
(2016) 03 GAU CK 0079
In the Gauhati High Court
Case No : WP(C) No. 156 of 2015

Smt. Vanlalmangaihi

APPELLANT

Vs

State of Mizoram

RESPONDENT

Date of Decision : 09-03-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 4 GauLJ 656 : (2016) 5 GauLR 394 : (2016) 3 GauLT 16

Hon'ble Judges : Zothankhuma, J.

Bench : Single Bench

Advocate : Mr. A.R. Malhotra, Mr. Lalramhluna, Ms. Lalramsangzuali and Mr. B. Lalthlamuana, Advocates, for the Appellant; Ms. Melody. L. Pachuau, G.A., Mizoram, Ms. Zairemsangpuii, CGC, for the Respondent

Final Decision : Allowed

Judgement

Zothankhuma, J. (Oral) - Heard Mr. A.R. Malhotra, learned counsel appearing for the petitioner. Also heard Ms. Melody L. Pachuau, Government Advocate for respondent Nos. 1 to 4 and Ms. Zairemsangpuii, learned CGC appearing for respondent No.5.

2. Petitioner passed her 10+2 Examination in Science stream in the year 2013 with First Division marks in the Examination conducted by Mizoram Board of School Education. She has also been selected in the State Medical & Technical Entrance Examination 2015 for the academic session 2015-2016 conducted by the said Board and secured 269th rank in the merit list as general category candidate.

3. The State respondents in the Higher & Technical Education Department allocated seats to the selected candidates for the admission to Mizoram Quota in Central and State Universities. Petitioners name figured at Srl. No. 1 amongst the waiting list candidates.

4. Due to non-availability of suitable candidate to fill-up one seat of OBC quota in

the Bachelor of Veterinary Science & Animal Husbandry for the year 2015-2016, allotted in the College of Veterinary Science & Animal Husbandry, Selesih, Aizawl under the Mizoram Quota and following the decision of the Hon'ble Supreme Court in the case of P.V. Indiresan (2) v. Union of India & Others, reported in (2011) 8 SCC 441, the Director of Higher & Technical Education, Mizoram cum Member Secretary of Selection Board for Higher Education, Mizoram by his Order under Memo No. A.33023/24/2014- DTE (TECH) dated 03.09.2015 converted the said seat to General Quota and allotted the same to the petitioner, with the observation that on requirement, the Selection Board Committee reserves the right to cancel the said allotment order without giving any reason thereof and without bearing any reimbursement of expenditure to be incurred by the candidate. By the said order the petitioner was directed to submit her joining report to the Joint Director (Technical) of the Office of the Joint Director, Technical Wing, Higher & Technical Education, Chaltlang through the Principal of the concerned Institution.

5. But the respondent No. 6 did not accept the said order dated 03.09.2015 of the Director of Higher & Technical Education, Mizoram and informed that it is the respondent No. 5, the Registrar of Central Agriculture University (College of Veterinary Science & Animal Husbandry, Selesih), Imphal, Manipur is the competent authority for such conversion from OBC Quota seat to General Category Seat. Accordingly, the Director of Higher & Technical Education, Mizoram by his communication under Memo No. A.33023/24/2014-DTE (TECH) dated 24.09.2015 informed the respondent No. 5 with regard to allotment letter in favour of the petitioner, but as nothing was forthcoming, the petitioner has preferred this petition. Petitioner has also placed reliance of the Judgment of the Hon'ble Apex Court in the case of Ashoka Kumat Thakur v. Union of India & Others reported in (2008) 6 SCC 1.

6. The petitioner's counsel Mr. A.R. Malhotra submits that as there is no OBC candidate to fill the vacancy, the petitioner, who was allotted the vacant OBC seat by the State of Mizoram by converting the same into a General category seat should be allowed to fill up the said seat.

7. Ms. Melody L. Pachuau, Government Advocate for the respondent Nos. 1 to 4 submits that every year, 12 (twelve) seats of B.V.Sc & AH are allotted to the State of Mizoram out of which 9 (nine) seats are to be reserved for UR+ST+SC Categories and 3 (three) seats are to be reserved for candidates belonging to OBC Category. The counsel for the respondent Nos. 1 to 4 also submits that though the respondent No. 5 had issued a letter dated 18.5.2015 which is to the effect that "If the State Government does not find the candidate from OBC category, the seats for this category should be kept vacant and these seats are not interchangeable with any other categories," the State of Mizoram would lose three valuable seats of B.V.Sc and A.H. every year as the State of Mizoram does not have any concrete list of OBC till date. The counsel for the respondent Nos. 1 to 4 submits that in view of the decision of the Hon'ble Supreme Court in the

case of P.V. Indiresan(Supra), which was brought to the notice of the respondent Nos. 1 to 4 by the petitioner, the respondent No. 3 allotted the vacant OBC seat to the petitioner.

