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DR. A. FRANKLIN JOSEPH

v.

STATE OF TAMIL NADU AND ORS.

FEBRUARY 14, 1994

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[M.N. VENKATACHALIAH, C.J., AND S. MOHAN, J.]

C

*Education: Admission to Professional courses—Medical education—Post-Graduate course in Diabetology—Seat allotted to All India Quota not filled and returned to State—Allotted to a service candidate with lesser marks than the candidate in waiting list—50:50 formula followed to bring about equality—Not followed in other courses—Matter of convenience—Held arbitrary—No rules in existence—Desirability of making rules to be followed from next academic year—Emphasised.*

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The appellant, a registered Medical Practitioner was one of the candidates for admission to Diploma Course in Diabetology. He took the entrance examination, secured 76.75% marks and was placed at no.2 in the waiting list. There were four seats for the said course of which one was allotted to All India Quota, two were filled up in open quota on merit basis, and the remaining seat was filled up from out of service candidates. One of the candidates selected from the open quota did not join and the candidate wait-listed at No.1 was accommodated. The seat allotted to All India quota was not filled and the seat was returned to the State Government. Appellant made a representation that he might be admitted against that vacancy, as he was the next in the waiting list, as per the practice followed in the post. Since there was no reply to his representation, appellant filed a Writ Petition before the High Court. Meanwhile, the said seat was filled up with a service candidate. Appellant contended that the said action of the respondents was arbitrary and was at variance from the past practice followed in other disciplines; and that even in that very academic year for M.D. Pathology, the vacancy caused by non-filling up from All India Quota, was allotted to open quota candidate and not to service candidate, and 50:50 formula was not followed.

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Taking the view that reservation should be 50:50 between service and non-service categories, the High Court held that when a seat had been allotted to a service candidate just to equalise the ratio, there was no

arbitrariness on the part of the respondents. Thus the Writ Petition was dismissed, against which the present appeal has been filed. A

The appellant contended that the allotment of the seat to a service candidate who had secured lesser marks than the appellant in the entrance Examination was arbitrary. B

The respondents contended that in order to equalise the two non-service candidates, the second service candidate was selected and it was in accordance with the practice followed in such selections.

Allowing the appeal, this Court C

**HELD:** 1.1. Admittedly, no rules in regard to allocation of seats in Post Graduate Medical Courses have been framed; yet allocation must be in the ratio of 50:50 as between service and non-service candidates, since according to the State, the High Court ruled on a prior occasion that such a ratio should be applied as it would be equitable. But it is equally admitted that such a principle was not adopted. As a matter of fact in the case of M.D. Pathology course 1992-93, the total number of seats were nine. Five seats were filled up by non-service candidates and four seats were given to service candidates. When the seat allotted to All India Quota was surrendered, that was allotted to a non-service candidate. There is no proper explanation as to why the same principle was not adopted in the case of the course in question, namely, Diploma in Diabetology. This shows the State is taking umbrage under the ruling of the High Court whenever it suits it. Therefore, there is every justification for the appellant to complain that the principle is used more as convenience than to bring about equality between service and non-service candidates. This should never be so. [930-H; 931-A-C] D E F

1.2. A candidate with a lesser percentage of marks *i.e.* 71.50% has been preferred as against the appellant who had secured 76.75% marks. Equality is a laudable principle but not to be used by the State at its whim and fancies. The appellant being the first in the waiting list having secured 76.75% marks would be legally entitled to admission in preference to the service candidate whose selection is clearly arbitrary. The appellant should not be deprived of his legitimate due, and he should be admitted to the course. [931-G, H; 932-A, B] G H

A *Ajay Kumar Agrawal v. State of U.P.*, A.I.R. (1991) S.C. 498, relied on.

2. It is desirable that rules should be made as to the proportion of allotment between service and non-service candidates, thereby avoiding accusation of arbitrariness, from the next academic year onwards.

[932-B, C]

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 724 of 1994.

From the Judgment and Order dated 6.8.93 of the Madras High Court in W.P. No. 7597 of 1993.

C C. Subramaniam, Dr. A. Francis Julian and R.N. Keswani for the Appellant.

R.K. Jain and P.R. Seetharaman for the Respondent.

D The Judgment of the Court was delivered by

MOHAN, J. 1. Leave granted.

The short facts of the case are as under:

E The appellant passed M.B.B.S. examination and was a registered practitioner. In August, 1992 appellant sent application for the post-graduate course and post-graduate diploma course for the academic year 1992-1993 pursuant to the advertisement inviting applications by respondent No. 2. He applied for M.D. general medicines and Diploma in Diabetology. He took the common entrance examination conducted by F Director of Medical Examinations on 6.9.1992 and was placed in the waiting list at serial No. 2 for Diploma in Diabetology having secured 76.75% marks. Out of total number of four seats for Diploma in Diabetology, one seat was allotted to All India Quota, two were filled up in open quota on merit basis and the remaining one was filled from out of service candidates. One did not join the course out of the seats filled up in open G quota and therefore, waiting list serial No. 1 was accommodated in the said vacancy.

