
(2008) 01 MAD CK 0004

In the Madras High Court

Case No : Writ Petition No. 18019 of 2008 and M.P. No's. 1 and 3 of 2008

Dr. A.C. Senthil Kumar

APPELLANT

Vs

Directorate of Medical Education and Others

RESPONDENT

Date of Decision : 01-01-2008

Acts Referred:

Constitution of India, 1950 — Article 15(4), 16(4), 335

Citation : (2008) 01 MAD CK 0004

Hon'ble Judges : R. Banumathi, J

Bench : Single Bench

Advocate : Yashodvardhan for K. Chandrasekaran, for the Appellant; Dakshyani Reddy, for R1, 2 and 4 and T.P. Prabakaran, for R5, for the Respondent

Final Decision : Allowed

Judgement

R. Banumathi, J.—Challenge in this Writ Petition is to the allocation of one and only seat in the Higher Speciality Course - Endocrine

Surgery exclusively to in-service candidates. Petitioner is aggrieved against the selection of 5th Respondent for M. Ch. Endocrine Surgery for the academic year 2008-2009.

2. In nutshell, case of the Petitioner is as follows:

(i) Petitioner possessed P.G. (M.S) Degree in General Surgery. He has applied for 3 years Super Speciality Courses in Tamil Nadu Government

Medical Colleges. As the candidate is eligible to give two options, Petitioner applied for M.Ch. Courses in surgical Oncology as first option and

Endocrine Surgery as second option. In M.Ch. Endocrine Surgery, there is only one seat available in Tamil Nadu i.e. in Madras Medical College.

As per the open merit list put up for Endocrine Surgery, Petitioner's name was placed at No. 1 with 73 total marks followed by Amudhan (service

candidate) with 71.25 marks and 5th Respondent - Zahir Hussain (service) with 69.25 marks. List for counselling was put up for M.Ch. Courses

in Endocrine Surgery contained only the names of service candidates and did not contain the name of the Petitioner. Petitioner filed Writ of

Mandamus to permit him to attend the counselling to be held on 28.7.2008.

3. In the counselling held on 28.7.2008, Amudhan with 72.25 marks which is lower than 73 marks of the Petitioner was selected. Since, Amudhan

did not want to join, another counselling was scheduled. By interim order, Court has permitted the Petitioner to participate in the counselling.

Petitioner attended the same on 20.8.2008. However, the seat has been allotted to 5th Respondent whose service merit mark is 70.25.

4. Petitioner has amended the prayer in the Writ Petition seeking Writ of Certiorarified Mandamus to quash the selection of the 5th Respondent

and to direct the Respondents 1, 2 and 4 to admit the Petitioner into M. Ch. Courses - Endocrine Surgery. Petitioner has challenged the selection

on the ground that Petitioner is more meritorious than any other candidates and the Petitioner ought to have been called for counselling and ought

to have been selected on the basis of merit.

5. Respondents 1, 2 and 4 resisted the Petition by filing common counter-affidavit. The stand of the Respondents 1, 2 and 4 is that as per Clause

60(a) of Higher Speciality Prospectus 2008-2009, 50% of seats in each discipline and in each College are reserved for service candidates and in

case of an odd number seat remaining vacant that seat shall be filled from the service candidates. According to the Respondents 1,2 and 4, only

one seat available in the Speciality Endocrine Surgery was allotted to service candidate as the seat was being odd number seat allotted for service

category.

6. Fifth Respondent has also filed counter stating that in case of odd number seat remaining vacant that seat shall be filled from service candidates

and the single seat was rightly filled by service candidate.

7. Placing reliance upon number of decisions, Mr. Yashodvardhan, learned Senior Counsel appearing for the Petitioner has submitted that the only

seat in M. Ch. Course Endocrine Surgery cannot be the subject matter of reservation for any one category but has to be kept open. The learned

Senior Counsel further submitted that Supreme Court has consistently laid that

at the level of super specialization there cannot be any reservation because any dilution of merit at this level would adversely affect the national interest and therefore, the only one seat is required to be kept as open competition. It was further urged that Petitioner with highest marks is thus entitled to be admitted and the selection of 5th Respondent is contrary to the Prospectus and also the consistent principles laid down by the Supreme Court.

