

(2002) 02 MAD CK 0160

In the Madras High Court

Case No : W.A. No's. 1862 and 1924 of 2001

Dr. R. Shakila and Others

APPELLANT

Vs

Dr. S. Krishnaraj and Others etc.

RESPONDENT

Date of Decision : 20-02-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 2002 Mad 307 : (2002) 1 MLJ 714 : (2002) WritLR 270

Hon'ble Judges : B. Subhashan Reddy, C.J;K.P. Sivasubramaniam, J

Bench : Division Bench

Advocate : N.R. Chandran, for the Appellant; T.P. Manoharan, T. Murugesan, Govt. Pleader and K.R. Ramesh Kumar, for the Respondent

Judgement

B. Subhashan Reddy, C.J.—These two Writ Appeal Nos. 1862 and 1924 of 2001 are preferred against the orders of the learned single Judge allowing the writ petition filed by the respondents 1 and 2 herein. The matter relates to the admission to M. D. S. course in Mahatma Gandhi Dental College and Hospital, Accepting the contention of the writ petitioners that they are entitled to admission to the said course from the waiting list, in which their names stood as Nos. 1 and 2, the learned single Judge allowed the writ petition.

2. In W. A. No. 1862 of 2001, the affected candidate is the appellant while in the other writ appeal, the Board of Governors of the College as also the College, are the appellants the parties are referred to as arryed in W. A. No. 1862 of 2001.

3. For Academic Year 2001-2002. applications were called for, for admission to M. D. S. course by notification dated 11-4-2001, six seats were notified and out of the same. three were set apart for Pondlcherry domiciles, two for All India quota and one for Non-Resident Indiana (NRIs). In so far as the first category is concerned, i.e. candidates of Pondlcherry domicile, enterance test was held and 64 candidates have appeared in the entrance examination conducted on 20-6-2001. There was no entrance teat contemplated for categories 2 and 3. Results of the entrance examination were declared on the very same day and

three candidates in accordance with the roster i.e. OC, BC/OBC and S.C. were admitted to M, D. S. course. There is no complaint with regard to their admission. The complaint is with regard to admission of appellant and fifth respondent. It is pertinent to mention that there is no candidate sponsored from N. R. I, quota, i.e. category - 3 and from All India quota, even though two persons have joined, one has opted out later and as such there was one vacancy available in category-2. The appellant and fifth respondent were admitted against the two vacant seats.

4. The appellant and the fifth respondent are service candidates. They have been appointed as Lecturers on 20-8-1993 and 11-2-1993 respectively, they are holders of B. D. S. and not M.D.S. But they had to acquire M. D. S. qualification because of the introduction of the said course from the academic year 1999-2000 onwards. Sanctioned posts are six in number and the Board, i.e. the third respondent, managing the fourth respondent college, which is an autonomous institution established by the Government of Pondicherry, had resolved to allocate two seats for the inservice candidates during the academic years 1999-2000 and 2000-2001. Pursuant to the same, in order of seniority, Dr. B. Premalatha and Dr. Karthikshree V. Prasad had been admitted into M. D. S. course for the academic year 1999-2000 and Dr. Latha Ashokan and Dr. A. Ranukumari have been admitted for the academic year 2000-2001. Next in line were the appellant and the fifth respondent. For this academic year 2001-2002, there was no allocation of seats for service candidates. While maintaining 50% quota for non-service candidates, two seats were allotted towards All India quota because of the Supreme Court directives, One seat was earmarked for N. R. I, in fact the fifth respondent had filed W. P. No. 1129 of 2001 seeking allotment of seat from the quota of in service candidates as was done in the past, but by order dated 20-6-2001, the writ petition was dismissed on the ground that the third respondent could formulate a policy of its own and it was not imperative on the part of the third respondent to allot to service candidates and no reservation can be given akin to the one provided under Article 15 of Indian Constitution. However, because of the resultant vacancies in categories 2 and 3 as mentioned above, the third respondent had resolved in the meeting held on 27-6-2001 to admit the appellant and the fifth respondent as in-service candidates. It is apt to extract the same.

"The Board noted the writ petition filed in the High Court, Chennai, by Dr. K. Ramadas, BDS Lecturer against the decision of not allotting MDS seats to the Non-MDS Lecturers working in the College this year, and that the petition was dismissed by the High Court with the observation that the petitioner has no right to claim reservation for the in-service candidates.

The Board discussed the matter at length. The Board observed that even though the in-service non-MDS Lecturers have no right to claim allotment of MDS seat to them, in the previous two years, 2 seats each were allotted to the in-service candidates. It was reported to the Board that 5 such non-MDS Lecturers are still

left. The Board observed that while these persons drew the salary of lecturers, they did not have the MDS qualification, which was an anomaly. The Board, therefore, decided that the one unutilised All India seat and the one seat earmarked for NRI's, which has also not been utilized, may be allotted to the in-service non-MDS Lecturers, on the basis of their length of service.