8. Ms. Zairemsangpuii, CGC submits that as per letter No. CAU/Reg/24/Adm-Vety(Vol-II)/14/6756 dated 18.5.2015, the respondent No. 5 has informed the respondent No. 3 that :-

"If the State Government does not find the candidate from OBC category, the seats for this category should be kept vacant and these seats are not interchangeable with any other categories." The CGC thus submits that the allotment of the vacant OBC seats to the petitioner, who is a General category candidate cannot be allowed as it flies in the face of the letter dated 18.5.2015 issued by the respondent No. 5. The CGC also submits that the respondent No. 6 is not the Competent Authority to give permission for conversion of OBC quota to General category. The CGC also submits that the 1st Semester class for BVSc and AH Degree began in 2015 and have ended as the examination for the same started on 20.11.2015 and was over on 9.12.2015. The CGC submits that even if the petitioner succeeds in the present writ petition, the petitioner cannot be allowed to join the 2nd Semester of the first year as the petitioner has not attended the classes of the 1st Semester.

The CGC however submits that she has received instruction from the respondent Nos. 5 and 6 that if there is a direction from this Court to admit the petitioner, it would be possible to admit the petitioner only for Academic Session of 2016-2017.

9. I have heard the learned counsel for the parties.

10. The Apex Court in the case of Ashoka Kumar Thakur v. Union of India and Others reported in (2008) 6 SCC 1 has held at paragraphs 358(3), 371 and 629 as follows:-

"358(3). The Central Government shall examine as to the desirability of fixing cut-off marks in respect of the candidates belonging to the Other Backward Classes (OBCs). By way of illustration it can be indicated that five grace marks can be extended to such candidates below the minimum eligibility marks fixed for general categories of students. This would ensure that quality and merit would not suffer. If any seats remain vacant after adopting such norms they shall be filled up by candidates from general categories."

"371. The Union of India should appreciate in proper perspective that the root cause of social and educational backwardness is poverty. All efforts have to be made to eradicate this fundamental problem. Unless the creamy layer is removed, the benefit would not reach those who are in need. Reservation sends the wrong message. Everybody is keen to get the benefit of backward class status. If we want to really help the socially, educationally and economically backward classes, we need to earnestly focus on implementing Article 21-A. We

must provide educational opportunity from day one. Only then will the casteless/classless society be within our grasp. Once children are of college-going age, it is too late for reservation to have much of an effect. The problem with the Reservation Act is that most of the beneficiaries will belong to the creamy layer, a group for which no benefits are necessary. Only non-creamy layer OBCs can avail of reservations in college admissions, and once they graduate from college they should no longer be eligible for postgraduate reservation. 27% is the upper limit for OBC reservation. The Government need not always provide the maximum limit. Reasonable cut-off marks should be set so that standards of excellence greatly effect. The unfilled seats should revert to the general category."

"629. Finding 68% reservation in educational institutions excessive, Balaji, at SCR pp.470-71 admonished States that reservation must be reasonable and balanced against other societal interests. States have to take reasonable and even generous steps to help the advancement of weaker elements; the extent of the problem must be weighted, the requirements of the community at large must be borne in mind and a formula must be evolved which would strike a reasonable balance between the several relevant considerations"

To strike such a balance, Balaji slashed the impugned reservation from 68% to less than 50%. Balaji thus serves as an example in which this Court sought to ensure that reservation would remain reasonable. We heed this example. There should be no case in which the gap of cut-off marks between OBC and general category students is too large. To preclude such a situation, cut-off marks for OBCs should be set no lower than 10 marks below the general category. To this end, the Government shall set up a committee to look into the question of setting the OBC cut-off at not more than 10 marks below that of the general category. Under such a scheme, whenever the non-creamy layer OBCs fail to fill the 27% reservation, the remaining seats would revert to general category students."

