

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.38651 of 2014

ORDER:

Heard learned counsel for the petitioners and learned Government Pleader for Medical and Health for respondents.

2. The petitioners are working as Medical Officers in Government Unani Dispensaries at Hyderabad and Nalgonda respectively. The second respondent issued a notification for admission into M.D (Unani) courses for the academic year 2014-15 and the last date for submission of applications was mentioned as 18.10.2014. The entrance test was fixed on 22.10.2014. The admissions were closed on 31.10.2014. As per the said notifications, there are 34 seats in 5 branches viz., Moalijat, Qubalat-O-Amraz-E-Niswan, Advia, Kulliyat and Tahafuzl-Wa-Samaji-Tib. The case of the petitioners is that four seats out of total seats were reserved for in-service candidates and 3 seats were meant for NRIs. Remaining 27 seats were meant for admission through process of entrance examination. The petitioners submitted their applications and appeared for the entrance examination as in-service candidates. The results of students other than in-service candidates were announced and counselling was completed on 30.11.2014, whereas the results of the in-service candidates were not announced. The petitioners enquired with regard to the fate of their applications and they came to know that the applications have to be forwarded through the fourth respondent and the same was informed to the petitioners by the second respondent on 20.11.2014. The petitioners approached the fourth respondent for sending their names and accordingly, the fourth respondent forwarded the names of the petitioners for admission into M.D (Unani) courses for the academic year 2014-15 through his letter dated 27.11.2014

addressed to the second respondent. The second respondent, in turn, forwarded the same to the third respondent and when no action was taken, the present Writ Petition was filed.

3. A counter-affidavit is filed on behalf of respondents 2 and 3 stating that the entrance test was held with 200 multiple choice questions for 3 hours duration carrying one mark for each question and the minimum marks required for admission is 40% for SC/ST candidates and 50% for other candidates. The petitioners appeared for the entrance examination which was held on 26.10.2014 and the results were published on 01.11.2014. But the petitioners failed to secure minimum percentage of marks in order to get eligibility as per Regulation No.14 of the second respondent University. The allegation that the results of the in-service candidates were not declared was denied and it was stated that since the petitioners did not secure the minimum percentage of marks, the case of the petitioners was not considered for admission into P.G. Course. It was further stated that 239 candidates appeared in the entrance examination, but 96 candidates alone were qualified in the entrance test. The counter further states that rules were issued by the Government in G.O.Ms.No.346, Health Medical and Family Welfare (R.2) Department, dated 10.12.2010. Rule 3 thereof states that in case of any seats remained unfilled even after completion of selection as per G.O.P.No.646 dated 10.07.1979 as per the reservations and after conversions as per rules, such seats shall be filled from among the applicants who are in-service candidates and who applied through their head of the Department. The selection of such candidates shall be done on the basis of merit secured by the candidates in the qualifying examination and they need not appear for entrance test. Since there were no qualified service candidates in the entrance test for M.D (Unani) Course, the service seats were converted into non-service seats as per

rules and all the seats were filled up except 3 seats reserved pursuant to the interim orders dated 03.12.2014 in W.A.No.1486 of 2014. It is further stated that if service seats remain unfilled after completion of final selections, the University would issue a separate notification for filling up of those seats duly calling for applications through the concerned head of the Department.

4. Since the learned counsel for the petitioners could not explain the position, he was asked to file written arguments in the matter. He filed the written arguments stating that G.O.Ms.No.603 dated 28.12.2004 provides for rules for admission into medical P.G. Courses and the said GO was amended by G.O.Ms.No.346 dated 10.12.2010 and Rule 3 of the said Rules reads as follows:

“ Provided that in case of any seats remaining vacant after completion of selections as per the G.O.P.646, dated 10-07-1979 and as per the reservations and after conversions as per rules, such seats shall be filled up from and among the applicants who are in-service candidates and who have applied through their Head of the Department and the selection shall be done on the basis of merit based on BAMS/BUMS/BHMS marks. These applicants need not appear for the P.G. Medical Entrance Test. The candidates who are selected shall serve the Government for a period of 5 (five) years and in default, he/she shall compensate the Government by remitting a sum of Rs.1.00 lakhs (rupees one lakh only) along with refunding the salary amount received during the study period.”