The Board also directed the Principal to inform the Director General of Health Services, Govt. of India that the seat for NRIs, against which no nomination has been received till now, is not available for NRIs any longer.

5. Questioning the same, W.P. No. 12618 of 2001 was filed contending that the moment vacancies arose in categories 2 and 3, they stood surrendered to the State and should be added to category -- 1 and as the respondents 1 and 2 were waitlisted as against Nos. 1 and 2, they were entitled to be admitted as against the above two seats automatically. The respondents 1 and 2 very much banked upon the note appended to the merit list dated 22-6-2001, which reads,

"subject to change, if any increase in number of seats".

6. The learned single Judge accepted the contentions advanced on behalf of the Respondents 1 and 2 and has set aside the admissions of the appellant and the fifth respondent. Hence, these two writ appeals.

7. At the time of admission, there was a stay granted pursuant to which the appellant and the fifth respondent, who have been admitted to M.D.S. First Year course on 2- . 7-2001, had been pursuing their studies.

8. Mr. N. R. Chandran, learned senior counsel appearing for the appellant and Mr. T. Murugesan, learned Special Government Pleader (Pondicherry) appearing for Respondents 3 and 4 submit that the note appended to the merit list, displayed on 22-6-2001, cannot be stretched to cover the seats falling vacant under categories 2 and 3, that the Respondents 1 and 2 cannot have any grievance on that score, that the Respondents 3 and 4, acted pursuant to the policy decision taken way back on 11-7-1996 and which was acted upon for the academic years 1999-2000 and 2000-2001 and as two seats were available from the categories 2 and 3, the appellant and the fifth respondent were admitted as per the Resolution of the Board of Governors in the meeting held on 27-6-2001 and that such a policy followed by the third respondent cannot either be held unconstitutional or illegal.

9. Mr. K. R. Ramesh Kumar, learned counsel appearing for the fifth respondent, has adopted the said arguments.

10. Countering the arguments advanced on behalf of the appellant and the Respondents 3 and 5, Mr. T. P. Manoharan, learned counsel appearing for the Respondents 1 and 2, has submitted that the vacancies unfilled from categories 2 and 3 will revert back to category-1 and that the service candidates are not entitled to tap any seats out of the unfilled from categories 2 and 3 and they have to go only to waitlisted candidates in accordance with their merit and not

otherwise. He heavily relies upon the note appended to the merit list dated 22-6-2001. He further submits that the appellant and the fifth respondent, even to secure admission as service candidates under category 1, had to compete with the candidates under category 1 by appearing in entrance examination and as they did not appear in the entrance examination, by no stretch of imagination, they could be admitted into MDS course.

11. The question lies in a narrow compass and in fact, revolves around the power of the third respondent to earmark seats for service candidates and that too in the absence of the candidates from categories 2 and 3.

12. In our country, reservations, be it educational or employment, are of several kinds. It may be communal, gender, institutional, residential, ex-servicemen, physically handicapped and service personnel. Last category of reservation, carved out for in-service candidates" is relevant for this adjudication. Again, the reservation may be vertical or horizontal. But this "in-service" reservation is vertical. Out of six seats available, three seats have been set apart for non-service candidates and that suits the norm fixed by judicial precedents. Out of remaining three, one was reserved for N.R.I. for augmentation of financial resources, two were earmarked for All India merit basis. There is no such rule envisaged, by way of regulation or in prospectus, providing the other seats meant for All India category or N.R.I., for adding to the pool of non-service category quota of three seats in the event of any seat/s falling vacant and left unfilled from All India quota or N.R.I. quota. The Note appended to the Merit List mentioned above has no relevance in so far as the categories 2 and 3 are concerned. The same has to be construed and restricted only to Category 1 and only if the seats in Category 1 remain unfilled by reason of prior rank holders not joining or vacating any seat later or in the event of increase of seats being made in that regard. The reason for this is that the three seats for All India and N.R.I. students cannot be treated as communal reservation or other kinds of reservations mentioned supra. Earmarking some seats for "in-service" candidates is not strictly reservation. It is only a classification or source of admission/entry into educational institutions. The classification/source of entry is broadly categorised at "in-service" and "non-service", Both are not "Interchangeable". Neither "In-service" candidates can claim from "non-service" quota nor "non-service" quota candidate can claim from "in-service" quota seats, Like any communal reservation, the "in-service" candidates cannot claim admissions both on merit and then from 60% service quota. There is no "in-service" candidate selected out of three seats earmarked for "in-service" candidates. All the candidates selected. In "non-service" quota are private students who passed out B.D.S.J, participated in the entrance examination and secured admission on merit by following the roster system for communal reservation. It is also not as if the candidates from "In-service" quota are not available so as to claim pooling the seats from Categories 2 and 3 to Category 1. The respondents 3 and 4 are empowered to allot the vacant seats from Categories 2 and 3 to "in-service" candidates. Like before a clear cut quota

