(2005) 11 AP CK 0025

Andhra Pradesh High Court

Case No: Writ Petition No. 17092 of 2005

M. Sunil Chowdary		APPELLANT
	Vs	
Government of A.P. and Others		RESPONDENT

Date of Decision: Nov. 10, 2005

Acts Referred:

- Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983 - Section 15, 3
- Constitution of India, 1950 - Article 309, 371D

Citation: (2006) 1 ALD 330

Hon'ble Judges: L. Narasimha Reddy, J

Bench: Single Bench

Advocate: K.G.K. Prasad, for the Appellant; Government Pleader, for Medical Health and Family Welfare for the Respondent Nos. 1, 3 and 4, D.V. Nagarjuna Babu, for the Respondent No. 2 and S. Niranjan Reddy, for the Respondent No. 5, for the Respondent

Final Decision: Allowed

Judgement

L. Narasimha Reddy, J.
The petitioner assails the action of the District Sainik Welfare Officer, Guntur, in rejecting his claim for the status of Children of Ex-servicemen, in the context of admission to I Year M.B.B.S. Course for the academic year 2005-2006, against the seat reserved for that category.

2. The State of Andhra Pradesh conducts a Common Entrance Examination for the purpose of selecting candidates for admission into I year of M.B.B.S. Course, in the colleges established in the State. In exercise of powers conferred under Sections 3 and 15 of the A.P. Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983 (for short ''the Act''), the Government promulgated Rules for regulating admissions into Private Medical and Dental Colleges, from time to time. Separate sets of Rules are framed, governing the admission into Government

and private Medical and Dental Colleges from the State.

3. So far as the admissions into private Un-aided, Non-minority, Professional Medical and Dental Colleges are concerned, the Rules published through G.O. Ms. No. 184, Health, Medical and Family Welfare (EI), dated 30-6-2004, hold the field, for the current academic year also.

4. The Rules inter alia provide for categorization of seats in the types of colleges, referred to above, as well as the nature of reservations to be followed for making admissions therein. The seats are divided into three categories. 50% of the seats are to be filled by candidates, selected by the Admission Committee, constituted by the State and in all respects, these seats are similar to those in Government colleges. The second category comprises of 25% of the sanctioned strength. Selection to this category of seats, is also on the basis of merit, but the fee structure would be different. The balance 25% of the seats are to be filled by the management of the institution, with the qualified candidates.

5. Depending on the category of seats to be filled in, reservations in favour of SCs, STs and BCs are to be followed. The reservations provided for under the Presidential Order, issued under Article 371-D also govern the field. We are not concerned with those kinds of reservations, in this writ petition. Rule 9(3) provides for reservation in favour of various categories, such as N.C.C., Sports, Physically Handicapped and Children of Armed Personnel (CAP). The controversy in this writ petition relates to the manner of selection of candidates against the seats reserved in favour of Children of Armed Personnel, which is 1% of the available seats. Under this category, the children of Armed Personnel, in service, as well as Ex-servicemen are eligible to be considered.

6. The petitioner appeared in the entrance examination for the current academic year. He secured the rank - 4140. He was not selected, either in the Government Colleges or in the Private Unaided Colleges, on merit. Father of the petitioner joined in the Indian Army on 28-8-1975 and worked as Inventory Clerk in Group-B. He was discharged from service, exactly after three years on 28-8-1978, at his request. Petitioner made a claim for a seat, reserved in favour of Children of Armed Personnel. Under the procedure followed by the 2nd respondent University, claims of candidates for seats reserved in favour of Ex-servicemen are to be processed and certified by the concerned District Sainik Welfare Officer. The claims of the petitioner and other candidates were referred to the 3rd respondent. Through an endorsement, dated 29-7-2005, the claim of the petitioner was rejected on two grounds, viz., the service of the father of the petitioner was less than five years and that he was discharged from the service, on his own request.

7. Sri K.G.K. Prasad, learned Counsel for the petitioner submits that the action of the 3rd respondent is illegal, arbitrary and contrary to the statutory rules. He contends that the very officer, who rejected the claim of the petitioner, for the current

academic year, recognized it during the previous academic year and certified that the petitioner comes under the said category. Learned Counsel submits that the petitioner did not avail the benefit of reservation during the previous academic year, because he was offered seat in the I Year of B.D.S. Course and when he improved his performance in the current academic year, the claim was rejected on untenable grounds. He further contends that the definition of Ex-servicemen, as it stood, when the father of the petitioner retired from service, did not exclude the persons, who were released from service on request and such a condition was stipulated only with effect from 1-7-1979. He also submits that the Ministry of Defence, Government of India, has clarified through their letter dated 13-9-2005, on a reference being made by the 3rd respondent, that the father of the petitioner must be treated as an Ex-serviceman, as per the relevant definition.

8. Sri D.V. Nagarjuna Babu, learned Standing Counsel for the 2nd respondent and learned Government Pleader for Home, appearing for respondents 3 and 4, on the other hand, submit that the reservation in favour of Children of Armed Personnel is meant for those, whose parents are serving the Armed Forces, or have retired from it, in the usual course and not for those, who served for a short duration and stood discharged at their request. Learned Counsel contend that if the claims of the persons, who joined the Armed Forces and left it after a short while; are to be considered, the very purpose would be defeated and genuine cases of those, who served for the full tenure, with dedication, would be defeated. They further submit that the Government framed Rules under the Act, initially through G.O. Ms. Nos. 339, dated 29-5-1985 and 368, dated 29-5-1986 and they were amended through G.O. Ms. No. 532, dated 21-8-1986, with reference to the definition of Ex-servicemen.