8. Ms. Dakshyani Reddy, learned Spl. Government Pleader (Education) has submitted that Clause 60(a) in the Prospectus squarely applies to the case and "one" is odd number and that seat shall be filled from the service candidate only as per the Prospectus. Learned Spl. Govt. Pleader further submitted that when admission envisages admission from two sources, it was rightly filled by the service candidate. Learned Spl. Govt. Pleader further argued that Petitioner having participated in the selection process is estopped from challenging the selection process.

9. Mr. F.B. Benjamin George, learned Counsel for the 5th Respondent would submit that Petitioner was permitted to write the examination for the simple reason that in the event of non-availability of service candidates, only then the single seat for the said course is to be filled by non-service candidates. learned Counsel for the 5th Respondent further submitted that the Prospectus is very clear that the said seat is to be filled with service candidates and when the Petitioner has not chosen to challenge the Prospectus, Writ Petition filed by the Petitioner is not maintainable. In support of his contention, learned Counsel for the 5th Respondent has placed reliance upon Pre-P.G. Medical Sangarsh Committee and Another Vs. Dr. Bajarang Soni and Others, and State of Himachal Pradesh and Another Vs. Padam Devi and Others, .

10. In this case, we are concerned with the selection of candidate for the only one seat for admission to Endocrine Surgery. In the open merit list put up for Endocrine Surgery, Petitioner's name was placed at No. 1 with 73 total marks followed by Amudhan (service candidate) with 71.25 marks and 5th Respondent Zahir Hussain (service) with 69.25 marks. As per the Prospectus one mark to be for Rural service/Hilly service (1 mark for every year of rural area service and 2 marks for every year of hilly area service) to a maximum of 10 and calculated to a total of 110 marks. Resultantly Amudhan and Zahir Hussain have scored 72.5 and 70.25

marks respectively and placed at 2nd and 3rd place.

11. As per Clause 59(b) of Higher Speciality Prospectus the allotment of seats will be purely on the basis of merit in respect of the options given

by the candidates. As per Clause 60(a) of the Higher Speciality Prospectus 2008-2009, 50% of the seats in each discipline and in each college are

reserved for service candidates. In case of an odd number seat remaining vacant that seat shall be filled from the service candidates. Clause 60(a)

and (b) of Higher Speciality Prospectus reads as follows:

60. a) The Selection will be made by counselling based only on Merit and no communal reservation will be followed. 50% of seats in each

discipline and in each college are reserved for service candidates in addition to those service candidates selected in the open category. In case of

an odd number seat remaining vacant that seat shall be filled from the Service candidates.

b) If there are no Non-service candidates opting for any Higher Speciality Course, the same will be allotted to service candidates.

12. In Mohan Bir Singh Chawla Vs. Punjab University, Chandigarh and another, , the Supreme Court having reviewed the judicial opinion

declared the rule-

the higher you go, in any discipline, lesser should be the reservation - of whatever kind"" and added ""in the larger interest of the nation. It is

dangerous to depreciate merit and excellence in any field.

13. Dr Preeti Srivastava and Another Vs. State of M.P. and Others, is a landmark decision of recent times delivered by a Constitution Bench of

the Hon''ble Supreme Court. In Dr. Preeti Srivastava's case, the Supreme Court has held that at the level of super specialization there cannot be

any reservation because any dilution of merit at this level would adversely affect the national goal of having the best possible people at the highest

levels of professional levels of professional and educational training. The Supreme Court has further held that since no relaxation is permissible at

the highest levels in the medical Institutions and accordingly declared that the reservations made for Schedule Castes and Schedule Tribes

candidate for D.M. and M.Ch. Courses is not consistent with the Constitutional mandate under Article 15(4) and 16(4). The principles laid down

by the Constitution Bench, so far as relevant for this case are culled out and

stated here under:

23. this Court has repeatedly said that at the level of super-specialisation there cannot be any reservation because any dilution of merit at this level

would adversely affect the national goal of having the best possible people at the highest levels of professional and educational training. At the level

of a superspeciality, something more than a mere professional competence as a doctor is required. A super-specialist acquires expert knowledge in

his speciality and is expected to possess exceptional competence and skill in his chosen field, where he may even make an original contribution in

the form of new innovative techniques or new knowledge to fight diseases. It is in the public interest that we promote these skills. Such high

degrees of skill and expert knowledge in highly specialised areas, however, cannot be acquired by anyone or everyone. For example, specialised

sophisticated knowledge and skill and ability to make right choices of treatment in critical medical conditions and even the ability to innovate and

devise new lines of treatment in critical situations, requires high levels of intelligent understanding of medical knowledge or skill and a high ability to

learn from technical literature and from experience. These high abilities are also required for absorbing highly specialised knowledge which is being

imparted at this level. It is for this reason that it would be detrimental to the national interest to have reservations at this stage. Opportunities for

such training are few and it is in the national interest that these are made available to those who can profit from them the most viz. the best brains in

the country, irrespective of the class to which they belong.