would have been allotted for "in-service" candidates but to maintain 50% quota for "in-service" candidates and again to satisfy the All India quota and N.R.I. quota, "in-service" candidate quota was not clearly earmarked when the prospectus was issued. As already stated above, the necessary for All India quota was to satisfy the dicta laid down by the Supreme Court and so far as the N.R.I. quota is concerned, it was for augmentation of financial resources. If the vacant seats in all India quota and N.R.I. quota were not filled up by "in-service" candidates, may be it was possible for the non service candidates to claim the said seats as the strength of six seats cannot be allowed to go waste. But there the "in-service" candidates were available and in fact, they were already arranged in order of merit to undergo Postgraduate Course in M.D.S. Due to paucity of seats, no prior reservation was made for "in-service" candidates for the academic year 2001-2002 and they were not so earmarked in the prospectus but having regard to the availability of the vacancies in Categories 2 and 3 later, the respondents 3 and 4 had rightly granted admissions to the appellant and the fifth respondent herein. Further, it is the choice of State/University to conduct entrance examination for the "in-service" candidates also but there cannot be any compulsion to conduct test for "in-service" candidates. There is no warrant to say that "in-service" candidates should perforce appear in entrance test even claiming the "in-service" quota. The above conclusions of ours are fortified by the judicial precedents stated Infra.

13. In (1) *State of Tamil Nadu v. T. Dhilip Kumar* (1995) (5) Scale 208, the Supreme Court, while upholding the reservation for "in-service" candidates, held that such reservation should not exceed 50% of the seats. Similar as the view taken by the Supreme Court in (11) *K. Duraisamy v. State of Tamil Nadu* (Judgment Today 2001 (2) SCW 48 : AIR 2001 SC 717. In *K. Duraisamy's* case (ii supra), the Supreme Court has laid down the broad principles explaining the nature of reservation for "in-service" candidates and holding that reservation for "in-service" candidates is not akin to communal reservation or other kinds of reservations, which are traced to Article 15(4) of Indian Constitution and that reservation for "in-service" candidates is a source of admission to medical college, the other source being reservation for "non-service" candidates. The Supreme Court further held that the principles underlying the communal reservation, where the meritorious candidates can compete for* general seats, keeping the reserved seats untouched, are inapplicable in the case of reservation for "in-service" candidates and that neither "in-service" candidates can opt for the seats reserved for "in-service" candidates nor can "in-service" candidates claim the seats earmarked for the "non-service" candidates. It was held in paragraph 11 thereof at page 723; of AIR :

"On a consideration of reasoning of the Full Bench as also the construction placed upon the Government Order and the Prospectus, we are of the view that the State Government in the undoubted exercise of its power, has rightly decided, as a matter of policy, so far as the admissions to super-speciality and Post graduate Diploma/Degree/M.D.S. courses for the academic session 1999-2000 are

concerned to have to scheme or pattern of two sources of candidates based upon a broad classification into two categories i.e. "in-service" candidates and non-service or private candidates with each one of them allocated exclusively for their own respective category of candidates fifty percent of the seats, the ultimate selection for admission depending upon the inter se merit performance amongst their own category of candidates"

The Supreme Court further held.

"12..... Though the prescription of a quota may involve in a general sense reservation in favour of the broad class or category, in whose favour, & quota in fixed, the concepts of reservation and fixation of quota, drastically differ in their purport and content as well as the object. Fixation of a quota in a given case cannot be said to be the same as a mere reservation and whenever a quota is fixed or provided for one or more of the classified group or category, the candidates falling in or answering the description of different classified groups in whose favour a respective quota is fixed, have to confine their respective claims against the quota fixed for each of such category, with no one in one category having any right to seek a claim against the quota earmarked for the other class or category"

In (iii) Pre-P.G. Medical Sangarsh Committee and Another Vs. Dr. Bajarang Soni and Others, , similar question arose with regard to the validity of reserving 50% for "in-service" candidates. Quoting the judgments in T. Dhilipkumar's case and I. Doraiswamy's case (supra) with approval, the Supreme Court held at page 2746; of AIR:

"8..... That apart, as rightly pointed 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 or Government Departments, have wide area and horizon of an exposure on the practical side and they may not have the required extra time to keep themselves abreast 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 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."

In (iv) Dr. Narayan Sharma and Another etc. Vs. Dr. Pankaj Kr. Lehar and Others etc., , the Supreme Court was considering, among other things, the

propositions as to whether the reservation in favour of teachers was valid and also whether there should be entrance examination. The Supreme Court held that there cannot be any doubt that the teachers formed a class by themselves and the classification is based on intelligible differentia having a rational nexus with the object of the Rule. Dealing with the exemption from entrance examination, it was held that as regards examination as they have been constantly in touch with the subject/discipline, for which reservation is made.

14. The two points viz. validity of allotting quota of two seats to "in-service" candidate and the fifth respondent and also admitting them into M.D.S. course without conducting any entrance examination for them, are fully justified because of the above legal propositions laid down by the Supreme Court. In view of what is stated *supra*, we set aside the order passed by the learned single Judge. The writ appeals are allowed. No costs. Consequently C.M.P. Nos. 15254 and 15589 of 2001 are closed.