

CASE NO.:

Appeal (civil) 5760-5761 of 1999

Appeal (civil) 5910 of 1999

Appeal (civil) 6995-6996 of 1999

Appeal (civil) 562 of 1999

PETITIONER:

K. DURAISAMY & ANR., ETC. ETC. C

Vs.

RESPONDENT:

THE STATE OF TAMIL NADU & ORS.

DATE OF JUDGMENT: 23/01/2001

BENCH:

R.C.Lahoti, Doraswamy Raju

JUDGMENT:

L.....I.....T.....T.....T.....T.....T.....T.....T..J

RAJU, J.

The above appeals have been filed against the decision of a Full Bench of the Madras High Court dated 1.10.1999 in Writ Appeal Nos.929/99, etc. The Writ Petition (C) No.562 of 1999 has been filed by a person similarly placed like the appellants, directly in this Court raising identical issues as are raised in the appeals, canvassing at the same time the correctness of the decision of the Full Bench of the Madras High Court.

Having regard to the question decided by the Full Bench and the issues raised in the above Appeals and Writ Petition, it is unnecessary to advert to the factual details relating to the Courses applied by the respective parties or as to the total number of seats available, number of seats reserved, the marks obtained by the respective candidates and the inter se ranking in the merit list. It is stated that Civil Appeal No.5910 of 1999 concerns D.M. (Obstetrics) & (Gynaecology), a post-graduate course, and the courses involved in the other Appeals and the Writ Petition are said to be super speciality courses.

The Government of Tamil Nadu, Health and Family Welfare (MCA) Department, issued G.O.Ms. No.55 dated 9.2.99 laying down the procedure for selection of candidates for admission to Post-graduate Diploma, Degree, M.D.S. and Higher Speciality courses for the academic session 1999-2000, with Annexure-I thereto containing the Prospectus pertaining to Post-graduate Diploma/Degree/M.D.S. courses and Annexure-II containing the Prospectus relating to Higher Speciality courses. The Government Order envisaged reservation confining up to 50% in favour of in-service candidates on merit basis and further stipulated that 50% of the seats available in each of the speciality, shall be allotted exclusively to service candidates. The Government Order also enumerated various categories of Medical

Officers, who alone will be treated as service candidates and considered for selection against the 50% of the seats allocated exclusively for service candidates. As for the remaining 50%, referred to as Open Quota, while stipulating the criteria for selection to what has been referred to as the remaining 50% Open Quota, it has been stated that all other eligible Medical Officers, except those enumerated categories of Medical Officers, shall be eligible to apply for the same. The further stipulation, which requires to be noticed, is the one providing that all procedures in respect of such of those matters enumerated in the relevant clause of the Order followed during 1998- 1999 shall be followed for 1999-2000 also. The above stipulations in respect of allocation of seats exclusively for the service candidates and the other for non-service candidates have been carried out in the Prospectus, both relating to the Post-graduate Degree/Diploma courses as well as the Higher Speciality courses. So far as the Post- graduate Degree/Diploma courses are concerned, the same were incorporated under the heading IX. METHOD OF SELECTION AND ADMISSION, and in respect of Higher Speciality courses, they were incorporated under the heading X. METHOD OF SELECTION AND ADMISSION. The necessary program has been published prescribing the last date for receipt of application forms, the dates for undertaking Entrance Examination, publication of merit lists, etc. After conduct of written Entrance Examination for the purpose and publication of the results of selected candidates, it came to be known, according to the appellants, that they were not selected due to a particular understanding of the Orders of the Government and stipulations contained in the Prospectus relating to earmarking or allocation of seats for in-service candidates and non-service candidates in a manner by which the claims of in-service candidates based on merit on the basis of marks came to be ignored in respect of 50% of the seats allocated as Open Quota by confining them exclusively to non-service candidates and considering claims of in- service candidates like the appellants only in respect of 50% allocated to and reserved for service candidates.

