauk, Chennai 600 010.

4.The Chief Secretary,
Tamilnadu Government,
Secretariat,
Fort St. George, Chennai-600 009

+1 CC to M/s.K.K.KANNAN, Advocate (SR-26865[F] dated 19/08/2021)

W.A. (MD) .No.610 of 2019

and

W.P. (MD) .Nos.14119 & 14128 of 2020

Dated : 19.08.2021

PS (CO)

SB(15.09.2021) 12P 6C

PS (CO)

KB(07.01.2022) 11P 6C