

GAHC010257252024



2024:GAU-AS:12903

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/6434/2024

DR. JANIFA KAIFEE AHMED
DAUGHTER OF KAMAL UDDIN AHMED,
RESIDENT OF VILLAGE- RUPAHI,
P.O.- RUPAHI, DISTRICT- NAGAON,
ASSAM, PIN- 782125.

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REPRESENTED BY ITS PRINCIPAL SECRETARY,
HEALTH AND FAMILY WELFARE DEPARTMENT,
DISPUR, GUWAHATI- 781006.

2:THE NATIONAL BOARD OF EXAMINATIONS IN MEDICAL SCIENCES
NEW DELHI
DELHI- 110075.

3:THE DIRECTOR OF MEDICAL EDUCATION
ASSAM
SIX MILE
KHANAPARA
GUWAHATI- 781022
ASSAM.

4:THE PRINCIPAL
SILCHAR MEDICAL COLLEGE
SILCHAR
CACHAR
ASSAM

Advocate for the Petitioner : MR. S K TALUKDAR, L TUBIN, L P BORAH, MR. A B T

HAQUE,MR. J M A CHOUDHURY

Advocate for the Respondent : SC, HEALTH, DY.S.G.I.

**BEFORE
HONOURABLE MR. JUSTICE LANUSUNGKUM JAMIR**

ORDER

Date : 18.12.2024

1. Heard Mr. S.K. Talukdar, learned counsel, for the petitioner. Also heard Mr. D.P. Bora, learned standing counsel, Health Department, for the respondent Nos. 1, 3 & 4 and Mr. K. Gogoi, learned CGC, for the respondent No. 2/National Board of Examinations in Medical Sciences.

2. The petitioner is an MBBS Doctor who obtained her degree from the Assam Medical College, Dibrugarh in the year 2017. Thereafter, the petitioner underwent one year compulsory rural posting at Messelkhowa MPHC, Agiya BPHC of Goalpara district under the National Health Mission w.e.f. 19th April 2018 to 8th April 2019. A certificate to that effect was issued by the Joint Director of Health Sciences, DHS, Goalpara on 09.04.2019. Thereafter, by a Notification dated 23rd October, 2019 issued by the Joint Secretary/Deputy to the Government of Assam, Health and Family Welfare (A) Department, the petitioner was appointed as Medical and Health Officer-I and was posted at Garajan SD, Nagaon. The petitioner, accordingly, joined to the said post on 31.10.2019. The petitioner was also issued a certificate by the Joint Director of Health Services, Nagaon in terms of the Rule 2(xxii) of the Medical College of Assam (Regulation of Admission into Post Graduate Degree and Diploma Courses) Rules, 2021 in Appendix-III certifying that the petitioner has been

working in regular service in Garajan SD under Singimari BPHC, Nagaon situated at Garajan village Singimari, Sub-Division in the Nagaon district, Assam w.e.f. 31.10.2019 till date for a period of 5 years 0 month continuously and satisfactorily, which is a rural area.

3. The National Board of Examinations in Medical Sciences, New Delhi issued a Notice dated 09.11.2023 announcing the tentative schedule of NBEMS Examinations scheduled in the first half of the year 2024. In the said Notice, the examination for the NEET-PG 2024 is scheduled w.e.f. 3rd March, 2024. By another Notice dated 9th January 2024, the schedule date for conducting the NEET-PG 2024 examination was re-fixed on 7th of July 2024. By another Notice dated 05.07.2024, the examination of NEET-PG 2024 was re-scheduled to be conducted on 11th August, 2024 in two shifts. The petitioner was also issued an Admit Card for appearing in the examination of NEET-PG 2024. By a Communication dated 27.09.2024 issued by the Secretary to the Government of Assam, Health and Family Welfare Department, 15(fifteen) Doctors under the Health and Family Welfare Department were granted No Objection Certificate for appearing in the Post Graduate Entrance Examination for the Session-2024 and the name of the petitioner appeared at Serial No. 11. The petitioner came out successfully in said NEET-PG 2024 Examination.