24. ...Therefore, selection of the right caliber of students is essential in public interest at the level of specialised post-graduate education....

59. ...The marks cannot be lowered further for admission to the postgraduate medical courses, especially when at the superspeciality level it is the

unanimous view of all the judgments of this Court that there should be no reservations. This would also imply that there can be no lowering of

minimum qualifying marks for any category of candidates at the level of admission to the superspeciality courses.

62. In the premises, we agree with the reasoning and conclusion in Dr. Sadhna Devi and others Vs. State of U.P. and others, and we overrule the

reasoning and conclusions in Ajay Kumar Singh v. State of Bihar AIR 1994 SCW

2515 (supra) and Post-Graduate Institute of Medical Education

and Research etc. Vs. K.L. Narasimhan and another etc., . To conclude:

1. ...

2. ...

3. ...

4. At the level of admission to the superspeciality courses, no special provisions are permissible, they being contrary to the national interest. Merit

alone can be the basis of selection.

67. ...Undoubtedly, protective discrimination in favour of the backward, including Scheduled Castes and Scheduled Tribes is as much in the

interest of society as the protected groups. At the same time, there may be other national interests, such as promoting excellence at the highest level

and providing the best talent in the country with the maximum available facilities to excel and contribute to society, which have also to be borne in

mind. Special provisions must strike a reasonable balance between these diverse national interests.

68. ...Admissions to the highest available medical courses in the country at the superspeciality levels, where even the facilities for training are

limited, must be given only on the basis of competitive merit. There can be no relaxation at this level.

69. ...Indra Sawhney v. Union of India 1992 Supp (3) SCC 217 has also observed that in certain positions at the highest level merit alone counts.

In specialities and super specialities in Medicine, merit alone must prevail and there should not be any reservation of posts. The observations in

Indra Sawhney etc. etc Vs. Union of India and others, etc. etc., were in respect of posts in the specialities and super-specialities in Medicine.

Nevertheless, the same principle applies to seats in the specialities and superspecialities in Medicine. Moreover, study and training at the level of

specialities and superspecialities in Medicine involve discharging the duties attached to certain specified medical posts in the hospitals attached to

the medical institutions giving education in specialities and superspecialities. Even where no specific posts are created or kept for the doctors

studying for the superspecialities or specialities, the work which they are required to do in the hospitals attached to these institutions is equivalent to

the work done by the occupants of such posts in that hospital. In this sense also, some of the considerations under Article 16(4) read with Article

335 rub off on admissions of candidates who are given seats for speciality and superspeciality courses in Medicine. Even otherwise under Article

15(4) special provisions which are made at this level of education have to be consistent with the national interest in promoting the highest levels of

efficiency, skill and knowledge amongst the best in the country so that they can contribute to national progress and enhance the prestige of the

nation. The same view has been upheld in *Fazal Ghafoor (Dr.) v. Union of India* 1988 Supp SCC 794 and *Mohan Bir Singh Chawla Vs. Punjab*

University, Chandigarh and another, .

14. However, reservation in favour of in-service candidates cannot be equated or treated on par with communal reservations envisaged under

Article 15(4) and 16(4). In *Tamil Nadu State v. T. Dhilipkumar* (2001) 8 SCC 700, Supreme Court has upheld the additional mark awarded to

in-service candidates serving in rural areas and it was held as follows:

4. Insofar as the additional mark awarded to in-service candidates serving in rural areas is concerned, the judgment of this Court in *Dr. Dinesh*

Kumar and Others (II) Vs. Motilal Nehru Medical College, Allahabad and Others, is the answer to the argument that in-service candidates serving

in rural areas will, after acquisition of postgraduate degrees, return to rural areas. The observations in this behalf have been cited by the High Court

and in our view, rightly.

6. In our view, the High Court was right in the view that it took, that no reservation beyond fifty per cent is ordinarily contemplated and this

percentage is what the High Court allowed. In striking down the additional mark for in-service candidates serving in rural areas, the High Court

followed the decision of this Court.

