
(2001) 06 KL CK 0021
In the High Court Of Kerala
Case No : W.A. No. 2427 of 2000

Ayyappan Pillai

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 25-06-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 2 ILR (Ker) 578

Hon'ble Judges : K.K. Usha, C.J.;Kurian Joseph, J

Bench : Division Bench

Advocate : C.P. Sudhakara Prasad, for the Appellant; Koshy George, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

K.K. Usha, C.J.—Petitioner in O.P. No. 25387/2000 is the appellant. The challenge in the Original Petition was against the manner of reservation of seats for admission to M.S. (Orthopaedics) in the Health Services Quota as contained in Ext. P4 Prospectus for P.G. Degree/Diploma Courses, 2000. Two seats are reserved to M.S. (Orthopaedics). Petitioner contended that allotment of these two seats to Rural Services Quota and Difficult Rural Areas Quota totally ignoring Seniority in Service Quota is arbitrary and discriminatory. According to the petitioner one seat should have been reserved in the Seniority in Service Quota. Petitioner claims that he is the seniormost among the applicants and if one seats has been allotted to the Seniority in Service Quota he would be entitled for admission to the above seat. The learned Single Judge dismissed the Original Petition accepting the contention raised by the learned government Pleader that as per the policy of the Government for the year 2000 the two seats are to be shared between Rural Service Quota and difficult Rural Areas Quota and that in policy matters this Court should not interfere. Aggrieved by the above the petitioner has come up in appeal.

2. Pursuant to the directions issued by this Court a counter affidavit was filed and

thereafter a statement was also filed producing all the earlier Government orders relating to the reservation of seats in different Post Graduate Courses for candidates from amongst the Health Services Department. It is seen from the documents produced by the respondents as well as from its counter affidavit that the category Difficult Rural Areas Quota was introduced for the first time in the year 1997. Till then there were only two categories, namely Service Seniority Quota and Rural Services Quota. The circumstances under which such a special category had to be recognised in the already existing category of Rural Services Quota are explained in Ext. R1(e) Government order dated 22.7.1997. In the annexure to R1(e) against M.S. (Orthopaedics) it was shown that one seat is reserved for Difficult Rural Areas Quota and one seat for Service Seniority Quota.

3. In paragraph 7 of the counter affidavit the respondent has explained how a further classification of Difficult Rural Services Quota was necessitated. It is contended that there were several complaints before the Government that a single classification of rural areas is not proper. In the rural area itself there are places where there is difficulty for accessibility, lack of other infrastructure facilities such as water, electricity, accommodation etc. It was under these circumstances of the Government decided to further classify the rural areas into Rural Services Quota and Difficult Rural Areas Quota based on certain guidelines regarding the availability of basic facilities in the area. To this extent the statement in the counter affidavit would go in support of the contention raised by the petitioner. But in the latter portion of the paragraph 7 it is stated that for the year 1999-2000 the Prospectus Committee thought of allotting the two seats to Rural Service Quota and Difficult Rural Areas Quota as the Committee found that there was continuous reservation for the three years for Seniority in Service Quota and Difficult Rural Areas Quota. It is further contended that the Committee makes the allotment of seats to these reservation quotas depending on the assessment of the conditions and circumstances prevailing at the particular year. This statement is very vague. Apart from the above we are of the view that the Prospectus Committee cannot have any power to change the rotation of the quota if there is no such clear provision in the Government order governing the field.

4. We also find no merit in the contention that the decision was taken in the year 1999 to ignore Seniority in Service Quota since for three years the above category was continuously given the reservation. It is to be noted that Difficult Rural Areas Quota was introduced for the first time only in the year 1997 and therefore, till then there is nothing wrong in allotting the seat to the Seniority in Service Quota. There is no provision to make good any seat to Difficult Rural Areas Quota as there was no quota at all for such a category before 1997. Apart from the above, on the reading of the Government Order Ext. R1(e) we do not understand that the intention of the Government was to introduce a new category of Difficult Rural Areas Quota by taking away the share of the category Seniority in Service Quota. On the other hand, the Government order would clearly show that Difficult Rural Areas Quota is carved out of the existing

category "Rural Services Quota". If that be so and going by the provisions in Ext. R1(e) one seat has to be always reserved for Seniority in Service Quota and the sub rotation between Rural Service Quota and Difficult Rural Areas Quota has to be restricted to the one seat initially reserved for Rural Area Quota in M.S. (Orthopaedics).

5. So long as the Government Order has not been subsequently modified, it is not open to the Prospectus Committee to totally ignore the Seniority in Service Quota and allot two seats between Rural Area Quota and Difficult Rural Area Quota. To that extent we are of the view that the provisions contained in Ext. P4 is against the provisions of the Government Order Ext. R1(e) and cannot be sustained.

6. In C.M.P. No. 6252/2000 this court had directed the respondents to reserve one seat in M.S. (Orthopaedics) in Health Services Quota for the year 2000. We hold that if the petitioner is the senior most among the applicants and if he is otherwise qualified he will be entitled to admission to the above seat reserved for M.S. (Orthopaedics). The respondents are directed to fill up the seats without further delay.

The Writ Appeal stands allowed as above.