It is the further contention of the learned counsel for the petitioners that there is a separate quota for in-service candidates and due to that reason only, 4 seats were reserved for in-service candidates in the subjects of Moalijat, Qubalat-O-Amraz-E-Niswan, Advia, Kulliyat and Tahafuzl-Wa-Samaji-Tib. He further states that in previous years, the quota of the in-service candidates was considered separately and for the academic year 2014-15 the said procedure was not followed. He further stated that any reservation or conversion shall be restricted to the general category, but cannot be implemented in respect of P.G.Courses.

5. The learned Standing Counsel for the respondents submitted that Rule 3 enables the filling up of vacant seats by in-service candidates only in case of seats remaining vacant after completion of selection as per G.O.P.No.646 dated 10.07.1979 and as per the reservations and after conversions as per Rules.

6. The prospectus issued by the second respondent for the academic year 2014-15 relating to admission into M.D (Unani) courses provides for eligibility for admission reads as follows:

“ 3. ELIGIBILITY FOR ADMISSION:

3.1 The PG Courses leading to Doctor of Medicine in Unani are open to the holders of a Degree obtained after undergoing a regular institutional course of study of Unani both Theory and Practical of not less than four years duration of a University established in India by a state, provincial or Central Act or of an Institution or Board recognized by the University Grants Commission or by a State Government or Incorporated under a Central or a State Act.

3.2 The candidate should have completed training as Internee/House Officer on or before **30-09-2014.**

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3.3 For inservice candidates three years of regular service shall be calculated as on **30-09-2014.**

3.4 Candidates who are already admitted and studying MD (UNANI) Course shall not be permitted to appear for M.D (Unani) Entrance Test unless they discontinue the course by remitting the bond amount and the stipend taken upto that date before submitting application from and such candidates shall submit the discontinuance certificate issued by the head of the Institution along with the application.

3.5 Candidates who are already holding a Post Graduate Degree in Unani in a subject shall not be eligible to appear for Entrance Test for admission into another P.G. Unani Course.”

Rule 4.4 provides that 15% of seats in clinical subjects and 30% of seats in non-clinical subjects are reserved for in-service candidates in each

category. Candidates selected on merit in the respective categories shall be counted against in-service quota. Candidates working on contract basis, consolidated pay basis, daily honorarium and adhoc basis are not considered as regular service candidates. The number of seats reserved for various categories is provided in G.O.Ms.No.603 dated 28.12.2004, after making provision for 3 seats in Advia course for Government of India Nominees and 1 seat each in Moalijat and Quabalat-O-Amraz-e-Niswan courses for foreign nationals.

7. Para 14.1.2 states that all candidates shall appear for Entrance Test. Only the candidates who qualify in the entrance test are eligible for admission for the year 2014-15. With regard to in-service candidates, it was stated in para 27 as follows:

“27. INSERVICE CANDIDATES:

27.1 In service Candidates who are selected will be given paid postings subject to the availability of vacancies in the concerned department of the college in the order of seniority.

27.2 All temporary candidates selected for PG course who could not get paid postings have to resign their job as they will not be entitled for sufficient leave for study of their PG course as per AP Leave Rules.”

8. G.O.Ms.No.603 dated 28.12.2004 governs the rules for admission into P.G. Medical Courses (Ayurveda/Unani/ Homeopathy) in the medical colleges in the State of Andhra Pradesh. G.O.Ms.No.346 dated 10.12.2010 was issued making amendments to G.O.Ms.No.603 dated 28.12.2004. In the original rule 3(vii), a proviso was added by virtue of which the Rule contained in G.O.Ms.No.603 dated 28.12.2004 after amendment, reads as follows:

“ (vii) 15% of seats in clinical subjects and 30% of seats in non-clinical subjects are reserved for in-service candidates in each category. Candidates selected on merit in the respective categories shall be counted against in-service quota. Candidates working on contract basis, consolidated pay basis, daily honorarium and adhoc basis are not considered as regular

service candidates.

Provided that in case of any seats remaining vacant after completion of selections as per the G.O.P.646, dated 10-07-1979 and as per the reservations and after conversions as per rules, such seats shall be filled up from and among the applicants who are in-service candidates and who have applied through their Head of the Department and the selection shall be done on the basis of merit based on BAMS/BUMS/BHMS marks. These applicants need not appear for the P.G. Medical Entrance Test. The candidates who are selected shall serve the Government for a period of 5 (five) years and in default, he/she shall compensate the Government by remitting a sum of Rs.1.00 lakh (rupees one lakh only) along with refunding the salary amount received during the study period.

Those in-service candidates who are having the remaining service of a minimum of eight (8) years as on the date of admission are only eligible to apply for the said seats.”

