

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION (ST.) NO. 22599 OF 2017

1. Dr. Shriram Omprakash Fafat & Ors.) ... Petitioners.
Age:33, Occupation: Medical Officer,)
Address: Primary Health Centre,)
Bhongoan, Shegaon,)
2. Dr.Archana A. Meshram)
Age: years, Occupation:Medical Officer,)
Address:Lopamudra Apartment, Civil lines,)
Bhandara 441904.)
3. Dr. Sujit S. Khairnar)
Age: years, Occupation:Medical Officer,)
Address:'Dheya', Plot No.24,)
Amrutvarsha Colony, Sainathnagar,)
Nashik 422 006.)
4. Dr.Deepashri Morale)
Age: years, Occupation:Medical Officer,)
Address:Morale Niwas, Sant Namdeo Nagar,)
Dhanora Road, Beed 431 122.)
5. Dr. Swapnali S. Mane)
Age: years, Occupation:Medical Officer,)
Address:'Punyai Niwas, Swagat Mahsul Colony,) Mahatma Gandhi Nagar, Osmanabad 413501.)
6. Dr.Shattari Tanhaniyat Banu Abdul Hafij)
Age: years, Occupation:Medical Officer,)
Address:Handarguli, Tal:Udgir,)
Taluka: Latur.)

V/s.

1. The State of Maharashtra) ...Respondents.
Through Secretary,)
Public Health Department,)
Mantralaya, Mumbai 400 032.)
2. The Director,)
Health Services, 8th floor, Arogya)
Bhavan, St.George Hospital Compound,)
P.D'Mello Road, Near C.S.T.Station,)
Mumbai 400 001.)
3. Medical Council of India,)
Through its Secretary,)
Pocket=14, Sec.8, Dwarka,)
Phase=I, New Delhi - 110177.)

Mr. Pralhad D. Paranjape, Advocate a/with Ms. Ritu Savla & Mrs. Shubhra Paranjape for the Petitioners.

Mr. Abhinandan B. Vagyan, GP a/w. Mr. C.P. Yadav, AGP, Mr. G.R. Golatkar, AAGP and Mr. R.S.Sawant, AAGP for Respondent Nos. 1 and 2.

Mr. Ritesh Ratnam, Advocate i/by Ganesh K. Gole for Respondent No. 3- MCI.

**CORAM : ANOOP V. MOHTA AND
SMT.BHARATI H. DANGRE,JJ.**

**RESERVED ON : 28th SEPTEMBER, 2017
PRONOUNCED ON : 06th OCTOBER, 2017**

JUDGMENT : (Per Smt. Bharati H. Dangre,J.)

1 Rule. Rule is made returnable forthwith and heard finally by consent of the parties.

2 The present writ petition, filed by six medical officers, seek directions to the Respondents to admit the petitioners to the DHS CPS Courses 2017 and issue orders of deputation to the petitioners so as to enable them to join in the selected institutes, after treating them as “in service” quota candidates for the DHS CPS Course.

3 The Petitioners before us are working as Medical Officers with the Public Health Department of the State of Maharashtra, on completion of their MBBS course. The appointments of Petitioner Nos. 1, 2, 4 and 5 as medical officers (permanent basis) in various hospitals run by the

Respondent No.1 are of the year 2014; whereas the Petitioner Nos. 3 and 6 have been appointed in the year 2015 and 2016 respectively. The State of Maharashtra with the purpose of encouraging specialized health services has reserved certain number of seats for the PG Diploma Course in favour of such 'in service candidates' and the Medical Council of India has also prescribed certain percentage of reservation for such in service candidates. The State Government through Public Health Department on 17.07.2015 issued a Government Resolution, thereby granting permission for running diploma courses from the year 2015-16 in the hospitals run by the public health department, for conducting diploma courses run by college of physician and surgeon (CPS) Society. It recognized total 8 diplomas to be conducted through the hospitals run by the public health department. The Government Resolution requires strict compliance of the norms prescribed by the college of physician and surgeon and the government resolution also stipulated that the medical officers, obtaining diploma through the said course, would

serve the public health department for five years, as bounded candidates. It is pertinent to note that the said government resolution was issued in view of the fact that various posts of specialized doctors are lying vacant in the hospitals run by the public health department. The medical education department is making available 80 to 90 seats for the diploma courses run by them for in service candidates. However, taking into consideration the available vacancies of the doctors, the said quota was not adequate and therefore, permission was granted to conduct the diploma course through the hospitals run by the public health department through CPS.

