

HON'BLE SRI JUSTICE VILAS V.AFZULPURKAR

W.P.Nos.13307 and 14346 of 2015

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COMMON ORDER:

Both these writ petitions are filed by the same petitioner, who is working as Civil Assistant Surgeon at Community Health Centre, Armoor, Nizamabad District. The subject matter of both these writ petitions is the petitioner's claim for a seat in a postgraduate course for the academic year 2015-16. The prospectus of P.G.Medical Degree and Diploma Courses for the academic year 2015-16 is issued by Dr.NTR University of Health Sciences, Andhra Pradesh, Vijayawada. In the said prospectus, the eligibility of in-service candidates under service quota is notified under Regulation 5.5.4. and the relevant portion is as follows:-

The in-service candidates eligible under service quota and the names of services to be considered for service quota shall be as per the orders of Government of A.P. vide G.O.Ms.No.260, HM & FW (E2) Department, dated 10-07-1997 and as amended in G.O.Ms.No.719, HM & FW (E2) Dept., dated 16-12-2003 and G.O.Ms.No.100, Labour, Employment, Training and Factories (IMS) Department, dated 01-11-2008, the relevant parts of which are extracted below

Explanation 1:

In-service candidate means a candidate who has put in

- a. 2 years of continuous regular tribal service (or)
- b. 3 years of continuous regular rural service (or)
- c. 6 years of continuous regular service.

Clause (b) of Explanation (2) to the aforesaid Regulation, which is also relevant, is extracted as follows:-

"Rural Service means service in Primary Health Centres, Subsidiary Health Centres, Dispensaries, Taluk Hospitals, Mobile Medical Units, Leprosy control units or the sample survey cum assessment units under Leprosy temporary Hospitalization wards situated in Taluk and Leprosy training centre at Pogiri (Ref.G.O.Ms.No.31, HM & FW (E2) Dept., dated 11-2-97) and 36 Dispensaries located in rural areas in Insurance Medical

Services Department (Ref.G.O.Ms.No.100 L.E.T. & F (IMS) Dept., dated 01-11-2008.”

Based on the above, the petitioner claims that he has fulfilled four years of regular service in the rural area at Armoor, Nizamabad and he is thereby eligible to be considered as inservice candidate under service quota in terms of relevant clause of the prospects as extracted above.

As the petitioner was desirous to compete for the P.G. degree course, he applied for a service certificate of rural service to enable him to compete for P.G.Degree course. However, the certificate was not furnished and since the counselling was proposed to be held as per the Notification, dated 23-04-2015 and the counselling was scheduled on 06-05-2015, he approached this Court by filing W.P.No.13307 of 2015. While admitting the said writ petition on 01-05-2015, this court passed the following order:-

“Heard both sides.

The petitioner applied on 25.03.2015 to respondents 2 and 3 for issuance of service certificate for the purpose of appearing for the P.G. counseling to be held on 06.05.2015, but so far service certificate has not been issued. It is submitted by the learned counsel appearing for the petitioner that if there is delay in issuing service certificate, the petitioner would loose an opportunity of participating in the counseling.

Therefore, there shall be interim direction to 4th respondent to permit the petitioner to appear for the counseling to be held on 06.05.2015, even though he fails to produce the service certificate. However, it is made clear that allocation of seat shall be finalized only subject to the petitioner producing service certificate.”

Based on the above, the petitioner has participated in the counselling and he got a seat in P.G. in M.S.Ophthalmology in Osmania Medical College. Subsequently, however, the application filed by the petitioner for issuance of service certificate was rejected by the District Medical & Health Officer, Nizamabad-3rd respondent under

his proceedings dated 05-05-2015 by holding that CHC Armoor comes under urban area and unless the petitioner completes requisite six years of service, the certificate as required cannot be granted. Questioning that proceedings, the petitioner filed W.P.No.14346 of 2015 before this Court. On 14-05-2015, this court granted interim direction not to place the seat for which the writ petitioner has been selected in second counselling for a period of three weeks. The said order is in force as on today and effectively the seat in P.G. in M.S.Ophthalmology in Osmania Medical College, to which the petitioner was found eligible is reserved in his favour.

