

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

WEDNESDAY, THE 8TH DAY OF JULY 2015/17TH ASHADHA, 1937

WA.No. 1403 of 2015 () IN WP(C).8096/2015

**AGAINST THE ORDER/JUDGMENT IN WP(C) 8096/2015 of HIGH COURT OF KERALA
DATED 08-06-2015**

APPELLANT(S)/PETITIONER:

**DR.SREEKUMAR.G.S
'AMBADY', TC 14/1714, FOREST OFFICE LANE VAZHUTHACAUD
THIRUVANANTHAPURAM 695 014**

**BY ADVS.SRI.N.N.SUGUNAPALAN (SR.)
SRI.S.SUJIN**

RESPONDENT(S)/RESPONDENTS:

- 1. COMMISSIONER OF ENTRANCE EXAMINATIONS
FOR ADMISSION TO POST GRADUATE MEDICAL COURSES, 2015
HOUSING BOARD BUILDINGS, SANTHI NAGAR
THIRUVANANTHAPURAM 695 001**
- 2. DIRECTOR OF MEDICAL EDUCATION,
DIRECTORATE OF MEDICAL EDUCATION
THIRUVANANTHAPURAM 695 001**
- 3. SECRETARAY TO GOVERNMENT
HEALTH & FAMILY WELFARE DEPARTMENT
GOVERNMENT OF KERALA THIRUVANANTHAPURAM 695 001**
- 4. STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM**

BY SR GOVERNMENT PLEADER SRI.P.J.DAVIS

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 08-07-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

ASHOK BHUSHAN, CJ

&

A.M. SHAFFIQUE, J.

=====

W.A. No. 1403 of 2015

=====

Dated this, the 8th day of July, 2015

J U D G M E N T

Ashok Bhushan, CJ

Heard the learned counsel for the appellant. This writ appeal has been filed against the judgment dated 8th June, 2015 in WP(C) No. No.8096/15 by which judgment the writ petition filed by the petitioner for quashing Ext.P4 was dismissed.

2. Petitioner applied for admission to the Post Graduate Medical Course, 2015 under Medical Service Quota. As per the prospectus, the candidate should have obtained a minimum score of 50% in the examination and for Scheduled Caste, Scheduled Tribes and Socially and Educationally Backward Classes, minimum percentage was fixed as 40. The petitioner's case is that prospectus was amended whereby the eligibility of in-service candidate is fixed at 50% instead of 40% and the respondents were proceeding to eliminate the candidates on the basis of the

amended prospectus. Petitioner could secure only 49% marks in the entrance examination. Petitioner filed the writ petition praying for the following reliefs;

“i) Call for the records and issue a writ of certiorari or any other appropriate writ or order to quash Clause 6-5.3 of Ext.P1 in so far as it directs to add the income of the petitioner to calculate the total income of the family;

(i)(a): Issue a writ of certiorari or any other appropriate writ order or direction to quash Ext.P4 in so far as it affects the petitioner;

(ii) To issue a writ of mandamus or any other appropriate writ, order or direction directing the respondents not to apply the amendment to the prospectus issued on 3.2.2015 and select the candidate without applying the modified criteria viz., the minimum marks required for getting admission to the Post Graduate Medical Courses:

(iii) To issue a writ of mandamus or any other appropriate writ, order or direction directing the respondents to conduct selection applying the Government order dated 1.1.2015 viz., Ext.P2 to the selection for the year 2015 for the admission to the Post Graduate Medical Courses in Kerala and select the candidates accordingly.

(iv) to grant the cost of these proceedings to the petitioner”.

3. Learned Single Judge dismissed the writ petition. Learned Single Judge has also referred to the judgment of the Division Bench in WA No.803/2015 and connected cases where one of the issue raised was noted at (VI). In the bunch of cases which were decided along with WA No.803/2015, one writ petition was also decided wherein the similar relief was claimed by the writ petitioner challenging the fixation of 50% minimum marks for the in-service candidate. Writ petition was dismissed, which judgment was affirmed by the Division Bench. It is useful to quote the relevant observations made in the judgment in the following paragraphs;