2. As the seat allotted to All India Quota was not filled, the said seat was returned to the State Government. The appellant, therefore, on H 6.4.1993 sent a letter to respondent No. 3 to admit him in the said vacancy

as he was the next in the waiting list in accordance with the practice being followed by the respondent in the past. A

3. Since the appellant did not receive any reply from respondent No. 3 and he learnt that there were attempts to fill the said seat with another influential candidate, he filed Writ Petition NO. 7597 of 1993 before the Madras High Court on 18.4.1993 seeking directions to the respondents to admit him in the Diploma in Diabetology course for 1992-1993. B

4. In the counter-affidavit filed by the respondents on 14.7.1993, it was stated that they have filled the All India Quota with a service candidate who had secured only 71.50% marks for below than that of the appellant who had secured 76.75% marks. C

5. Appellant filed rejoinder affidavit on 31.7.1993 pointing out that the action of the respondents in allotting the All India Quota which fell vacant to service candidate was arbitrary and was at variance from the practice being followed in other disciplines in the past years as well as during this academic year. It was also stated specifically that in the case of M.D. Pathology, the vacancy caused by the All India Quota not being filled up was allotted to the open quota only and not to the service candidate and no 50:50 formula was followed there. D

6. The respondent No. 3 in his additional-counter dated 5.8.1993 admitted the facts that the State Government had not framed any rule for filling up the seat falling vacant against the All India Quota. The respondent also did not deny the specific allegations made in the rejoinder filed by the appellant that in the case of M.D. Pathology, no 50:50 formula was followed. F

7. The Division Bench of the High Court by its order dated 6.8.1993 dismissed the writ petition upholding the allotment of the seat to the service candidate. It took the view that the reservation should be 50:50 between candidates from service as well as non-service categories. When a seat had been allotted to a service candidate just to equalise the ratio, it could not be said that the action of the respondent was arbitrary or illegal. It is under these circumstances, the present appeal has come to be preferred. G

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A 8. The learned Senior counsel for the appellant Shri Siva Subramaniam would argue that the appellant had secured 76.75% marks in the entrance examination. He was the first in the waiting list. Therefore, he should have been allotted a seat which was surrendered to the State from all India quota. The State Government has, without any rules, arbitrarily  
B allotted the seat to service candidate who had secured only 71.50% marks which are far lower than that of the appellant. If merit alone is to be the criterion for selection, then allotment cannot be supported. Of course, if a seat had been reserved for a particular category, the issue would have been different. But, there was no such reservation in the instant case. Therefore,  
C it is submitted that the allotment to service candidate is arbitrary.

D 9. In other discipline such as M.D. Pathology, a seat allotted to All India Quota returned to State came to be filled by merit only. The same practice had been followed in this case as well. Out of ten seats allotted to M.D. Pathology, six seats including that of All India quota which fell vacant  
E were allotted to merit candidates. Only four seats were allotted to service candidates. This was cited as an instance to show that the ratio of 50:50 was never followed. Merely because it suited the authorities to apply this principle, it cannot be done arbitrarily. In this case, only one seat was reserved for service candidate that having been filled up by a service candidate; it cannot be stated that by application of 50:50 rule again, it should be filled by a service candidate, more so, in the absence of any specific rules in this regard.

F 10. The learned counsel appearing for the State would submit that if really justice is to be done between service and non-service candidates, the application of the rule of 50:50 could certainly be justified. Where already one of the seats came to be allotted to service candidates out of four in order to equalise the two non-service candidates, a second service candidate had been selected. Therefore, the first in the waiting list Dr. Balamurgan in the service quota was selected. It was this practice which  
G has been followed with regard to all selections.

11. The following details would bring out the factual controversy to the fore.

H "Diploma in diabetology:

Total number of Seats	:	3	A
Allocation for merit quota (Open)	:	2	
Allocation for service quota	:	1	

## OPEN QUOTA 50% SEAT - 2

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## SELECTED CANDIDATES

SL. NO.	E.E. NO.	NAME OF THE CANDIDATE	MARKS
1.	262748	Dr. T.G. Srinivasan	79.00
2.	352701	Dr. R. Venkataraman	78.50

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## SERVICE QUOTA 50% SEAT - 1

SL. NO.	E.E. NO.	NAME OF THE CANDIDATE	MARKS
1.	2251145	Dr. P. Dharmarajan	73.25

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The candidate Dr. R. Venkataraman, E.E. No. 352701 in the Open (Merit) Quota did not join the course. Hence, the vacancy was filled up by Dr. Nagarajan Bose, E.E. No. 252410 from the merit (open quota) waiting list No. 1 (in the open quota) who secured 78.25 marks. The details of wait listed candidates operated in the merit (open quota) is as below:

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## Waiting List Open Competition (Merit)

S.No.	E.E.No.	Name	Sex	S/P	Community	Marks
1.	252410	Dr. Nagarajan Bose	M	P	BC	78.25
2.	252537	Dr. Franklin Joseph	M	P	BC	76.75
3.	262635	Dr. S. Ravi	M	P	FC	76.25
4.	452264	Dr. R. Rangarajan	M	P	FC	75.75
5.	252631	Dr. G. Sivakumar	M	P	FC	75.25

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S - Service, P -Private

Thus the following candidates joined the Diploma Course in Diabetology.