This resulted in the appellants and others filing Writ Petitions before the High Court. A learned Single Judge, while allowing the writ petitions held that reservation of 50% of seats for non-service candidates have to be given effect to or worked out by selecting candidates from in-service and non-service, on the basis of merit in the first instance and thereafter the 50% seats reserved for in-service candidates shall be filled up by in-service candidates who could not gain selection on the basis of merit as against the other 50% earmarked as open. The learned Judge, even overlooking the fact that a description of the respective classification has been given, was of the view that there is no category as non-service candidates, and it is only the in-service candidates who form a separate class. The learned Judge also drew inspiration from decisions of Courts pertaining to reservation under Article 16 (4) of the Constitution of India to hold in these cases also that those candidates belonging to special categories who have a reservation in their favour but could get or got selection purely on the basis of their own merits shall not be counted against the number reserved for that class or category and must be treated as having got in against the seats available in open competition. Aggrieved, some of the selected candidates who had intervened in the writ petitions filed in Writ Appeal Nos. 905, 906 and 918 of 1999 but the

same were dismissed on 18.6.99 even at the stage of admission, summarily. The appeals filed by the State in Writ Appeal Nos. 929, 952 to 956 of 1999 came up subsequently before another Division Bench and finding themselves unable to agree with order of dismissal of the earlier appeals, the matters were referred for consideration by a larger Bench after obtaining orders of the Chief Justice. This Division Bench was of the view that the decision of the Single Judge was not correct. Thereupon the matters were placed before the Full Bench, which, in turn, reversed the judgment of the learned Single Judge and dismissed the Writ Petitions.

The Full Bench, whose judgment is under challenge before us, was of the view that the interpretation given by the Single Judge, particularly on the basis of the guidelines of the earlier year cannot be sustained, that the writ petitioners who participated in the written examination and selection process duly proclaimed cannot challenge the same subsequently on finding themselves unsuccessful and cautioned the authorities to be more careful to avoid vague clauses/language of doubtful purport and import leading to unnecessary and avoidable litigation, in future.

The learned counsel for the appellants and the writ petitioner, while adopting the line of reasoning of the learned Single Judge in the High Court, vehemently contended that the interpretation placed by the Full Bench on some of the clauses in the Government order/prospectus was not justified in law and that the manner of working out the policy of reservation indicated by the Full Bench is opposed to the well-settled principles laid down by Courts in the matter of implementing reservation policies and if allowed to stand, according to the appellants, would defeat the policy and objects of reservation, itself. The learned counsel for the State supported the reasoning of the Full Bench by contending that the classification made as service quota and open quota for non-service candidates for purposes of confining the respective class/category of candidates to the percentage earmarked for them exclusively is permissible and well within the powers of the State which establish, administer and maintain the Medical Colleges and that such prescription of quota cannot be treated on par with communal and other reservations, ordinarily made. It was also urged that in law there can be different sources of recruitment under classified heads or categories such as service candidates and non-service or private candidates, they having distinct and different identity based on intelligible criteria and that too when made with a definite purpose and object.

Before dealing with contentions of parties, it is useful and necessary to refer to the clauses on which there had been divergent views of the High Court. The Government order dated 9.2.99, which forms the basis for the prospectus issued and the relevant clauses found extracted therein, lays down the criteria, as follows:-

1. (iii) (a) The reservation will be confined to and kept at 50% in favour of in-service candidates on merit basis.

(b) 50% of the seats available in each of the specialities shall be allotted exclusively to service candidates.

(c) If sufficient number of eligible service candidates are not available for the seats reserved exclusively for them, such vacancies shall be filled up by the non-service candidates from the merit list/waiting list in the respective reserved compartments. If vacancies exist even after this, such vacancies shall be filled up applying the order of preference indicated in the prospectus.

(d) The following categories of Medical Officers only will be treated as Service candidates and considered for selection against 50% of seats allocated exclusively for service candidates:-

(1) All Medical Officers selected by the TNPSC and appointed in Tamilnadu Medical Services on regular basis, who have put in minimum of 2 years continuous service as on 1.2.99.