4 For the year 2017-18 the public health department through the Director of Health Services issued Information Bulletin for admission to DHS Post Graduate Diploma Courses. The said information Boucher was made available on official website of the public health department from 17th May, 2017. According to the said brochure, the NEET PG 2017

examination was required to be passed by the candidates applying for in service quota seats. The brochure contains following clauses which are relevant for adjudication of the present matter :-

“3. In-service NEET PG 2017 qualifying candidates who are eligible as per the current existing government norms need to apply for in-service quota of DHS CPS PG Diploma Courses 2017 admission process.

4. The in-service NEET PG 2017 qualifying candidates who are eligible as per the GoM GR .. dated 3rd May 2011, shall apply for 40% in-service quota.

5. The in-service NEET PG 2017 qualifying candidates who are regular/ permanent government employees but have less than 3 years of continuous government service shall also apply for 40% in-service quota of DHS PG Diploma 2017 admissions subject to future government decisions in this regard.

10. A separate merit list for in-service and private candidates will be prepared and displayed based on NEET PG -2017 score.

11. The CPS PG Diploma Courses approved by the DHS are recognized by Maharashtra Medical Council.”

4.8. In -service candidates :

4.8.1. For in-service candidates eligibility criteria will be as per the criteria fixed by GoM GR number dated 3rd May 2011 for DHS candidates i.e. M.M & H.S. candidate belonging to Group-A pay scale 15600-39200 Grade pay 5400/-. ESIS in-service candidates' eligibility criteria will be as per the criteria fixed by GoM for ESIS candidates. The in-service candidates who have already submitted their verified service records for DMER 2017 admissions need not submit the records again for DHS PG Diploma 2017 admissions.

4.8.2. The in-service NEET PG 2017 qualifying candidates who are regular / permanent government employees but have less than 3 years of continuous government service shall be considered eligible as in-service candidates for DHS PG diploma 2017 admissions subject to future government decisions in this regards. As proof of their candidature, such candidates should submit to

DHS their service records through their respective CS /DHO and DDHS office.

4.8.3. In-service quota candidates must have appeared for NEET PG 2017 and declared eligible by NBE, New Delhi.

5 On 17th May, 2017, a notification was issued by the Director of Health Services, inviting applications for DHS CPS-PG, medical post graduate diploma courses for 2017-18. As per the said notification the NEET PG 2017 qualified candidates are held to be eligible to apply to the CPS courses at its various district hospitals in the State of Maharashtra. It is also mentioned that CPS courses are recognized by the Maharashtra Medical Council and 40% seats are reserved for in-service medical officers and 60% seats are reserved for general eligible candidates. The notification also contains following clauses in the form of Notes :

- 1) Only NEET PG 2017 qualified candidates will be considered for DHS PG Diploma 2017 admissions.

- 2) The regular/permanent medical officers presently posted in public health department shall not apply for 60% seats reserved for private candidates.

Based on the above information brochure and the notification, the petitioners had participated in the process for admission to DHS CPS PG Diploma Courses, as in-service candidates. On 13.06.2017 the notice was issued, inviting the candidates, both in-service and private for counseling at St. George's Hospital Compound, P.D'Mello Road, Mumbai-400-001 on or before 09.06.2017. On 13th June, 2017 a provisional common merit list for both in-service and general (private) candidates for medical post graduate diploma courses for 2017 session was displayed in which the name of all the petitioners appeared based on their NEET Score. The category of their candidature was mentioned as 'in-service' and they were shown to be qualified. On 28th June, 2017 the final common merit list of in-service medical officers and private candidates for DHS CPS PG Diploma Admission 2017 was published which included the name of all the petitioners and their category was shown

as 'in-service' candidates. However, in the remark column following noting was made “candidates will be considered for admissions for private quota due to the less than three years regular government service.”

It is the contention of the petitioners that 216 seats were available for CPS courses, out of which 130 seats were for private candidates/students and 80% seats were for in-service candidates. Out of 86 in-service candidates 31 candidates were selected in the NEET Examination and the final merit list of 37 candidates was published including the petitioners.