15. The Hon"ble Supreme Court upheld the reservation upto 50% upholding the increase of reservation of seats for in-service candidates from

25% to 50%, in *Pre-P.G. Medical Sangarsh Committee and Another Vs. Dr. Bajarang Soni and Others*, the Supreme Court has held as under:

8. The learned Counsel for the Appellants, who filed the appeals with the permission of the Court, also sought to challenge the conclusion arrived

at by the learned Single Judge in repelling the challenge made to the reduction of

the minimum cut-off marks for selection of the in-service candidates from 50% to 33%.... That apart, as rightly pointed out in one of the judgments of this Court noticed above, mere theoretical excellence or merit alone is no sufficient indicia of the qualitative merits of the candidates in the field of actual practice and application. The doctors, who are in-service candidates in various medical institutions run and maintained by the Government departments, have wide area and horizon of exposure on the practical side and they may not have the required extra time to keep themselves afresh on the theoretical side like an open candidate who may have sufficient time at his disposal to plod through books. The in-service candidates in contrast to the fresh or open candidates have to spend much of their time on attending and treating the patients in the hospitals they serve gaining excellence on the practical side and, in our view, they would constitute a distinct class by themselves to be given a special treatment and no grievance can be made out on the ground that the minimum eligibility marks for their selection in respect of seats earmarked for them should also be the same as that of the fresh or open candidates. We could see no discrimination or arbitrariness involved in the special provision made to meet a just and appropriate need in public interest.

16. Observing that the candidates having to confine their claims against the quota fixed for each of such category viz., 50% for service candidates and 50% for non-service candidates and no one in one category having any right to stake a claim against the quota earmarked for the other category in *K. Duraisamy and Another Vs. The State of Tamil Nadu and Others*, speaking for the Bench, Justice D. Raju has held as under:

8. That the government possess the right and authority to decide from what sources the admissions in Educational Institutions or to particulars disciplines and courses therein have to be made and that too in what proportion, is well established and by now a proposition well settled, too. It has been the consistent and authoritatively settled view of this Court that at the super speciality level in particular and even at the Post-Graduate level reservations of the kind known as ""protective discrimination"" in favour of those considered to be backward should be avoided as being not permissible. Reservation, even if it be claimed to be so in this case, for and in favour of in-service candidates, cannot be equated or treated on par

with communal reservations envisaged under Article 15(4) or 16(4) and extended the special mechanics of their implementation to ensure such reservations to be the minimum by not counting those selected in open competition on the basis of their own merit as against the quota reserved on communal considerations.

9. Properly speaking, in these cases, we are concerned with the allocation of seats for admission in the form of a quota amongst in service

candidates on the one hand and non-service or private candidates on the other and the method or manner of working out in practice the allocation

of seats among the members of the respective category. Could the State Government have legitimately made a provision allocating 50% of seats

exclusively in favour of in-service candidates and keep open the avenue for competition for them in respect of the remaining 50% along with others

denying a fair contest in relation to a substantial or sizeable number of other candidates, who are not in service and who fall under the category of

non-service candidates, will itself be open to serious doubt. One such attempt seems to have been put in issue before the Madras High Court

which held that reservation in favour of in-service candidates for the academic year 1992-93 should be confined to 50% and awarding of two

additional marks, instead of one addition mark for each completed year of service in primary health centres, was unconstitutional and when the

matter was brought to this Court, in the decision reported in *State of Punjab and others Vs. Dev Dutt Kaushal and etc. etc.*, , the decision of the

High Court has been upheld. this Court also further observed that the Government should appoint a highly qualified committee to determine from

year to year what, in fact, should be the percentage-wise reservation required for in-service candidates, having regard to the then prevailing

situation and that the percentage of fifty percent shall, if found appropriate, be reduced.

10. ...We are also of the view that it does not lie in the mouth of the writ Petitioners to raise a bogey of selection based on merit alone, only in

respect of a portion of the seats available for admission to non-service candidates, when they belong to and are part of a category or class who

have got in their favour fifty per cent of the number of seats in each of the disciplines allocated to their category of "in-service" candidates to be

filled up exclusively from such "in-service" candidates on the basis of their own inter se merit and not on the overall merit performance of all the candidates both in-service and non-service.... The justification, both in law and on facts for exclusive allocation and stipulation of a definite quota or number of seats for non-service or private candidates, in our view, lies in the very principle which warranted or enabled the fixation of a quota of fifty percent of seats and exclusively allotted to in-service candidates. Any countenance of such claims of the Appellants is likely to also endanger the very allocation of 50% of the seats exclusively to the category of in-service candidates too.