(2) Medical Officers (or) Health Officers in the Public Health Department who have been selected by the TNPSC and working under the control of DPH & PM and who apply for Public Health Course i.e. Diploma in Public Health can be considered as Service candidates for DPH as the above qualification namely Dip. in Public Health is essential for declaration of probation. However, to consider under service quota for MD (SPM), the candidates must have completed 2 years of service like the other postgraduate courses.

(3) Medical Officers who have put in 2 years of continuous service and who are working in :-

(i) Local Bodies/Municipalities in Tamil Nadu.

(ii) Government of India Institutions in Tamil Nadu.

(iii) Public Sector Undertaking and Organisation under the control of Govt. of India in Tamil Nadu.

(iv) Undertakings and Organisations of Government of Tamil Nadu. These Medical Officers should produce bona-fide certificates from the concerned authorities with the declaration to serve in the respective institutions for a minimum period of 5 years after completion of the course.

(e) Criteria for selection under 50% open quota:-

All other eligible Medical Officers except those specified in clause (iii) (d) above are eligible to apply under 50% open quota.

(iv) (a) The Rule of reservation i.e. 31% for open competition, 30% for backward classes, 20% for most backward classes/De-notified communities, 18% for Scheduled Castes and 1% for Scheduled Tribes shall apply to 50% seats reserved for service candidates and to the 50% seats to be filled up on the basis of merit from service and non-service candidates separately under each speciality.

(b) The rule of reservation shall apply to any course with 8 seats and above both for open and service quota, in a discipline.

(v) The cost of application form shall be Rs.600/-

(Rupees Six Hundred only) for all the courses. The cost of the application form shall be paid by a crossed Demand Draft on any Nationalised Bank drawn in favour of the Secretary Selection Committee KMCH campus Kilpauk, Chennai-600010. As per G.O. MS No.111 Adi Dravidar & Tribal Welfare Department dated 22.9.98 SC/ST candidates are exempted from payment of DD for Rs.600/-

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6. The Government direct that all procedures such as reservation of 25% of seats in Post Graduate Courses for all India Quota, conduction of Entrance Examination at Chennai only, eligibility criteria to apply allocation of seats between open quota and service candidates on 50:50 basis, the procedure for filling up of vacant seats allotted to service candidates in the event of non-availability of candidates, awarding of one mark to each answer with correct response, Negative Mark System for incorrect response, determination of inter se merit of candidates obtaining equal marks, mentioning of number of seats in each speciality college-wise and course-wise in the Annexure to the prospectus, payment of stipend and other procedures relating to execution of security bond and surety bond, obtaining written undertaking from all non-service candidates to serve within the country for a period of not less than 5 years, computerisation of application/coding sheet, evaluation of answer papers, taking of anti-Hepatitis-B injection by selected candidates and incurring of expenditure for the conduct of entrance examination, scrutiny of applications, evaluation, the expenditure relating to introduction of optical mark reader system in admission to various courses from the personal deposit account maintained by the Secretary Selection Committee followed during 1998-99 shall be followed for the academic year 1999-2000 also.

That the Government possess the right and authority to decide from what sources the admissions in Educational Institutions or to particular 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 Articles 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.

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 additional 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 Tamil Nadu Vs. T. Dhilipkumar & Ors.* [1995 (5) SCALE 67], 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.

The stipulations governing the selection for admissions in these cases have got to be viewed and construed in the above backdrop of events and legal position. The learned Single Judge, in our view, was certainly not right in equating the provisions made for allocation of seats in the form of fixation of quota in this case with the usual form of communal reservations and allowing himself to be carried away by the peculiar method of working out such reservations in order to ensure adequate representation to such candidates, and applying those principles to construe a provision of the nature involved in these cases. Yet another error in the reasoning of the learned Single Judge lies in his assumption that open quota seats have to be thrown open to all and are meant only to be filled up purely on the basis of merit performance and no one from even the class of candidates in whose favour a special quota has already been provided can be excluded from consideration as against the open quota. This reasoning of the learned Single Judge not only ignores the object and scheme underlying the allocation of seats for admissions for the academic year 1999-2000, but has the consequence of rewriting the Prospectus and introducing altogether a different pattern of admissions, overriding the policy of the Government aimed at meeting out equal justice and affording equality of opportunity to the different categories classified for the purpose. If the Government can be said to possess the power to fix a quota for the exclusive benefit of in-service candidates, it is beyond comprehension or dictates of either reason or logic as to why the Government cannot equally exclusively earmark the remaining seats in favour of non-service or private candidates, thereby confining the claims of service candidates to the number of seats earmarked and allocated to them. As there can be a classified category of service candidates, it is open to the Government to make classification of all those other than those falling in the category of service candidates, as non-service candidates and allocate the remaining seats after allotment to the service candidates for exclusive benefit of the source of non-service or private candidates. There is nothing in law