It is to be noted that according to the petitioners, the deputation orders were issued in favour of the 12 in-service candidates, who had completed more than three years of service and the petitioners were refused for admissions as in-service candidates.

6 The matter was listed before us on 21.08.2017 and on the said date, we directed the respondents to file their

affidavit-in-reply. We passed interim order thereby, observing that in view of the representations given by the respondents, permitting the candidates who have not completed three years of service, to be eligible as in-service candidates, the petitioners orders of appointment and selection/ deputation to continue until further orders.

Considering the urgency of the matter, we issued notice of final disposal of the petition to the respondents, making it returnable on 27th September, 2017 and heard the matter finally.

7 We have heard learned counsel Mr. P.D. Paranjape for the Petitioners and the learned government pleader Mr. A.B. Vagyani, assisted by Mr. C. P. Yadav, Assistant Government Pleader and the learned counsel Mr. Ritesh Ratnam appearing for the Medical Council of India.

The petitioners would argue that by virtue of the information brochure and the notification published by the

respondents, they (petitioners) were made eligible to apply to the DHS CPS Courses and accordingly they applied. Their names featured in the provisional seniority list so also the final merit list. However, at the time of publication of the final merit list, the petitioners were directed to be treated as private candidates instead of in-service candidates, for which they had applied. The learned counsel for the petitioners would argue that the rules of the game cannot be changed after the game has begun and in spite of the fact that 2011 government resolution was already in existence, the Director of Health Services, permitted the petitioners to apply as in-service candidates though they had not completed 3 years of service and their candidature was considered as in-service candidates. However, at the fag end, while publishing the final merit list their admissions were shown as in private quota since they did not complete three years of regular government service. According to the petitioners, an impression was given that the State Government had relaxed the requirement of three years government service in the information brochure as

well as in the notification dated 17.05.2017 and hence, the petitioners cannot now be denied the in-service quota and be treated as private candidates.

8 As against the said contention Mr. Vagyani, learned government pleader invited our attention to various riders clauses in the brochure and according to him, the said brochure makes a reference to the government resolution dated 3rd May, 2011 and according to him it was made clear under clause no. 4.8.2. of the brochure that the in-service NEET PG 2017, qualifying candidates who are regular / permanent government employees but have less than three years of continuous government service, shall be considered eligible as in-service candidates for the said diploma subject to the future government decision in this regard. According to Mr. Vagyani, the said admissions were only provisional and did not confer any right upon the petitioners since they had not completed three years of government service and they are not entitled for admission as in- service candidates.

Learned government pleader refers to the affidavit filed by Dr. Umesh Shirodkar, Assistant Director, Health Services Maharashtra, who has made a categorical statement in para nos. 8, 10 & 14 to the following effect, quoted below :

“8. I say and submit that, the Directorate of Health Services realized during the state medical admissions conducted by Directorate of Medical Education and Research, Maharashtra that just 85 in-service medical officers have become eligible as per NEET 2017 result. Due to this there was a probability of many PG Diploma seats going vacant and would be lapsed for the current 2017 academic session. Directorate of Health Services has 2667 posts for specialist doctors out of which 1658 posts are filled and as many as 1009 posts are lying vacant. Considering that large number of post of specialists are vacant and it is affecting the rural, tribal and difficult areas, health services, it was decided to allow the in-service medical officers having less than three years of service to apply, subject to approval by the Government of Maharashtra.

10. I say and submit that, as per the deliberations done in this regard, keeping in view of the various government resolutions, MCI regulation and various court decisions mentioned above it was decided that the in-service medical officers having less than 3 years of services can only be considered to be given admission as general /private candidates and not as in-service candidates. So the Directorate of Health Services incorporated this decision and displayed the final merit list on 20th June, 2017 clearly mentioning in front of the 15 in-service medical officers, having less than 3 years of service that they will be considered for admission under general /private quota seats only.”

14. I say and submit that, due to unavailability of NEET qualified candidates the remaining 190 seats will go vacant and will lapse for the current academic year.”