11. The Apex Court in the case of P.V. Indiresan(2) v. Union of India & Others (Supra) has held at paragraph 54(ii) as follows:

"54.(ii) If in any Central educational institution, the OBC reservation seats remain vacant, such institutions shall fill the said seats with OBC students. Only if OBC candidates possessing the minimum eligibility/qualifying marks are not available in the OBC merit list, the OBC seats shall be converted into general category seats."

12. This Court vide its order dated 23.11.2015 had directed the respondent Nos. 5 and 6 to allow the petitioner to take provisional admission in the 1st Semester of the B.V.Sc and A.H Degree in the College of Veterinary Science & A.H., Selesih, Aizawl for the Academic Session 2015-2016, in terms of the order dated 3.9.2015 issued by the Director of Higher & Technical Education, Mizoram. However, the same has not been done, most probably, in view of the fact that the examination for the 1st Semester session has already started.

13. The question to be decided is whether the vacant OBC category seat can be filled up by candidates from the General category. It is submitted at the bar at this stage that the vacant OBC category seat has not been filled up by anyone till date.

14. In view of the fact that the Apex Court has held in Ashoka Kumar Thakur(Supra) and P.V. prakticen (2)(Supra) that if any OBC seat remains vacant, they shall be filled up by candidates from the General categories, I find no justification in the respondent Nos. 5 and 6 in not allowing the petitioner (General category candidate) to fill up the vacant OBC seat. No prejudice would have been caused in filling up of a vacant OBC seat by a General category candidate, which cannot be filled up by a particular category/class of persons, due to lack of candidates. However, in view of the fact that the petitioner cannot take part in the 1st Semester classes for the Academic Session of 2015- 2016 due to the fault of the respondent Nos. 5 and 6, I am of the view that the petitioner should be given a seat in the Academic Session 2016-2017 in the OBC seat, by converting one of them into a General category seat. The State of Mizoram have stated in their affidavit that they do not have any concrete list of OBC till date. As such, no prejudice would be caused if one out of the three seats of OBC is converted into a General category seat to accommodate the petitioner.

15. The respondent Nos. 1 to 4 in their affidavit-in-opposition have stated at paragraph 8 as follows:

"8. That with regard to the statements made in paragraph No. 8 of the writ petition, I say that the Counselling authority has obediently followed the practise of not converting the OBC quota into ST for the past many years, however, instead of losing the valuable seats, it sometimes unwillingly nominated non-Mizo candidates who can produce OBC certificates issued by other State Government, which is very much undesirable as the State of Mizoram does not have alternative way due to absence of separate OBC list solely for the State of Mizoram....."

16. In view of the decisions of the Hon"ble Supreme Court and keeping in view the extract of paragraph 13 of the affidavit-in-opposition filed by the respondent Nos. 5 and 6 which is to the following effect :-

"However, if there is a direction from the Hon"ble Court to admit the petitioner, it only possible to be admitted in the Academic Session i.e. 2016-17""

and the facts and circumstances of the case, the respondent Nos. 5 and 6 are directed to give admission and allot one OBC seat (by converting the same into a General category seat) to accommodate the petitioner for Academic Session 2016-2017.

17. In the light of the submissions of the counsel for the parties, it is the requirement of the State Government to identify and make a list of OBC in the State of Mizoram. The respondent Nos. 1 to 4 are therefore directed to identify

the OBCs in Mizoram and make a list of the same at the earliest. In the event, the State respondents come to a decision that there is no OBC in the State of Mizoram, they should take necessary steps with the respondent Nos. 5 and 6 to do away with the OBC quota reserved for the State of Mizoram for conversion of the said 3(three) seats for General category students.

18. In view of the fact that there is no concrete OBC list for the State of Mizoram at present, and as the petitioner has not been allowed to fill the vacant OBC seats for the year 205-2016, the letter dated 18.5.2015 issued by the respondent No. 5 to the extent that it directs the State Government to keep vacant the vacant OBC seats is set aside, so as to enable the respondents to accommodate the petitioner, who should be given 1 (one) of the OBC seats for the year 2016-2017 so as to enable her to undergo the B.V.Sc & A.H course for the year 2016-2017 in the college of Veterinary Sciences & Animal Husbandry, Selesih, Aizawl. The respondents should also keep in mind the decision of the Hon"ble Supreme Court if it is found that OBC seats cannot be filled up and fill up the same as per the law laid down.

19. Writ petition is accordingly allowed. No cost.