4. The Director of Medical Education, Assam issued an Admission Notice on 26.11.2024 after the first round of counselling for 50% Post Graduate Seats in Government Colleges of Assam and B.B.C.I. Guwahati under Assam State Quota for the Session-2024 and a direction was also given to the candidates to report to the Office of the Director of Medical Education, Assam for document verification. The rank of the petitioner in the State Merit Rank being 574, her

date of documents verification was scheduled on 29.11.2024. Along with the Admission Notice dated 26.11.2024, the Director of Medical Education also published the Provisional Select List of Candidates for NEET-PG 2024 counselling for State Quota Seats, Assam (Round-1) and in the said list, the name of the petitioner appears at Serial No. 401 with revised state rank of 574 under the State Health Quota for the subject MD Radio Diagnosis and her provisional admission was shown to be at Silchar Medical College, Silchar.

5. The petitioner, accordingly, appeared in the Office of the Director of Medical Education Assam on 29.11.2024 for her document verification. However, during the document verification, she was verbally informed that her case has been rejected as she did not have the required 5 years of continuous qualifying service in terms of the Notification dated 13th March, 2024, which notified the Medical Colleges of Assam (Regulation of Admission into Post Graduate Degree and Diploma Courses) Amendment Rules, 2024, (Amendment Rules of 2024 in short).

6. Being aggrieved, the petitioner is before this Court by way of the present writ petition.

7. Mr. S.K. Talukdar, learned counsel for the petitioner, submits that the Notice notifying the schedule for conduct of the MBBS examination was issued on 09.11.2023. At the time of issuance of the said notice, the Notification dated 6th December, 2021, by which the Medical Colleges of Assam (Regulation of Admission into Post Graduate Degree and Diploma Courses) Rules, 2021 (Rules of 2021 in short) was notified was in force. In terms of the Rules of 2021, particularly, with regard to Rule 7(1)(c), it is provided that 40 seats (37 degree and 3 diploma) out of total State Quota Seats shall be reserved in each session

for the doctors appointed in the State Health Services on regular basis on the recommendation of the APSC/MHRB and who have completed 5 years or more service in the rural areas. As the said Rules of 2021 was in force when the Notice dated 09.11.2023 was issued, the petitioner had the required qualification of 5 years of service in Rural areas, which is clearly indicated by the Certificates dated 09.04.2019 and 02.11.2024. However, the respondents applying the Notification dated 13th March, 2024, by which the Amended Rules of 2024 was notified, rejected the case of the petitioner on the ground that the petitioner did not have 5 years or more than 5 years of continuous service. He submits that as the Notice dated 09.11.2023 was issued when the Rules of 2021 was in force, the respondents could not have applied the Amended Rules of 2024 inasmuch as the said Rules of 2024 does not have any express provision that it would have retrospective effect.

8. To butteress his submission, learned counsel for the petitioner relies in the case of ***Tej Prakash Pathak and others Vs. State of Rajasthan and others***, reported in ***2024 0 Supreme (SC) 1001***, particularly with reference to Paragraph Nos. 5, 7, 13 & 42. He submits that in terms of the ratio laid down by the Constitutional Bench of the Hon'ble Supreme Court in the case of ***Tej Prakash Pathak (supra)***, the recruitment process commenced from the issuance of advertisement calling for the applications and ends with filling up the vacancies. Therefore, when the National Board of Examinations in Medical Sciences issued the Notice dated 09.11.2023 specifying that the examination of NEET-PG 2024 would be held on 3rd March 2024, the Rules of 2021 should have been applied on the petitioner, which requires only 5 years of service in rural areas. He submits that the Amended Rules of 2024 was notified only on 13th of March 2024 and therefore, as the said amendment was made only after the

