

Supreme Court of India

A. Franklin Joseph (Dr) vs State Of T.N on 14 February, 1994

Equivalent citations: 1994 SCC (2) 387, JT 1994 (2) 103

Author: S Mohan

Bench: Mohan, S. (J)

PETITIONER:

A. FRANKLIN JOSEPH (DR)

Vs.

RESPONDENT:

STATE OF T.N.

DATE OF JUDGMENT 14/02/1994

BENCH:

MOHAN, S. (J)

BENCH:

MOHAN, S. (J)

VENKATACHALLIAH, M.N. (CJ)

CITATION:

1994 SCC (2) 387 JT 1994 (2) 103

1994 SCALE (1) 544

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by MOHAN, J.- Leave granted.

2.The short facts of the case are as under: The appellant passed MBBS examination and was a registered practitioner. In August 1992 appellant sent application for the postgraduate course and postgraduate diploma course for the academic year 1992 pursuant to the advertisement inviting applications by Respondent 2. applied for MD General Medicines and Diploma in Diabetology. He took the common entrance examination conducted by Director of Medic Examinations on September 6, 1992 and was placed in the waiting list 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 quota and therefore, waiting list Serial No. I was accommodated in the said vacancy.

3.As the seat allotted to All India quota was not filled, the said seat was returned to the State Government. The appellant, therefore, on April 6, 1993 sent a letter to Respondent 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.

4.Since the appellant did not receive any reply from Respondent 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 April 18, 1993 seeking directions to the respondents to admit him in the Diploma in Diabetology course for 1992-93.

5.In the counter-affidavit filed by the respondents on July 14, 1993, was stated that they have filled the All India quota with a service candidate who had secured only 71.50% marks far below than that of the appellant who had secured 76.75% marks.

6.Appellant filed rejoinder affidavit on July 31, 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 MD 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.

7.Respondent 3 in his additional-counter dated August 5, 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 MD Pathology, no 50 : 50 formula was followed.

8.The Division Bench of the High Court by its order dated August 6, 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.

9.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 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, it is submitted that the allotment to service candidate is arbitrary.

10. In the other discipline such as MD 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 MD Pathology, six seats including that of All India quota which fell vacant 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.

11. 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 Balamurugan in the service quota was selected. It was this practice which has been followed with regard to all selections.

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

"DIPLOMA IN DIABETOLOGY				
Total number of Seats				3
Allocation for merit quota (open)				2
Allocation for service quota				1
Open quota 50% Seats		2		
Selected candidates				
Sl No.	EE. No.	Name of the candidate		Marks
1 .	262748	Dr T.G. Srinivasan		79.00
2.	352701	Dr R. Venkataraman		78.50
		Service quota 50% Seat	I	
Sl. No.	E.E. No.	Name of the candidate		Marks
1.	2551145	Dr P. Dharmarajan		73.25

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. I (in the open quota) who secured 78.25 marks. The details of wait-listed candidates operated in the merit (open quota) is as below: Waiting List Open Competition (Merit) S1. E.E. No. Name Sex SIP Community Marks No.

1.	252410	Dr Nagarajan Bose	M P B C	78.25
2.	252537	Dr Franklin Joseph	M P B C	76.75
3.	262635	Dr S. Ravi	M P F C	76.25
4.	452264	Dr R. Rangarajan	M P B C	75.75
5.	252631	Dr G. Sivakumar	M P B C	75.25
S Service		P Private		

Thus the following candidates joined the Diploma Course in Diabetology.

Open quota 2 Seats

1 .262748	Dr T.G. Srinivasan	79.00
2. 252410	Dr Nagarajan Bose	78.25
Service quota		
1 . 251145	Dr P. Dharmarajan	73.25

Subsequently one vacancy arose in the speciality in Diploma in Diabetology course consequent of 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.

The following is the Service quota waiting list S1. E. E. No. Name Sex S/P Community Marks No.

1.	272150	Dr Balamurugan M	S	BC	71.50
2.	262304	Dr K. Sheik Anwar M	S	BC	68.50
		Hussain			
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"

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

14. 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.

15. 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 MD 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.* 1: (SCC p. 642, para 10) "This is a specialised study and being Postgraduate course in the Medical Faculty, the most eligible and qualified students should have access to the courses for the ultimate social good. In the main case *Pradeep Jain v. Union of India*' of the reports this Court said: (SCC p. 673, para 10) 'The philosophy and pragmatism of universal excellence through equality of opportunity for education and advancement across the 1 (199) 1 SCC636,642: AIR 1991 SC 498,502 2 (1984) 3 SCC 654,673: AIR 1984 SC 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 or other institutions giving instruction in specialities, less meritorious students when more meritorious students are available. ... "

16. 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 entitled to admission in preference to Dr Balamurugan 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.

17. 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.