which deprive the Government of any such powers and no such impediment has either been brought to our notice at the time of hearing or seems to have been brought to the notice of the learned Single Judge to warrant any such construction, as has been adopted by him. 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 percent 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 put together. The writ petitioners are found to have applied as in-service candidates and merely because they could not be selected within the number of seats earmarked for their category or class on the basis of the inter se merits among their own class, they cannot be allowed to contend to the contrary in retrospect and on hind sight experience of having obtained more marks, than those who got selected as against the seats earmarked and allocated to non-service candidates. 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.

On a consideration of the reasoning of the Full Bench as also the construction placed upon the Government Order and the Prospectus, we are of the view that 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/MDS courses for the academic session 1999-2000 are concerned to have 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. As pointed out by the Full Bench, the change in the nomenclature of the categorisation from open competition in 1998-1999, to open quota in 1999-2000 and the conspicuous omission in the scheme and the Prospectus for 1999- 2000 of a specific stipulation like the one contained in clause X (5) in the Prospectus for 1998-1999 that the 50% of the seats available for open competition shall be made available for selection and admission of both service and non-service candidates, as also the stipulation contained in the Government Order and the Prospectus for 1999-2000 under the caption criteria for selection under 50% open quota, which specifically reads that all other eligible Medical Officers except those specified in clause (iii)(d) above (meaning thereby Medical Officers who will be treated as service candidates and allowed to apply as such) are eligible to apply under 50% of

the open quota, supports the stand of the State Government and the Selection Committee and justify the selections for admission already made by them. 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.

The mere use of the word reservation per se does not have the consequence of ipso facto applying the entire mechanism underlying the constitutional concept of a protective reservation specially designed for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes to enable them to enter and adequately represented in various fields. The meaning, content and purport of that expression will necessarily depend upon the purpose and object with which it is used. Since reservation has diverse natures and may be brought about in diverse ways with varied purposes and manifold objects, the peculiar principles of interpretation laid down by the Courts for implementing reservations envisaged under the Constitution in order to ensure adequate and effective representation to the backward classes as a whole cannot be readily applied, out of context and unmindful of the purpose of reservations as the one made in this case, more to safeguard the interest of candidates, who were already in service to enable such in-service candidates to acquire higher and advanced education in specialised fields to improve their professional talents for the benefit of the patients to be treated in such Medical Institutions where the in-service candidates are expected to serve. That apart, where the Scheme envisaged is not by way of a mere reservation but is one of classification of the sources from which admissions have to be accorded, fixation of respective quota for such classified groups, the principles at times applied in construing provisions relating to reservation simpliciter will have no relevance or application. Though the prescription of a quota may involve in a general sense reservation in favour of the particular class or category in whose favour a quota is 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 stake a claim against the quota earmarked for the other class or category. Since we are of the view that the Full Bench has correctly come to the conclusion that the scheme adopted for selection of candidates for admissions in question provided for a definite and fixed quota for the respective classified sources of admission and the reasons assigned therefor do not suffer from any infirmity whatsoever to call for any interference at our hands, these appeals fail and are dismissed.

In view of the above discussion, it is unnecessary for

us to deal with the issue of estoppel on which also the Full Bench has chosen to reject the claim of the appellants. In view of the conclusion of ours in the appeals, the Writ Petition also shall stand dismissed. There will be no order as to costs.

JUDIS