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Court : Karnataka

Decided On : Dec-20-1967

Reported in : ILR1968KAR118

Judge : G.K. Govinda Bhat and ;M. Sadananda Swamy, J.

Acts : [Constitution of India](#) - Articles 15(4) and 226

Appeal No. : Writ Petn. No. 1864 of 1967

Appellant : B. Subhas Chandra Shetty

Respondent : State of Mysore and anr.

Judgement :

Govinda Bhat, J.

1. This is a writ petition under Article 226 of the [Constitution of India](#) by an unsuccessful applicant for admission to the pre-professional course leading to M. B. B. S. Degree in the Mysore Medical College for a writ in the nature of mandamus directing the respondents (the State of Mysore and the Chairman of the Selection Committee for admission to the Government Medical Colleges, Bangalore Medical College, Bangalore), to admit the petitioner to the pre-professional course leading to M. B. B. S. Degree.

2. Respondent No. 1 the State of Mysore has framed rules called the Mysore Medical Colleges (Selection for Admission) Rules by Notification dated the 19th May 1967 for admission to pre-professional course leading to M. B. B. S. Degree in the Government Medical College.

Under Rule (6) of the said Rules, 30 per cent of the seats are reserved for persons belonging to the 'backward classes'. The procedure for Selection has been laid down by Rule 11 which provides that the Selection Committee shall prepare a list of persons arranging them in the order of merit on the basis of marks obtained in the optional subjects of the qualifying examination. The petitioner who had secured 201 out of 300 marks in P. C. B. (optional), claimed the benefit of reservation for backward classes. The Selection Committee rejected the petitioner's claim that he belongs to the backward classes on the ground that his father did not satisfy the conditions specified in the Government Order No. ED 75 TGL 63 dated 26th July 1963. The petitioner did not qualify for selection from the merit pool and consequently his application for admission was rejected.

3. It is not disputed that if the petitioner is a member of the backward classes he should have been given a seat. Candidates belonging to the backward classes who had secured a total of 192 marks and above were selected; the petitioner having secured 201 marks would have been selected if his claim for being treated as a member of the backward class had been accepted.

4. The only question for decision is whether the Selection Committee was in error in rejecting petitioner's

claim that he is a member of the backward class. In order to decide the said question. It is necessary to set out the Government Order for classification of backward classes in the State for purposes of Art. 15(4) of the [Constitution of India](#), hereinafter called the 'Order'. It reads;

'Education Secretariat.

Issues Orders re: classification of backward classes in the State for purposes of Article 15(4) of the Constitution and reservation of seats in Technical and Professional Institutions:

Read: 1. G. O. No. KD 156 TGL 60 dated 10th July 1961.

2. D. O. No. ED 156 TGL 60 dated 5th August 1961.

3. G. O. No. KD 48 TGL 62 dated 31st July 1962.

ORDER No. ED 75 TGL dated Bangalore, the 26th July 1963.

'Government have all along been anxious to make special provision for the advancement of socially and educationally backward classes. In the light of the several attempts made at classification and judicial pronouncements by various High Courts and the Supreme Court, Government have since reviewed the position for the determination of socially and educationally backward classes.

2. Backwardness for purposes of Article 15(4) of the Constitution must be social and educational. The problem of determining who are socially and educationally backward classes is a very complex one. An elaborate investigation and collection of data and examination of such data which would inevitably involve considerable length of time, may be desirable. But the obligation of the State to make special provision for the advancement of the backward classes is a pressing problem and cannot be postponed. Pending such elaborate study and investigation of the problem, Government consider that the classification of socially and educationally backward classes should be made on the following basis:

(1) Economic condition; and

(2) Occupation.

3. Social Backwardness: It is a matter of common knowledge that poverty is one of the main factor contributing to social backwardness.

The per capita income of the State for the year 1961 was Rs. 266 per annum. Taking an average family to consist of 5 members, the average income of the family comes to Rs.1300/- per year. Even though this income is low having regard to the present day cost of living, Government are of the opinion that a family whose income is Rs.1200/- per annum or less can be regarded as economically backward.

In addition to economic condition, the other determining factor for social backwardness is occupation. Persons or classes following occupation of agriculture, petty business, inferior services, crafts or other occupations involving manual labour, are in general socially backward. The environmental conditions are also not conducive to progress either in the social sphere or in education. Amongst them, there is little or no urge for progress and improvement of their condition. The Government, therefore, list the following occupations (persons pursuing those occupations) as contributing to social backwardness:

(1) Actual Cultivator;

(2) Artisan;

(3) Petty businessman;

(4) Inferior service (i.e. Class IV in Government service and corresponding class or service in private

employment) including casual labour; and

(5) Any other occupation involving manual labour.

'4. Educational Backwardness: It is well known that while the general level of education and literacy in the State is low, it is lower still among the poorer sections of the people. Especially among agriculturists, artisans, petty businessmen, persons in inferior services and persons following occupations involving manual labour, the level of education and literacy is even lower, and they may be reasonably be considered to be educationally backward.