Notice dated 09.11.2023 was issued, the same is not applicable to the petitioner for rejecting her case on the ground that the petitioner did not have 5 years of continuous service. The learned counsel for the petitioners also relies in the case of ***Secretary, AP Public Service Commission Vs. B. Swapna and others*** reported in ***(2005) 4 SCC 154*** to substantiate his submissions that unless there are words in the Statute or in the Rules showing the intention to affect existing rights, the Rule must be held to be prospective. If the Rule is expressed in a language which is fairly capable of either interpretation, it would be considered as prospective only. Therefore, in the present case as there was no express provision providing that the Amended Rules of 2024 would have retrospective effect, the same cannot be applied on the petitioner and accordingly, a direction is required directing the respondents to give admission to the petitioner under the State Health Quota for the Session-2024

9. Mr. D.P. Bora, learned standing counsel, Health Department, on the other hand, submits that the Information Bulletin which was uploaded by the respondent No. 2, on 16.04.2024, would be the date when the process of admission into the NEET-PG 2024 would take effect more particularly when it is indicated that the Online submission of applications would start from 16th April, 2024 upto 6th May, 2024. He, therefore, submits that as the Amended Rules of 2024 was already notified on 13th March, 2024, much prior to the issuance of Information Bulletin, the said Amended Rules of 2024 would have application on the petitioner and accordingly, as the petitioner did not have the required 5 years or more than 5 years of continuous service, her case was rightly rejected. He also submits that the Educational Notice dated 14.11.2024 clearly provides that the 1st round of Online counselling for admission into 50% Post Graduate

Seats in the Government Medical Colleges of Assam and B.B.C.I. Guwahati under the Assam State Quota for Session-2024 will be held as per the Medical Colleges of Assam (Regulation of Admission into Post Graduate Degree and Diploma Courses) Rules, 2021 (Amendment upto date). Further, the Admission Notice dated 26.11.2024 also provides that all admission shall be provisional and will be subject to fulfilment of all requisite eligibility criteria as per the Medical Colleges of Assam (Regulation of Admission into Post Graduate Degree and Diploma Courses) Rules, 2021 (amendment upto date). The petitioner being fully aware that her case would be considered under the Amended Rules of 2024, participated in the selection process and only when her case was rejected, she has approached this Court on the ground that the Amended Rules of 2024 were not applicable to the petitioner. The petitioner also did not challenge the Educational Notice dated 14.11.2024 as well as the Admission Notice dated 26.11.2024 wherein it is clearly stipulated that admission would be subject to fulfilment of the eligibility criteria under the Amended Rules of 2024. He has placed his reliance in a decision of this Court in WP(C)/4482/2017 and also in the case of ***Vidhi Himmat Katariya and Ors. Vs. State of Gujarat and Others*** reported in **2019 10 SCC 20**.

10. Regarding the controversy as to whether the Rules of 2021 or the Amended Rules of 2024 would apply on the candidature of the petitioner, this Court requested Mr. K. Gogoi, learned CGC appearing on behalf of the respondent No. 2/National Board of Examinations in Medical Sciences to take instructions with regard to the Notice dated 09.11.2023 as well as the Information Bulletin, which is annexed to the affidavit-in-opposition filed by the respondent No. 3 as Annexure-A.

11. Mr. K. Gogoi, learned CGC, on instructions, submits that the Notice dated

09.11.2023 issued by the respondent No.2 is purely tentative in nature. He also submits that the Information Bulletin, issued by the respondent No. 2 containing the Notice dated 16.04.2024 was uploaded on 16.04.2024, wherein the date of examination was shown to be held on 23rd July, 2024. He also submits that the examination for the NEET-PG 2024 was conducted on 11th August, 2024 in terms of the Notice dated 05.07.2024.