11. ...The further stipulation that the reservation will be confined to and kept at 50% in favour of in-service candidates on merit basis, coupled with the other provisions noticed above make it abundantly clear that the selection of in-service candidates is confined to and has to be kept at 50% only of the total seats and not against any of the other seats, exclusively earmarked for the non-service or private candidates.

17. Though, State has power and right to provide for reservation for in-service candidates, 50% reservation has been upheld by the Hon'ble Supreme Court. Insofar as, Super Speciality Courses are concerned except the extent of 50% reservation for service candidates, merit alone should be criteria for admission to such courses.

18. As per Clause 60(a) of Higher Speciality Prospectus, 50% of seats in each discipline are reserved for service candidates. In case of an odd number seat remaining vacant that seat shall be filled from the service candidates. For instance, in case of D.M. Neurology, M. Ch. Genito Urinary Surgery and M. Ch. Paediatric Surgery there are seven seats in respect of each discipline. 50% of the seats are reserved for service candidates and 50% to be filled by non-service candidates. Since total number of seats is odd number, as per the Prospectus remaining one seat falling vacant shall also be allotted to the service candidates. Petitioner is not in fact challenging the reservation in respect of other discipline where there are odd number of seats. All that is challenged, when there is only one seat whether that one seat can be allotted to service candidate.

19. The learned Spl. Govt. Pleader and the learned Counsel for 5th Respondent would forcibly contend that "one" is an odd number and naturally

applying Clause 60(a) of the Prospectus that seat shall be filled from the service candidates only. learned Counsel for the 5th Respondent would

further submit that non-service candidates were allowed to take up the examination for the simple reason that in the event of non-availability of

service candidates or in the event service candidates fail to meet the minimum prescribed qualification norms in the selection process, only then the

single seat for the said course is to be filled by non-service candidates.

20. It is illogical to contend that "one" is an odd number and therefore that one seat of Endocrine Surgery has to be allotted to service candidates.

In the Prospectus, it was not indicated that one Endocrine Surgery seat is reserved for service candidates. Nor was stated that preference will be

given to service candidates and filled by non-service candidates only in case of non-availability of service candidates. Had it been stated so in the

Prospectus, Petitioner might have opted for some other Super Speciality Courses or Petitioner might have challenged the Higher Speciality

Prospectus 2008-09 on the ground that reservation of only one seat for service candidate is over and above the permissible limits of reservation.

Non-mention in the Prospectus about the preference/reservation to the service candidates in respect of only one seat would clearly show that the

said one seat was meant for open competition.

21. M. Ch. in Endocrine Surgery is a Super Speciality course which is very vital in health care. This branch of medicine is concerned with

Endocrine glands and hormones and treatment. In such superspeciality course, for one seat there cannot be any reservation for any one category.

Allotment to that one seat and only seat shall only be by open competition.

22. Time and again, the Hon"ble Supreme Court has held that Super Speciality Courses have to be consistent with national goal of having the best

possible people in the higher professional level. To say that only one post is reserved for in-service candidates would make the reservation awry.

23. It is not as if the Respondents 1, 2 and 4 have indicated in the Prospectus that for one year, the post of Endocrine Surgery is given to service

candidates and the next year, the same would be available for open competition. Endocrine Surgery being only one seat, to say that it would be

allotted to service candidate is not in accordance with law and the well settled legal principles laid down by the Supreme Court.

24. It is relevant to note that Petitioner was not even called for counselling. Only pursuant to the interim direction of the Court, Petitioner attended

the counselling. Prospectus is silent about the preference/reservation to service candidates in respect of one seat - Endocrine Surgery. All

indications are that the seat is meant for open competition. Petitioner being placed at No. 1 with 73 as total marks is entitled for admission. Denial

of admission to the Petitioner who was placed at No. 1 is arbitrary and against the well settled principles laid down by the Supreme Court. In the

place of 5th Respondent who is said to be admitted, necessarily Petitioner has to be admitted. The selection made in respect of 5th Respondent

and allotment of seat Endocrine Surgery for the 5th Respondent is set aside.

25. In the result, the Writ Petition is allowed. Allotment of seat to the 5th Respondent in Endocrine Surgery discipline is set aside. Respondents 1,

2 and 4 are directed to admit the Petitioner in M. Ch. Endocrine Surgery for the year 2008-2009 in Madras Medical College within a period of

two weeks from the date of this order. Consequently, connected M.Ps. are closed.