9. Now it is clear from the above rule that all candidates have to appear for the entrance examination and there is no exemption for the in-service candidates. Though the main rule provides for 15% of seats in clinical subjects and 30% of seats in non-clinical subjects for in-service candidates in each category, a proviso was added to the said rule by virtue of G.O.Ms.No.346 dated 10.12.2010 and it says that seats remaining vacant after completion of selection as per G.O.P.No.646 dated 10.07.1979 and as per reservations and after conversions as per rules, such seats shall be filled up from among the applicants who are in-service candidates and who applied through their head of the Department and the selections shall be done on the basis of merit based on BAMS/BUMS/BHMS marks. It was also stated in the said proviso that such applicants need not appear for the P.G. Medical Entrance Test.

10. G.O.P.No.646 dated 10.07.1979 provides for admission in educational institutions for local as well as non-local candidates. The prospectus and the rules of admission state that 85% of the seats shall be reserved in favour of and allocated among the local candidates in

relation to the local area in respect of the Andhra University including the Nagarjuna University area, the Osmania University including the Kakatiya University area and S.V. University including the Sri Krishna Devaraya University area in the ratio of 42:36:22 respectively. The total number of seats permitted by the Government of India for 2014-15 are as follows:

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|----------------------------|-------------|
| “ 1. Moalajat | - 10 seats |
| 2. Illmul Advia | - 05 seats |
| 3. Qabalat Wa Amraz Niswan | - 09 seats |
| 4. Tahafuzi Wa Samaji | - 05 seats |
| 5. Kuliya | - 05 seats” |

As per the above information furnished in the prospectus, there are 34 seats, out of which, 3 seats are reserved for Government of India Nominees and 1 seat is reserved for foreign national. The rest of 30 seats are available for local and non-local candidates. The University published the results on 01.11.2014 and the list of admitted candidates was published on 07.12.2014 indicating 27 candidates. 3 seats were reserved as per the interim orders of this Court in W.A.No.1486 of 2014 dated 03.12.2014. The filling up of 27 candidates was done as per the provisions in G.O.P.No.646 dated 10.07.1979.

11. It is urged by the learned counsel for the petitioners that the list of in-service candidates was not published, whereas the learned Standing Counsel submits that all the seats were filled up and in-service candidates would be called only when the seats remain vacant after filling up of the seats as per G.O.P.No.646 dated 10.07.1979 and as per reservations and after conversions as per rules.

12. It is clear from the prospectus that one seat in OC quota in Moalijat subject was reserved for in-service candidate and no candidate was admitted in the said course. Out of 27 candidates, 2 candidates belonging to non-local area were admitted as per G.O.P.No.646 dated

10.07.1979. Except in the case of Moalijat subject, no reservation is provided to the in-service candidates in order to claim a seat for admission in the M.D (Unani) courses. A conjoined reading of original Rule 3 with the amended proviso makes it clear that 15% of seats in clinical subjects and 30% of seats in non-clinical subjects are reserved for in-service candidates in each category. The proviso cannot take away the effect of the main rule. In the case of in-service candidates also, they have to appear for the entrance test and the proviso deals with the cases of left over seats after complying with all other rules of reservation contained in G.O.P. No.646 dated 10.07.1979 and the marks in the qualifying examination will be taken into account. They need not appear for the P.G. Medical Entrance Test.

13. In the instant case, the petitioners appeared for the entrance test rightly, but they did not qualify in the entrance test. In the circumstances, their cases cannot be considered against the quota of reserved in-service candidates as stated in Rule 3(vii) of the Rules contained in G.O.Ms.No.603 dated 28.12.2004. The contention of the petitioners that their case should be considered as in-service candidates after forwarding their application by the head of the Department would arise only when any seat remains vacant after complying with the rule of reservation contained in Rules 3 to 6 of G.O.Ms.No.603 dated 28.12.2004 read with G.O.P. No.646 dated 10.07.1979. All the seats were filled up by complying with Rules 3 to 6 of G.O.Ms.No.603 dated 28.12.2004 and also keeping in view the interim order of this Court in W.A.No.1486 of 2014 dated 03.12.2014.

14. In view of the above, the Writ Petition is liable to be dismissed and is accordingly dismissed. No order as to costs. Miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

A.RAMALINGESWARA RAO, J

Date:10.08.2015

Note: L.R. Copy to be marked: No
B/o. TJMR