

Court No. - 35

Case :- WRIT - A No. - 19185 of 2023

Petitioner :- Dr. Anant Sachan And 7 Others

Respondent :- National Medical Commission And 4 Others

Counsel for Petitioner :- Jalaj Singh, Ashutosh Kumar Singh

Counsel for Respondent :- A.S.G.I., C.S.C., Dhananjay Awasthi, Vivek Kumar Singh

Hon'ble Vikas Budhwar, J.

1. Heard Sri Ashutosh Kumar Singh learned counsel for the writ petitioner and Sri Dhananjay Awasthi for the respondent No. 3, Sri Ratan Deep Mishra, learned Standing Counsel, who appears for Respondent no. 5.

2. Notice on behalf of the Union of India has been received by Sri Vivek Kumar Singh.

3. The case of the writ petitioners is that they possess the qualification of MSc. Medical and Ph.D. Medical and they are teaching in their respective institutions, Medical College since about a decade and have eligible to teach M.B.B.S. candidates and another details whereof is given in Para 24 at page 23/24 of the writ petition. They seek to challenge the relevant part of the C.B.M.E. guidelines dated 01.08.2023 introduced by National Medical Commission which provides that the persons to be appointed as examiners must have total teaching experience of four years as Assistant Professor and obtaining Post graduate degree followed M.B.B.S. in college recognized by National Medical Commission. Learned counsel for the writ petitioner relied upon that the decision dated 03.11.2023 passed in **Writ A No. 18482 of 2023 Dr. Geeta Jaiswal and 55 others Vs. National Medical Commission and 4 others** whereof is being quoted herein under:-

1. Heard Sri Rahul Sripat, learned Senior Advocate assisted by Sri Mohit Kumar, learned counsel for the petitioner and Sri Vivek Kumar Singh, learned counsel for the respondent nos.1 and 2.

2. By means of this petition filed under Article 226 of the Constitution petitioners seek quashing of the relevant part of the CBME Guidelines dated 01.08.2023 introduced by National Medical Commission which provides that the persons to be appointed as examiners must have total teaching experience of four years as Assistant Professor after obtaining post graduate degree following MBBS in the college affiliated to a recognized medical college by National Medical Commission.

3. The petitioners' grievance is that since they have been teaching faculty in the colleges prior to the introduction of this curriculum and have been examiners as well, such new modified guidelines have placed them in a disadvantageous position quite arbitrarily and is hit by Article 14 of the Constitution. He has

further relied upon order passed by Kerela High Court in WP (C) No.34567 of 2023 entertaining the writ petition questioning the guidelines and granting interim protection to the extent that such teachers would continue to be appointed as examiners. He has also placed reliance upon some other order passed by Rajasthan High Court in D.B. Civil Writ Petition No.17958 of 2023 on 31.10.2023 granting similar protection.

4. Sri Vivek Kumar Singh, learned counsel for the respondent nos.1 and 2 submits that National Medical Commission has clarified its position as to the guidelines that this note appended to Clause 6 (ii) of the CBME Guidelines 2023 which are put to challenge will have only prospective effect and is meant for only those teaching faculties which are appointed after the guidelines coming into force. Paragraph 3 of the instruction which has been placed before the Court is reproduced hereunder:

"3. Further, it is informed that the effect of CBME Guidelines, 2023 will not disturb the old faculty. They will continue to remain eligible for becoming the examiner. The CBME Guidelines, 2023 shall be applicable on new appointments."

5. Sri Singh, submits that in view of the clarification issued by the National Medical Commission, the controversy no more survives in so far as the challenge to the guidelines is concerned on this very ground.

6. Learned Senior Advocate after perusing the note could not dispute the stand of National Medical Commission. Thus no more any cause survives to continue this petition.

7. In view of the above, petition is consigned to records with this observation that National Medical Commission shall follow its own clarification that have been placed before this Court.

4. Prayer in the present petition is for a direction in the nature of certiorari calling for records concerning the part of impugned curriculum dated 01.08.2023 issued by National Medical Commission, so far it restrain the MSc. Medical/ Ph.D Medical Professors as Examiners in all upcoming examinations and to quash the same and issue a writ, order or direction in the nature of mandamus directing the Controller of Examination Atal Bihari Vajpayee Medical University, Lucknow, U.P. to restrain the list of examiners which was provided by all affiliated colleges/ Institutions and recall the order dated 03.10.2023 issued by the Controller of Examination Atal Vajpayee Medical University, Lucknow, U.P.

5. Sri Dhananjay Awasthi as well as the learned Standing Counsel and the counsels appearing for the other respondents do not dispute the fact that the decision has been rendered in the above noted case which is still law of land, the case of the writ petitioner stands covered with the same.

6. Considering the submissions of the rival parties as well as stand taken by them, the writ petition is being disposed off in view of the light of the decision in the case of **Dr. Geeta Jaiswal (Supra)**. However, the concerned authority before granting any benefit to the writ petitioners in the writ petition shall verify the fact that regarding their working prior to the issuance of the C.B.M.E. guidelines dated 01.08.2023.

7. With the aforesaid observation, the writ petition is ***disposed off.***

Order Date :- 28.11.2023

Suraj Srivastav