12. I have considered the submissions forwarded by the learned counsel appearing for the parties.

13. The issue that is to be decided in this writ petition is whether the tentative Notice dated 09.11.2023 or the Information Bulletin containing the Notice dated 16.04.2024, both issued by the respondent No. 2, would be the dates from which the admission process would have commenced. Thereafter, whether the Rules of 2021 or the Amended Rules of 2024 would be applicable, will have to be considered by this Court.

14. Before entering into the issue, the relevant provisions of the Rules of 2021 and the Amended Rules of 2024 will have to be considered by this Court.

15. Rule 7 (1)(c) of the Rules of 2021 reads as under:

*7 (i) The following Quota/Reservation of seats shall be applicable in respect of admission to the Post Graduate **Degree & Diploma** Courses in Medical Colleges-*

(a)

(b)

(c) **SHQ Seats:** 40 Seats (37 Degree and 3 Diploma) out of Total State Quota seats shall be reserved in each session for the Doctors appointed in the State Health Services on regular basis on the recommendation of the APSC/MHRB and who have completed five years or more service in Rural Areas,

However for counting the experience of five years of service in Rural Areas period of work under Regulation 3f of APSC (Limitation & Function 1951)/17D of MHRB rules, service under any Society/Agency created by the State Government or NHM shall also be counted. The applicant must complete the required period of service in Rural Areas on or before 31 May of the year of Admission and a certificate to this effect shall be submitted in the format at Appendix III along with the application form for Post Graduate Counselling Seat Matrix and the allotted institution for SHQ shall be notified by the Directorate of Medical Education with approval of competent authority before the counselling. In the event of increasing in the numbers of PG seats in Medical Colleges, there shall be proportionate increase of seats for in-service government doctors (SHQ seats).

A consideration of Rule 7(1)(c) would indicate that the State Health Quota Seats shall be reserved in each session for the Doctors in the State Health Services on regular basis and who have completed 5 years or more service in the rural areas. It further indicates that the applicant must complete the required period of service in rural areas on or before 31st of May of the year of the admission and certificate to that effect shall be submitted in the format as Appendix-III along with the application for Post Graduate Counselling Seat Matrix.

16. Rule 7(1)(c) was amended by the Amended Rules of 2024, which was notified in the Assam Gazette on 13th March, 2024. The Notification provides that the said amendment shall come into force from the date of publication in the Official Gazette. The relevant portion of the Amended Rules of 2024 is also reproduced hereinbelow:

Amendment of rule 7

2. (i) In the principal Rules, in rule 7, in sub-rule (i), after clause (c), in last line, after

the word and brackets (SHS seats), the punctuation mark ":" shall be inserted and thereafter the following proviso shall be inserted, namely:-

"Provided that

(i) State Quota seats shall be reserved in each session for the Doctors appointed in the State Health Services on regular basis on the recommendation of the Assam Public Service Commission or Medical and Health Recruitment Board and who have completed five years or more than five years of continuous service. For counting the experience of five years of service, service under Regulation 3(f) of Assam Public Service Commission (limitation and Function) Regulation, 1951, Service under rule 17B of Medical Health Recruitment Board rules, 2017, service under any Society or Agency created by the State Government or National Health Mission shall also be considered,

*(ii) the applicant shall have to complete the required period of service on or before 31st May of the year of admission and a certificate to this effect shall be submitted in the format as at **Appendix-III** along with the application form for Post Graduate Counseling,*

(iii) Seat Matrix and the allotted institution for State Health Service Quota shall be notified by the Director of Medical Education with approval of competent authority before the counseling and in event of increasing in the numbers of PG seats in Medical Colleges, there shall be proportionate increase of seats for in-service government doctors (State Health Service Quota seats)."

A consideration of the amendment Rule 7(1)(c) would indicate that the requirements of 5 years service in rural areas as per the Rules of 2021 was amended by 5 years or more than 5 years of continuous service.

17. Coming to the issue in hand, a perusal of the Notice dated 09.11.2023 clearly indicates that it is a tentative notice and the schedule of NBEMS Examinations scheduled in the first half of the year 2024 is also tentative in nature. In other words, it would mean that the notice is not definitive or positive

and purely tentative in nature.