9 The respondent placed reliance on the decision taken by the State Government on 19th July, 2017, which was placed on record by the petitioners by way of amendment. By the said communication, section officer from the public health department has informed the Director of Health Services

with reference to the letter dated 01.07.2017 in relation to the admissions to the DHS CPS Diploma Courses 2017 in respect of candidates who have rendered less than three years of government. By the said communication, attention is drawn to Rule 80(5)(a) of the Maharashtra Civil Service Rules, 1981 and it is, thereby, informed that those medical officers who have completed less than three years of service should not be considered eligible for CPS PG Diploma Courses and if there are other alternative options available for such students, then proposal should be accordingly forwarded to the State Government.

10 On consideration of the contentions advanced on behalf of the petitioners and the respondents, certain undisputed facts emerge. Respondent No.2 - Director of Health Services, considering the situation that in NEET 2017 only 85 in-service medical officers had become eligible for the PG admissions and there was possibility that PG diploma seats would go vacant for the current 2017 academic session. The

Director of Health Services on realizing that there are huge number of posts for specialist doctors out of which almost 1000 posts were lying vacant, which was affecting the rural, tribal and difficult areas. It was decided to permit medical officers having less than 3 years of service to apply in 'in-service quota' subject to the approval of the State Government. The Director of Health Services indicated so in its information Brochure. In the notification published on 17.05.2017, the Director made it clear that the regular/ permanent medical officers presently discharging in public health department, shall not apply for 60% seats reserved for private candidates. The conjoint reading of both these documents made the medical officers less than three years of service eligible to apply and by virtue of the notification the regular/ permanent medical officers in the public health department would apply only as in-service candidates for 40% seats reserved for them.

Though the brochure mentioned that the said permission would be subject to the final decision of the State

Government in this regard, the candidates applied and their names were displayed in the provisional merit list published on 13.06.2017 after they were called for counseling. It is only on 20.06.2017, the Director imposed the rider that such candidates will be considered under the private quota since their services are less than three years. It is note worthy to mention that the State Government took the decision on 19th July, 2017 and intimated the Director that the candidates below three years of service as medical officers could not be considered for the DHS CPS-PG diploma as in-service candidates. However, it was too late in the day to submit its decision when by that time the Director of Health Services had already published provisional and final merit list. The petitioners in view of the notification dated 17.05.2017 published by the Director could not have been considered as private candidates and as there was a clear bar on the employees of the State Government, filling up their forms as private candidates. The net result is that though the Director permitted the admission of the petitioners and it was after

finalization of the list the State Government intimated the Director-Respondent No.2, that it is not permissible to consider the candidates below three years of service as in-service candidates.

11 We are of the express opinion that the conduct of the Respondent No.2, who was the competent authority for conducting the admissions process to the DHS Post Graduate Diploma Courses, has already given an impression to the students to be eligible even in spite of the existence of the government resolution dated 3rd May, 2011, prescribing eligibility for in-service candidates. The candidates like the petitioners cannot be at fault since they were aware of the existence of the government resolution and that in spite of the existence of the government resolution an impression was given to them that these candidates who have less than three years government service shall also apply and they shall be considered as eligible. There is no merit in the contention of the Government Pleader that the students were made aware

that their consideration was subject to the decision of the state government. We are of the clear opinion that when the competent authority has completed the admission process by displaying final merit list and the state government gave its decision after the entire procedure was over as late as on 19th July, 2017 putting the persons like the petitioners in precarious situation, when they could not have applied as private candidates and they are now not being treated as 'in service candidates'. In service candidates have certain benefits which include the exemption of fees, continuity of their services and they are required to sign a bound to serve the public health department for the period of two years, failing which they are required to pay 5 lakhs in default. Having that advantage in mind, the candidates like the petitioners have applied as in-service candidates based on information brochure which declared them to be eligible. The State Government ought to have taken decision before the finalization of the merit list and before the completion of the process. The petitioners are left at a stage where they were

helpless when their candidature is being treated as private quota candidates; whereas their applications are not from that category and they have certain benefits for availing in-service quota seats. Perusal of the affidavit of the Assistant Director filed before us, the Director has disclosed that out of 2667, 1009 posts / seats for specialized doctors are lying vacant in the Directorate of Health Services, which is affecting the health services in rural, tribal and difficult areas and therefore, it had taken a decision to allow in-service medical officers having less than three years of service to apply.