“10. W.A.No.880 of 2015 arises out of judgment dated 08.04.2015 in W.P(C).No.27209 of 2014. W.P (C).No.27209 of 2014 has been filed by Dr.RNK Sankar and four other doctors, who were working for the last 15 to 20 years. The petitioners' case in the Writ Petition was that the admission to PG Medical Courses for in-service candidates should be held only on the basis of seniority in terms of Section 5(4) of the 2008 Act. The petitioners' case was that the requirement in the prospectus dated 15.12.2014 that in-service doctor has also to qualify in PG Entrance Examination by acquiring 50% is not

-:4:-

correct and the said clause deserves to be struck down from the prospectus. The petitioners have prayed for the following reliefs in the Writ Petition:

“i) Issue a writ of mandamus or any other appropriate writ, order or direction, directing the 1st respondent to make admission to the Medical Post Graduate courses under the service quota strictly as per seniority in terms of Section 5(4) of the Kerala Medical Officers Admission to Post Graduate Medical courses under Service Quota Act, 2008 in the absence of any existing Union legislation providing for minimum eligibility criteria.

ii) Issue a writ of mandamus or any other appropriate writ, order or direction, directing the 1st respondent to take up, consider and pass orders on Exhibit P1 representation for making admission to the Medical Post Graduate Courses under the Service Quota strictly as per seniority in terms of Section 5(4) of the Kerala Medical Officers Admission to Post Graduate Medical Courses under Service Quota Act, 2008 in the absence of any existing Union legislation, providing for minimum eligibility criteria, before issuing prospectus for admission to the Medical Post Graduate Courses for the year 2015.

ii)(a) Issue a writ of certiorari or any other appropriate writ, order or direction calling for the records leading to Exhibit P2 and quash clause 4.4 of Exhibit P2 to the extent it requires all candidates

-:5:-

belonging to service quota as well to qualify the Post Graduate Medical Entrance Examination 2015 for seeking admission to Post Graduate Medical Degree/Diploma courses in the State of Kerala, in breach of section 5(4) of the Kerala Medical Officers Admission to Post Graduate Medical courses under Service Quota Act, 2008 Kerala Medical Officers Admission to Post Graduate Medical Courses under Service Quota Act, 2008.

ii)(b) Declare that clause 4.4 is illegal to the extent it requires the candidates belonging to service to well to qualify the Post Graduate Medical Entrance Examination 2015 for seeking admission to Post Graduate Medical Degree/Diploma courses in the State of Kerala, in breach of section 5(4) of the Kerala Medical Officers Admission to Post Graduate Medical Courses under Service Quota Act, 2008 Kerala Medical Officers Admission to Post Graduate Medical Courses under Service Quota Act, 2008."

11. The learned Single Judge dismissed W.P(C). No.27209 of 2014 by judgment dated 08.04.2015 holding that minimum 50% of marks was necessary for qualifying for entrance examination in the case of service quota candidates. The judgment of the Apex Court dated 12.01.2015 in **Sudhir N's case (supra)** has also been relied on by the learned Single Judge for coming to the conclusion that admission in the PG Medical Examination has to be

-:6:-

on merit and not on seniority.

"27. xxxxx

VIII. Whether admission of in-service candidates in PG course is to be made only on the basis of seniority of the inservice candidates as per Section 5(4) of 2008 Act and the provision in prospectus requiring inservice candidates to secure 50% mark in Common Entrance Examination Test deserves to be struck down ?"

"68. Now we come to issue No.VIII. In view of the law laid down by the Supreme Court in **Sudhir N's case (supra)** petitioners cannot claim that admission to the postgraduate course of in-service candidates be held in accordance with Section 5(4) of the 2008 Act. The provision in the prospectus requiring in-service candidates to secure 50% in common entrance test cannot be struck down for the reasons above mentioned. Regulation 9 of the Regulations 2000 does not permit any such mode of admission as claimed by the petitioners. In view of the forgoing discussion Issue No.VIII is also answered against the petitioners in W.P(C) No.880 of 2015".

4. The petitioner having not been able to obtain minimum

WA No.1403/2015

-:7:-

50% marks in the entrance examination, he cannot claim admission in the Post Graduate Medical Course, 2015. We do not find any ground to interfere with the judgment of the learned Single Judge dismissing the writ petition.

Writ appeal is dismissed.

Sd/-
ASHOK BHUSHAN, CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE, JUDGE

Rp

//True Copy//

PS to Judge