18. Coming to the Information Bulletin, which is annexed to the affidavit-in-opposition filed by the respondent No.3 as Annexure-A, it is seen that Information Bulletin also contains the Notice dated 16.04.2024, wherein applications were invited for National Eligibility-cum-Entrance Test and Post Graduate (NEET-PG) 2024. A reading of the same would, therefore, indicate that the Notice dated 16.04.2024, which was issued by the respondent No. 2 is not tentative and it is definitive in nature. Therefore, in the considered opinion of this Court, the Notice dated 16.04.2024 would be the date from which the admission process would have commenced.

19. This Court having come to the conclusion that the Notice dated 16.04.2024 would be the date when the admission process has commenced, the next issue is whether the Rules of 2021 or the Amended Rules of 2024 would be applicable to the candidates seeking admission in the NEET-PG Examination in the Government Medical Colleges of Assam and B.B.C.I. Guwahati for the Session-2024.

20. The records clearly indicate that the Amended Rules of 2024 were notified in the Assam Gazette on 13th March, 2024 by which Rule 7(1)(c) of the Rules of 2021 was amended. Therefore, when the Notice dated 16.04.2024 was issued, the Amended Rules of 2024 were already in force and therefore, the admission of the petitioner to the NEET-PG Course in Government Medical Colleges of Assam B.B.C.I. for the Session 2024 would be governed by the Amended Rules of 2024.

21. In that view of the matter, this Court, without any hesitation, comes to the conclusion that as the Notice was issued on 16.04.2024 by the respondent No. 2

inviting applications for National Eligibility-cum-Entrance Test and Post Graduate (NEET-PG) 2024 and the Amended Rules of 2024 being already notified in the Assam Gazette on 13th March, 2024, the Amended Rules of 2024 would govern the admission of the petitioner to the Post Graduate Seats in the Government Medical Colleges of Assam and B.B.C.I. Guwahati.

22. The submission of the learned standing counsel, Health Department that the Educational Notice dated 14.11.2024 as well as the Admission Notice dated 26.11.2024 prescribing that counselling for admission and the admissions will be subject to the fulfilment of the requisite eligibility criteria as per the Rules of 2021 (amendment upto date) has been considered by this Court. There is no doubt that both Educational Notice dated 14.11.2024 and the Admission Notice dated 26.11.2024 clearly prescribe the applicability of the Amended Rules of 2024. The petitioner being fully aware of the applicability of the Amended Rules of 2024 in both the Educational Notice dated 14.11.2024 and the Admission Notice dated 26.11.2024 and having already participated in the admission process, cannot be permitted to turn around and claim that her candidature is governed by the Rules of 2021.

23. This Court has also taken into consideration that the petitioner completed her one year compulsory rural posting at Messelkhowa MPHC, Agiya BPHC of Goalpara district w.e.f. 9th April 2018 to 8th April 2019. Thereafter, the petitioner was freshly appointed by the Notification dated 23rd October, 2019 as Medical and Health officer-I and posted at Garajan SD, Nagaon. Therefore, from 8th April 2019 up to 23rd October 2019, there was a break of the service in respect of the petitioner. The Amended Rule 7(1)(ii) of the Amended Rules of 2024 provides that the applicant shall have to complete the required period of service

on/or before 31st May of the year of admission and certificate to that effect shall be submitted in the format as at Appendix-III along with the application Form for Post Graduate counselling. Therefore, computing the period of 5 years of continuous service w.e.f. 23rd October 2019, the petitioner was well short by about 5 months for having the requisite eligibility criteria of 5 years or more than 5 years of continuous service.

24. In view of the discussions made hereinabove, there is no merit in the present writ petition and accordingly, the writ petition is dismissed. No cost.

25. Interim order stands vacated.

JUDGE

Comparing Assistant