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## OPEN QUOTA - 2 Seats

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|----|--------|----------------------|-------|
| 1. | 262748 | Dr. T.G. Srinivasan, | 79.00 |
| 2. | 252410 | Dr. Nagarajan Bose   | 78.25 |

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## SERVICE QUOTA

- |    |        |                    |       |
|----|--------|--------------------|-------|
| 1. | 251145 | Dr. P. Dharmarajan | 73.25 |
|----|--------|--------------------|-------|

Subsequently one vacancy arose in the speciality in Diploma in Diabetology course consequent on the surrender of one seat under All India Quota by Director General of Health Services to State. That Vacancy was filled up by candidates from service quota in S. No. 1 in the wait list of candidates viz. Dr. R. Balamurugan. (E.E. No. 272150) who secured 71.50 marks.

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## The following is the SERVICE QUOTA - WAITING LIST

S.No.	E.E.No.	Name	Sex	S/P	Community	Marks
1.	272150	Dr. Balamurugan	M	S	BC	71.50
2.	262304	Dr. K. Sheik Anwar Hussain	M	S	BC	68.50
3.	151061	Dr. T.A. Madeeswaran	M	S	BC	67.50
4.	251303	Dr. Raja Ganesan	M	S	BC	67.25
5.	231050	Dr. T Pugazhendi	M	S	BC	66.00"

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12. On the basis that the seat was surrendered by the Director General of Health Services to the State was filled up by the service candidate and thereby ratio of 50:50 between service candidates and non-service candidate has been maintained, is the stand of the State.

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13. The appellant would argue that there are no rules to this effect. The rule of 50:50 had been adopted as a matter of convenience. The question is which of the stand is correct.

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14. It is admitted by the learned counsel for the State of Tamil Nadu that no rules in this regard have been framed. Yet allocation must be in the ratio of 50:50 as between service and non-service candidates since, the High Court ruled on a prior occasion that such a ratio should be applied

as it would be equitable. But it is equally admitted that such a principle was not adopted. As a matter of fact in the case of M.D. Pathology course 1992-93, the total number of seats were nine. Five seats were filled up by non-service candidates and four seats were given to service candidates. When the seat allotted to All India Quota was surrendered that was allotted to non-service candidate. Why the same principle was not adopted in the case of the course in question namely Diploma in Diabetology the State is hard put to explain. This shows the State is taking umbrage under the ruling of the High Court whenever it suits the State. Therefore, there is every justification for the appellant to complain that the principle is used more as convenience than to bring about equality between service and non-service candidates. This should never be so. What is the result of the State action? Merit is the casualty. At this juncture, we may usefully refer to the observations of this Court made in *Ajay Kumar Agrawal v. State of U.P.*, AIR (1991) SC 498 @ 502:

"This is a specialised study and being Post-Graduate Course in the Medical Faculty, the most eligible and qualified students should have access to the courses for the ultimate special good. In the main case *Pradeep Jain v. Union of India*, [1984] 3 S.C.C. 654, at page 673: AIR (1984) SC 1420, of the reports this Court said, at page 673 [1984] 3 S.C.C.:

'The philosophy and pragmatism of universal excellence through equality of opportunity for education and advancement across the nation is part of our founding faith and constitutional creed. The effort must, therefore, always be to select the best and most meritorious students for admission to technical institutions and medical colleges by providing equal opportunity to all citizens in the country.....Moreover, it would be against national interest to admit in medical colleges for other institutions giving instruction in specialities, less meritorious students when more meritorious students are available....'

15. A candidate with a lesser percentage of marks of 71.50% has been preferred as against the appellant who had secured 76.75% marks. Equality is a laudable principle but not to be used by the State at its whims and fancies. The stand of the State is wholly untenable. The appellant being the first in the waiting list having secured 76.75% marks would be legally

- A entitled to admission in preference to Dr. Bala Murugan whose selection is clearly arbitrary. The State has adopted the principle of "show me the man, I will show you the law". The appellant should not be deprived of his legitimate due. Therefore, it is hereby directed that the State-respondent shall admit the appellant within two weeks from today since the academic year had commenced and the course is in progress. The Civil Appeal will stand allowed with costs.
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16. Before we part with the case, we would like to emphasise the desirability of making rules as to the proportion of allotment between service and non-service candidates, thereby avoiding accusation of arbitrariness from the next academic year onwards.
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G.N.

Appeal allowed.