5. 'Hence, classes of people whose annual income is Rs. 1200/- per annum or less and who are pursuing occupations set out in para 3 above can reasonably be classified as socially and educationally backward classes and are hereby so classified.'

6. As regards the quantum of reservation, Government consider that it would be reasonable to reserve 30 per cent of the seats in Professional and Technical Colleges and Institutions for the Backward classes (who answer the criteria mentioned above). The reservation is in addition to the reservation of 15 per cent and 3 per cent to students belonging to Scheduled Castes and Scheduled Tribes in Mysore State.

By Order and in the name of the Governor of Mysore.

Sd/-

B. R. Varma,

Secretary to Government,

Education Department.

(Underlining (here in ' ') is ours)

5. By the Order the Government have classified the classes of people following the occupations specified in para 3 therein, and whose annual income does not exceed Rs. 1,200/- as socially and educationally backward.

6. The reasons for rejection of the claim of the petitioner set out in paragraph 3 of the counter-affidavit filed by the Secretary of the Selection Committee are:

(i) that the petitioner's father is a retired teacher and that school teachers as a class do not come under any of the occupations listed in para 3 of the Order, and

(ii) that the petitioner's father had given his share of income from his undivided family as Rs. 348-20 per annum therefore his family income was Rupees 4,526-60 which exceeds Rs. 1200/- the maximum prescribed in the Order.

7. The petitioner's case is that his father retired from service about a month after the Government passed the Order, that after retirement he is pursuing the occupation of agriculture and that the material date under the Order for inclusion in the backward classes is the date of the application for admission. His further case is that the income of the undivided family is not the income of his father and as such it cannot be taken into consideration.

8. It was not disputed by the learned Counsel for the petitioner that when the Order was passed, petitioner's family was not eligible for inclusion among the backward classes. But, it was argued that after retirement, petitioner's father is only a pensioner and his present occupation being agriculture, he satisfies the occupational qualification.

9. Learned Counsel argued on the basis of decision in Rajagopalachari v. Corporation of Madras, :

[1964]53ITR454(SC) that a pensioner is in no employment and he does not carry on any profession, trade, calling or employment and that he is merely in receipt of income for past services in employment and therefore the fact that the petitioner's father is a retired teacher does not disentitle him for inclusion in the Backward Classes, if he satisfies the occupational and income qualifications laid down by the Order and that the past occupation of petitioner's father and the income of his undivided family are wholly irrelevant.

10. The Order was issued by the State Government for purposes of Article 15(4) (sic) of the Constitution for making special provision for the advancement of the socially and educationally backward classes of citizens in the State of Mysore. The basis of the classification of the socially and educationally backward classes of citizens, according to the Order is their economic condition and occupation. Classes of people following certain occupations as mentioned in para 3 of the Order are, in general, socially backward and their environmental conditions are not conducive to progress either in the social sphere or in education.

11. The occupations contemplated by the Order, in our opinion, are not casual or temporary occupations, but the habitual occupations of families; otherwise a person may claim to be treated as backward in one year and forward in another as it suits to his advantage. Any other interpretation would also result in one member of a family being classed as belonging to the socially and educationally backward while another is not. It was pointed out in *M. R. Balaji v. State of Mysore*, : AIR1963SC649 that the special provision for advancement of backward classes under Clause (4) of Article 15 of the Constitution is for classes of citizens and not for individual citizen as such. The classes of citizens falling under the group of socially and educationally backward classes are actual cultivators, artisans, IV Class Government employees etc., whose annual income does not exceed Rupees 1,200/-. The order has treated the family as a unit for purposes of classification. Therefore, what has to be seen is whether a particular family to which the candidate belongs is socially and educationally backward. When the family is considered as a unit for purposes of classification. it is not possible to envisage a situation where one member of the family is treated as backward while another is not.

12. The petitioner's father was a school teacher employed in the service of the erstwhile District Board in South Kanara. He retired in about August 1963. A school teacher is not considered as belonging to the socially and educationally backward classes. While in service, it is not disputed that his family was not one belonging to the socially and educationally backward classes. After retirement, it cannot be said that the retired teacher became socially and educationally backward, merely because he has chosen one of the occupations specified in para 3 of the Order. It is common knowledge that even after retirement, a school teacher is held in the same esteem in society as before and a retired school teacher who takes to agriculture, in our opinion, cannot be regarded as belonging to the socially and educationally backward classes.

13. It is not disputed that the annual income of the Hindu undivided family of the petitioner's father exceeds Rupees 1,200/-. Though technically the income of the undivided family is not the income of its individual members, the social status of a member of a joint Hindu family, it cannot be denied, has relation to the wealth and income of the joint family. Therefore, the view of the Selection Committee that the petitioner's father does not satisfy the income test also cannot be said to be unreasonable.

14. In the result this Writ Petition fails and is dismissed. No costs.

15. Petition dismissed.