

**(1995) 08 AP CK 0001**

**Andhra Pradesh High Court**

**Case No:** Writ Appeal No. 677 of 1995

The Convenor, EAMCET-92, A.U.

College of Engineering

APPELLANT

Vs

Jasmeet Singh Siddu and others

RESPONDENT

**Date of Decision:** Aug. 22, 1995

**Acts Referred:**

- Constitution of India, 1950 - Article 15(1), 226

**Citation:** AIR 1996 AP 1 : (1995) 3 ALT 47

**Hon'ble Judges:** P.S. Mishra, C.J; C.V.N. Sastri, J

**Bench:** Division Bench

**Advocate:** Sri T.S. Haranath, for Andhra Pradesh, for the Appellant; Sri M.R.K. Choudhary, Govt. Pleader for Education, Mr. K. Ramakantha Reddy for Osmania University, for the Respondent

### **Judgement**

@JUDGMENTTAG-ORDER

C.V.N. SASTRI, J.:

1. The Convener, EAMCET-92, Andhra University, Engineering College, Visakhapatnam, has filed this writ appeal questioning the order passed by the learned single Judge granting a direction that the petitioner-first respondent shall be admitted into the second year Engineering course in the subject as per his entitlement under the quota of seats reserved for the children of ex-servicemen with reference to his rank in EAMCET held in June/July, 1992 for which interviews were held in July, 1993. The facts leading to the filing of this writ appeal may be stated in brief:--

The petitioner-first respondent appeared for EAMCET-92 and obtained 2859th rank in order of merit. He, however, claimed admission into one of the seats under the quota of 240 seats reserved for children of armed personnel and ex-servicemen. His

ranking under this category was 53. In the interviews held in July, 1993, the authorities, however, considered that he is not eligible for a seat under the reserved quota on the ground that his parents do not belong to Andhra Pradesh but belong to Punjab and instead granted him a seat in a private engineering college based on his rank in the open category. Aggrieved by the said action of the authorities in refusing a seat to him under the reserved category where he has a chance of getting admission in a Government college and in a subject of his choice, the petitioner-first respondent filed the writ petition.

2. The relevant provision for reservation is contained in the Annexure to G.O.Ms. No.263, Education (B.C. 2) Department dated 27-7-1992. It is as follows:

"III-CHILDREN OF EX-SERVICEMEN, ARMED PERSONNEL AND BORDER SECURITY FORCE AND CRPF PERSONNEL, RESIDING IN ANDHRA PRADESH

(i) Children of Ex-Servicemen, Armed Personnel and BSF and CRPF personnel (belonging to Andhra Pradesh State including those stationed in other States and other servicemen who are posted and stationed in Andhra Pradesh State at the time of submission of application for admission) shall be considered in this category....."

The case of the petitioner-first respondent is that his father had worked for 17 1/2 years in the Air Force and while working in Andhra Pradesh he had retired and joined in the Indian Airlines at Hyderabad and from the date of his retirement he has been residing at Hyderabad and working as an employee of the Indian Airlines at Hyderabad. The learned single Judge following an earlier Division Bench judgment of this Court in W.A. No. 1088 of 1993 and W.P. No. 12540 of 1993 dated 23-11-1993 held that on a proper interpretation of the above rule, the children of ex-servicemen belonging to other States who are posted and stationed in Andhra Pradesh in any service other than the army at the time of submission of application are also eligible for consideration for the reserved seats in the army quota and accordingly the petitioner-respondent is entitled for a seat under the said reserved category. Having regard to the fact that by the time of pronouncing the orders the petitioner-first respondent had already completed the first year engineering course in a private college, the learned single Judge granted a direction to admit him in the second year of the course in a college and subject as per his entitlement under the reserved quota without any further eligibility test or conditions being applied to him. It is this order which is assailed in the present writ appeal.

3. We are not required in this case to go into the question of the validity of the above rule since it has not been raised before us even though we have grave doubts about the validity of the same in view of Art. 15(1) of the Constitution of India. So the only question for consideration is whether the petitioner-first respondent fulfils the requirements of the said rule and he is eligible for admission under the reserved category. The learned counsel for the appellant has not seriously canvassed the correctness of the finding of the learned single Judge that the petitioner-first

respondent satisfies the second part of the said rule and he is, therefore, eligible for a seat under the reserved quota. We also do not find any reasons to interfere with the said finding. We, therefore, affirm the finding of the learned single Judge that the petitioner-first respondent is entitled for admission under the said reserved category. The learned counsel for the appellant, however, vehemently argued that since all the seats have already been filled up and since more than one year has already elapsed, it is not possible to provide a seat for the petitioner-first respondent in any other college and that too in the second year as directed by the learned single Judge. He further contended that the appellant has no power either to create a seat or to grant admission now since he has already completed his work and has become *functus officio*. If at all, it is only the Government which is competent to do so and as the petitioner-first respondent did not implead the Government or the University concerned, no, relief can be granted to him.

4. The learned counsel for the petitioner-first respondent relied upon an order dated 30-6-1993 passed in W.P.M.P. No. 10997 of 1993 in W.P. No. 8735 of 1993 in which an undertaking was given on behalf of the appellant that in the event of the petitioner's success in the writ, petition one seat can be converted under the court's direction as one reserved for army quota and submitted that in view of this undertaking the petitioner has to be provided a seat under the reserved category.

5. Noticing these contentions in appeal, we have ordered the State Government and the Osmania University to be impleaded as party respondents and accordingly they have been so impleaded. A counter-affidavit has since been filed on behalf of the State Government contending that All India Council for Technical Education, New Delhi, alone has the power to grant permission for starting of new technical institutions and courses in the country and as such any creation of supernumerary seat in any course has to be approved by the All India Council for Technical Education, New Delhi. It is unnecessary to go into this question as we are of the view that the petitioner-first respondent was wrongfully denied a seat under the reserved quota to which he was lawfully entitled. He has to be provided a seat in a college and subject as per his entitlement. This, however, may lead to displacement of another candidate who has been admitted in the seat which ought to have gone to the petitioner-first respondent. It will be highly unjust to disturb the other person now after a lapse of more than two years. We, therefore, direct that the petitioner-first respondent should be accommodated in the second year engineering course in a college and subject as per his entitlement under the reserved quota without disturbing anybody else. Even if the permission of the All India Council for Technical Education is required for this purpose, we have no doubt that the All India Council would not object to the same having regard to the above facts.

6. For the foregoing reasons, we affirm the order of the learned single Judge and dismiss the writ appeal. No order as to costs.

7. Appeal dismissed.