



2024:UHC:8668-DB

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

HON'BLE THE ACTING CHIEF JUSTICE MR. MANOJ KUMAR TIWARI
AND
HON'BLE SRI JUSTICE VIVEK BHARTI SHARMA

21ST NOVEMBER, 2024

SPECIAL APPEAL No. 354 OF 2024

Hemwati Nandan Bahuguna,
Uttarakhand Medical Education University.

..Appellant

Versus

Dr. Mohit Goyal and others.

..Respondents

Counsel for the appellant. : Mr. Bhuwan Bhatt, learned counsel.

Counsel for respondent nos. 1 to 17. : Mr. Rajendra Dobhal, learned Senior Counsel assisted by Mr. Prince Chauhan, learned counsel.

Counsel for respondent nos. 18 & 19. : Mr. P.C. Bisht, learned Additional Chief Standing Counsel for State of Uttarakhand.

Counsel for respondent no. 21. : Mr. Hemant Pant, learned counsel.

Counsel for respondent no. 22. : Mr. Parikshit Saini, learned counsel.

JUDGMENT : (per Mr. Manoj Kumar Tiwari, A.C.J.)

This intra-Court appeal has been filed by Hemwati Nandan Bahuguna Uttarakhand Medical Education University, challenging judgment dated 23.10.2024 passed by learned Single Judge in Writ Petition (M/S) No. 2732/2024. Relevant extract of the said judgment is reproduced below :

"5. Since the experience certificate has already been issued by the respondent no.2 in favour of petitioners,



which is to be handed over to respondent nos.3 and 4 for getting weightage of maximum 30% for the service rendered by them in the remotest area of the State, there is nothing left to be decided in this petition.

6. Accordingly, the writ petition is disposed off. Respondent nos.3 and 4 are directed to allow the petitioners to participate in the Counselling pursuant to the afore-mentioned government orders, referred to hereinabove (Annexure Nos.1 and 2 to the writ petition) and grant them weightage of 30% maximum, depending upon their length of service with the government , in remotest areas.”

2. Appellant has challenged the impugned judgment, on the ground that Postgraduate Medical Education Regulations, 2000, framed by Medical Council of India (MCI), as amended in the year 2012, were not considered by the learned Single Judge. It is contended that the Regulations provide that weightage in the marks, for rendering services in remote/ inaccessible areas, would be available only to such Doctors, who are in service of Government/ Public Authority, while writ petitioners (private respondents herein) are no longer in service, after expiry of the term of their contract.

3. Another ground of challenge to the impugned judgment is that writ petitioners got subsidized education in MBBS course, as they had executed undertaking/ bond that they will serve in remote/ difficult areas of Uttarakhand for minimum three years, and whatever



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services were rendered by them, upon successful completion of MBBS course, was in terms of condition of the bond, which does not make them eligible for benefit of Postgraduate Medical Education Regulations, 2000. Even otherwise also, they were not having status of member of Provincial Medical and Health Services (PMHS) in Uttarakhand, and they were engaged on contract for a period of three years, and their engagement came to an end before commencement of counselling for admission to PG Medical Courses. It is not in dispute that appellant-University, conducts the counselling.

4. Appellant has relied upon Government Order dated 29.01.2018 issued by Government of Uttarakhand (Annexure No. 3 to Stay Application, filed along with this Special Appeal), for contending that benefit of services rendered in remote/ difficult areas, for admission in PG Medical Course, would be available only to regular Medical Officers belonging to PMHS, and since writ petitioners are not members of PMHS, and they were engaged on contract for serving as per condition of the bond, therefore, they are not entitled to weightage in marks in terms of Postgraduate Medical Education Regulations, 2000, framed



by Medical Council of India (MCI), as amended in the year 2012.

5. Per contra, Mr. Rajendra Dobhal, learned Senior Counsel appearing for writ petitioners-private respondents submits that, in the year 2023, weightage, in terms of Postgraduate Medical Education Regulations, 2000, framed by Medical Council of India (MCI), as amended in the year 2012, was given even to Doctors, who were appointed on contract, therefore, denial of such benefit to writ petitioners, who are similarly situated, in the year 2024, is unjust and improper, and amounts to hostile discrimination. He further submits that the State Authorities have made an artificial classification amongst Doctors, who were engaged on contract, in terms of condition of the bond executed by them, for five years, vis-à-vis those, who were engaged on contract, as per condition of the bond, only for three years. He submits that his clients were engaged for a term of three years only, and not five years, as is generally the case, and due to this reason, they have been denied weightage in marks, which was given to other Doctors engaged on contract, in terms of MCI Regulations. Mr. Dobhal, although, admits that term of his clients came to an end before



commencement of counseling for admission to PG Medical Courses, however, he submits that his clients made a request, in writing, to extend their term, and no decision was taken on their request. Thus, he submits that the ground now taken by appellant, that engagement of writ petitioners (private respondents herein) has come to an end, cannot be a valid ground for denying them the benefit of weightage in marks for services rendered in remote areas.