12 Reliance of the State Government on Rule 80 (5) (a) of the Maharashtra Civil Services (Leave) Rules, 1981, is of no consequence since it deals with the study leave and by virtue of the said rule, the study leave shall not be granted to a government servant who rendered less than five years service in the government office/department. Perusal of the Rule 80 sub-rule (3) makes it clear that the study leave shall be granted when it is for prosecution of studies, a course of

post -graduate study in medical sciences, if such study shall be valuable in increasing the efficiency of such medical officers in the performance of his duties. If that rule is applied with then imposition of condition of three years of service in the government resolution on 3.05.2011 is not sustainable. However, we do not want to deliberate on the condition of imposition of three years of service which is a policy decision of the State Government and more over it is not a subject matter of challenge before us.

We cannot shut our eyes to the fact that the State Government is not able to provide for adequate medical and health facilities in rural and remote areas and the State Government is in dire need of specialized doctors in the field. If the in-service candidates are offered opportunities of improving their qualifications and they specialized themselves, they would be an asset to the State Government since they have to mandatorily serve the State Government for the bond period and at least the government would be able to ensure the services of such doctors to the citizens, specially residing in

rural and hilly areas and ensure that the State discharges its obligations.

A perusal of the government resolution dated 03.05.2011 which prescribes the modalities for admission to in-service medical officers to pass graduate/diploma courses reveals that the State Government by virtue of clause 1.28 of the said Government resolution is empowered to effect any changes in the said rules, containing the government resolution without any intimation and it is also empowered to effect any modifications to the said rules.

13 The petitioners who are in-service candidates based their claim on legitimate expectations and they rely upon the representations given by the government and contend that its denial at the stage when their names are already included in the final merit list is detrimental to their interest. It is no doubt true that legitimate expectation is not legal right. It is an expectation out of a bonafide belief or remedy that may flow from an impression that is given and the

expectations should be legitimate that is reasonable, logical and valid. The doctrine of legitimate expectation is founded on the principles of reasonableness and fairness though it is to be different from anticipation. Such legitimate expectation should be justifiable, practicable and protectable. The restriction on the doctrine could not be invoked to block the public interest nor it can be unfair to fitter changes in administrative policy if it is in the public interest to do so.

14 In the present case, the existence of a policy by the government was displayed in the information brochure by the Director which referred to the government resolution on 3rd May, 2011 which prescribed the eligibility criteria for in-service candidates, however, the same brochure treated the in-service government employees having less than three years of government continuous service as eligible in-service candidates subject to the future decision of the government. The legitimate expectation was crated when the name of the petitioners were displayed in the provisional list and also in

the final list as in-service candidates and it would be unfair treatment to the petitioners who would be deprived of such benefit at such a point of time when there is no turning back for them.

15 We are conscious of the fact that the government resolution dated 03.05.2011 is governing the field and it requires completion of three years government service to be completed as in-service candidates and we would not be relaxing the said condition at all since according to us it has rational behind it. Further, Respondent no.2, the competent authority for conducting the admission process of the PG Diploma Course, has given and created a clear hope in the mind of the persons like the petitioners who have completed less than three years government service and have made them applied from in-service candidates quota and therefore, their rejection is in violation of their legitimate expectation. The petitioners are, therefore, eligible to be considered as in-service candidates as an exceptional case for this year in view

of the peculiar facts which we have already narrated above. The relaxation of the government service below three years shall not be treated as precedent but we expect the Director-Respondent No.2, who conducts admission procedure, giving clear communication about the eligibility and is expected to consult the State Government before publication of the brochure and the notification, making the candidates eligible.

16 In view of the aforesaid reasons, we are of the clear opinion that the legitimate expectation was created in the mind of the petitioners, in view of the conduct of the respondents and the petitioners are entitled for being considered as in-service candidates for admission to DHS CPS-PG Diploma Course 2017 since they have already qualified themselves in the NEET 2017 Examination. We direct that the Petitioners are entitled for admission to the CPS DHS Diploma Courses as 'in-service candidates for the year 2017-18 and the Respondents are directed to the appointment orders and also the deputation orders in favour of the petitioners so as to

enable them to join the Institutes on the seats in which they are selected.

17 In the result, we allow the writ petition in terms of prayer clause (b)(i)(ii).

18 Rule is made absolute in the above terms. No order as to costs.

(SMT. BHARATI H. DANGRE,J.)

(ANOOP V. MOHTA,J.)

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