9. Learned Counsel point out that the definition of Ex-servicemen, in the notification dated 15-12-1979 issued by the Department of Personnel and Administrative Reforms, Ministry of Home Affairs, Government of India, was adopted by the Government of Andhra Pradesh, in the year 1986 and though the rules have undergone minor changes, year-after-year, the one, relating to definition of Ex-servicemen, is not altered. He contends that the action of the 3rd respondent accords with the settled principles and definitions adopted by the competent authorities and that the clarification issued by the Ministry of Defence does not conform to the relevant provisions.

10. Sri S. Niranjan Reddy, learned Standing Counsel for the 5th respondent submits that the time stipulated for the closure of admission into M.B.B.S. course has elapsed and no relief can be granted to the petitioner, at this stage.

11. The writ petition was heard on an earlier occasion and was dismissed through order dated 20-9-2005. Subsequently, the petitioner filed Review W.P.M.P.No. 27803 of 2005, placing reliance upon an additional material, as well as the clarification issued by the Ministry of Defence, Government of India. The Review W.P.M.P. was allowed and the order dated 20-9-2005 was set aside and the matter was heard

afresh.

12. The only controversy in this writ petition is as to whether the father of the petitioner answers the description of Ex-servicemen, as defined under the relevant provisions. If the answer to this question is in affirmative, the petitioner will be entitled to be admitted into MBBS I-Year, against a seat reserved in favour of the children of armed personnel, on the basis of the rank secured by him.

13. Ex-servicemen are conferred with various kinds of benefits, from time to time. On being discharged from service, they are provided with employment in civilian organizations, depending on their qualifications and existence of vacancies. Government lands are allotted subject to availability, to the Ex-servicemen. Similarly, seats in educational institutions are reserved in favour of their children. There does not exist much difficulty in understanding the expression "Ex-servicemen". However, since the claims increased and avenues depleted, the Government felt the necessity to define the expression.

14. In the context of providing employment to Ex-servicemen, the Government of India issued a Notification, dated 15.12.1979, in exercise of powers under proviso to Article 309 of the Constitution of India. It framed the Ex-Servicemen (Re-employment in Central Civil Services and Posts) Rules. The term "Ex-servicemen" was defined as under:

"Ex-servicemen" means a person, who has served in any work (whether as a combatant or as non-combatant) in the Armed forces of the former Indian States, but excluding the Assam Rifles, Defence Security Corps;, General Reserve Engineering Force, Lok Sahayak Sena and Territorial) Army, for a continuous period of not less than six months after attestation, and

(i) has been released, otherwise than at his own request or by way of dismissal or discharge on account of misconduct or inefficiency, or has been transferred to the reserve pending such release, or

(ii) has to serve for not more than six months for completing the period or service requisite for becoming entitled to be released or transferred to the reserve as aforesaid, or

(iii) has been released at his own request, after completing five years service in the Armed Forces of the Union;

The same definition was introduced into the A.P. State and Subordinate Service Rules, by the Government of Andhra Pradesh, amending the rules, through its orders in G.O. Ms. No. 738, GAD, dated 4.12.1980.

15. Had the father of the petitioner been governed by the set of rules, the case of the petitioner cannot be considered at all. The fact, however, remains that the father of the petitioner was relieved from Army on 28-8-1978. Apart from the rules,

referred to above, the Ministry of Defence also issued notifications, defining the term ''Ex-serviceman''. The notification dated 1-7-1968 defined the term ''Ex-serviceman'', as under :

Any person who had served in any rank (whether as Combatant or not) in the Armed Forces of the Union for a continuous period of not less than six months after attestation and released therefrom otherwise than by way of dismissal or discharged on account of misconduct or inefficiency.

16. In effect, from 1-7-1979 a different definition was adopted, where the persons, who have been discharged on their own request, was exempted from the category. Inasmuch as the father of the petitioner was released from the Army on 28-8-1978, he cannot be excluded from the definition.

17. The 3rd respondent, obviously faced with this uncertain situation, sought clarification from the Ministry of Defence, Government of India. Through their letter dated 13-9-2005, it was informed that the father of the petitioner answers the description of Ex-serviceman and reference to various notifications was made. Therefore, the petitioner is entitled to be treated as the Children of Ex-serviceman and to be considered for admission into the seat reserved for that category, depending on his merit.

18. It is true that the Hon''ble Supreme Court stipulated dates for conclusion of admissions for under-graduate and post-graduate courses, for every year. Various agencies, entrusted with the admission process, cannot cross the limits. In the instant case, the admissions have been carried out, keeping the time limit in view. In fact, one seat has been reserved in favour of the petitioner. But for the doubt expressed by the concerned agencies, the admission of the petitioner would have been concluded long back. The process of verification undertaken by the authorities as well as this Court cannot result in denial of the right of the petitioner. It is not as if any supernumerary seat is created to accommodate the petitioner. Therefore, eventual admission of the petitioner cannot be said to be in violation of the time frame fixed by the Hon''ble Supreme Court.

19. For the foregoing reasons, the writ petition is allowed and it is held that the father of the petitioner answers the description of Ex-serviceman and that the petitioner is entitled to be considered for admission into a seat reserved for Children of Armed Personnel. The 2nd respondent is directed to verify the rank of the petitioner and take further steps, in relation to admission, if he otherwise stands for selection, within a period of two weeks from the date of receipt of a copy of this judgment.

20. There shall be no order as to costs.