6. The Postgraduate Medical Education (Amendment) Regulations, 2012, as notified by Medical Council of India on 15.02.2012, are enclosed as Annexure No. 1 to Stay Application, filed along with the Special Appeal. Regulation 9 of the Postgraduate Medical Education Regulations, 2000 was amended by the said notification by adding a proviso. The proviso added to Clause 9(IV) of the 2010 Regulations, vide Notification dated 15.02.2012, is extracted below :

"Provided that in determining the merit of candidates who are in service of Government/public authority, weightage in the marks may be given by the Government/Competent Authority as an incentive at the rate of 10% of the marks obtained for each year of service in remote and/or difficult areas upto the maximum of 30% of the marks obtained in National Eligibility-cum-Entrance Test, the remote and difficult areas shall be as defined by State Government/Competent authority from time to time."



7. Thus, as per proviso to Regulation 9(IV) of the aforesaid Regulations, a Doctor may be given weightage up to 10% of the maximum marks prescribed for admission to PG Medical Course, as incentive for each completed year of service in remote and/ or difficult areas, subject to a maximum of 30% marks. The writ petitioners had contended before learned Single Judge that, since they served in places, which are identified as remote/ difficult by State Government, therefore, they are entitled to benefit of weightage marks, in terms of proviso to Regulation 9(IV) of the aforesaid Regulations. The said contention found favour with learned Single Judge, and Writ Petition was allowed.

8. It is not in dispute that writ petitioners did serve in remote/ difficult places, however, the fact remains that the services rendered by writ petitioners was not voluntary, and in view of the bond executed by them, they had no choice regarding place of posting. Proviso to Regulation 9(IV) talks of incentive, which indicates that a Government Doctor, who can be posted in an urban centre having all facilities, may choose to serve in a remote village for getting benefit of the Regulations. However, this is not the case here and respondents served in remote



areas not because of incentive, but due to the undertaking given by them while taking admission in MBBS course.

9. Another aspect, which appears to have been lost sight of, is that writ petitioners are not members of Provincial Medical and Health Services (PMHS), or for that matter, they are not enjoying the status of a regular employee, or a State employee, and their engagement is on contract, which had come to an end before commencement of counselling for admission to PG Medical Courses. Since State Government does not have any control over Doctors appointed on contract, in the manner it exercises control over a member of Provincial Medical and Health Services (PMHS), therefore, giving benefit of weightage to a person, upon whom State Government has little or no control, would defeat the purpose for which MCI has formulated the policy of giving weightage. The rationale for providing weightage to Government Doctors, who have served in remote / difficult places, is to compensate them for the loss of their studies, so that they may also get better career prospects by upgrading their qualification. If benefit of that policy decision of MCI is given even to Doctors engaged by Government on contract for a limited period, then the benefit meant for regular Government Doctors would be eaten away by



Doctors appointed on contract, and it would defeat the purpose for which the policy was formulated by MCI.

10. A Division Bench of this Court in the case of *Dr. Darshana Gaira v. State of Uttarakhand & others (Writ Petition (S/B) No. 195/2017)*, while considering a similar issue regarding admission in PG Medical Courses, has held that Doctors, who are working on contractual basis, on the basis of the bond filled by them, are not entitled for the benefit of weightage for the period they had worked on contractual basis. Paragraph no. 20 of the said judgment, rendered on 31.05.2017, is extracted below :

“20. In our view, it would be wrong to say that weightage cannot be and should not be given to those doctors, who are working and who have worked in remote areas for certain period. In State of Uttarakhand, out of 13 districts, 10 districts are situated in hill areas. Few dispensaries are situated at remote areas where nobody wants to go. It is known fact that the State of Uttarakhand is facing great hardship in getting the Government Doctors for these places. If at some point of time, State Government makes a policy to give some weightage to such doctors, who are working in remote areas and are serving those people, who have no medical facilities, such decision cannot be said to be an arbitrary and unreasonable decision. Such decision will always be said to be a decision of the State Government taking into account the public interest. From the perusal of this Court’s order dated 11.05.2017 in WPSB No. 159 of 2017, it is clear that benefit is given only to those doctors, who are permanent government employees and also for the period they have served as permanent doctor. The doctors, who are working on contractual basis on the basis of the bond filled by them, are not entitled for the weightage for the period they have worked on contract basis.



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11. A perusal of the impugned judgment reveals that the judgment rendered by Division Bench of this Court in the case of *Dr. Darshana Gaira v. State of Uttarakhand & others (Writ Petition (S/B) No. 195/2017)* was not placed before learned Single Judge.

12. In such view of the matter, the impugned judgment dated 23.10.2024 deserves to be set-aside, and is, hereby, set-aside. The Special Appeal is, accordingly, allowed.

13. Pending application(s), if any, also stand disposed of accordingly.

MANOJ KUMAR TIWARI, A.C.J.

VIVEK BHARTI SHARMA, J.

Dt: 21st November, 2024
Rahul

Digitally signed by RAHUL PRAJAPATI
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