Both the matters are coming up for further hearing and for extension of interim order. In view of the second counselling already completed, learned Government Pleader for Medical and Health has secured instructions which inter alia reiterates the stand that Armoor is declared as urban area by the Municipal Council in the year 2006. Since Armoor is urban area, the petitioner would get eligibility for service certificate only after completion of six years.

It is also stated that the Collector and District Magistrate, Nizamabad, informed the District Medical Health Officer, Nizamabad, under letter dated 30-04-2015 that Armoor being a Municipality comes under urban area and on that ground, the impugned proceedings of the 3rd respondent is sought to be justified.

On the contrary, learned counsel for the petitioner points out that the petitioner was in fact issued requisite Service Eligibility Certificate on 28-06-2014 i.e., during the last year itself showing that CHC Armoor is a rural service and the petitioner has completed three years and two days. In addition, learned counsel has also produced the salary particulars of the entire staff of Civil Surgeon, C.H.C., Armoor, for the month of November 2013, showing that the petitioner and other employees were getting HRA as per rural service and it is specifically mentioned that the service rendered is in rural area.

Learned counsel also points out that the very fact of payment of house rent allowance by treating Armoor as rural area establishes that the petitioner is eligible for grant of Service Eligibility Certificate and based on the prospectus and the relevant clauses extracted as above, the petitioner fulfils the requisite criteria, but he is erroneously denied the service eligibility certificate.

A look at the impugned order shows that the District Medical and Health

Officer has obtained telephonic instructions and based on that, he states that Armour comes under urban area since 2006 and the letter of the Collector and District Magistrate, Nizamabad, dated 30-04-2015 is also referred to in the impugned order. However, the same is inconsistent to the service eligibility certificate, dated 28-06-2014 produced by the petitioner, which is referred to above, and also inconsistent with the house rent allowance being paid to the petitioner and the other employees at CHC, Armour. All these aspects, therefore, are not taken into consideration by the District Medical and Health Officer while considering the eligibility of the petitioner and merely on the basis of telephonic instructions and based on the letter of the Collector the service eligibility certificate to the petitioner was denied.

It is also note worthy that the petitioner has successfully secured a seat in P.G. in M.S.Ophthalmology in Osmania Medical College as inservice candidate and if he is really eligible to the service eligibility certificate, he cannot be denied the seat by erroneously treating the service rendered by him as service in urban area instead of rural area.

In my view, therefore, it is just and proper that the 3rd respondent shall consider the matter afresh and after taking into consideration all attending circumstances, decide the issue as to whether the petitioner is entitled for service eligibility certificate. The impugned order as stated above based on telephonic instructions and letter cannot therefore be sustained and is accordingly set aside and the matter is remitted back to the 3rd respondent for fresh consideration in the light of the observations made above.

It is also to be noted that classes for P.G.Academic course are going to commence from 10-07-2015. Hence, appropriate decision with regard to issuance of service eligibility certificate to the petitioner as directed above is required to be taken by the 3rd respondent expeditiously preferably within two weeks from the date of receipt of a copy of this order.

As the subject matter of W.P.No.13307 of 2015 has become infructuous, W.P.No.13307 of 2015 is dismissed as infructuous.

W.P.No.14346 of 2015 is allowed setting aside the impugned order and remitted the matter to the 3rd respondent for reconsideration as directed above. It is made clear that in the event of the petitioner not being granted service eligibility

certificate treating Armour as rural area, the seat reserved for him in P.G. in M.S.Ophthalmology in Osmania Medical College shall be available to the University for offering to any other eligible candidate. The decision to be taken by the 3rd respondent shall therefore be communicated to the University to enable it to take further action.

The miscellaneous petitions, if any, pending in these writ petitions shall stand closed.

VILAS V.AFZULPURKAR, J

Date: 03-06-2015

Note:

Issue C.C. in three days

(B/o)

Prv

