

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **17.04.2017**

CORAM

THE HON'BLE MRS.JUSTICE **PUSHPA SATHYANARAYANA**

W.P.No.6031 of 2017
and W.M.P.No.6455 of 2017

Dr.Rajesh Wilson

.. Petitioner

VS

1. The Secretary to Government
Health and Family Welfare Department,
St.George Fort,
Chennai 600 009.
2. The Director of Medical Education,
The Directorate of Medical Education,
Kilpauk, Chennai 600 010.
3. The Selection Committee,
The Directorate of Medical Education,
Kilpauk, Chennai 600 010.
4. The Medical Council of India
Represented by its Secretary,
Pocket 14, Sector 8,
Dwarka Phase I, New Delhi 110 077

R-4 is Suo-Motu impleaded as per order dated
06.04.2017 by P.S.N.J in W.P.No.6031 of 2017 .. Respondents

Prayer: Writ Petition filed under Article 227 of the Constitution of

India praying to issue a Writ of Mandamus directing the second and third respondents to implement the Regulation 9(4) of Post Graduate Medical Education 2000 as amended by adding 30% mark on the marks secured by the petitioner in the NEET examination while preparing the rank list for admission to Post Graduate Course in 50% reserved category for Government Servants for the academic year 2017-2018 by passing orders on the representation dated 24.02.2017.

For Petitioner : Mr.G.Justin

For Respondents : Mr.T.N.Rajagopalan,
1 to 3 Special Government Pleader
(Education) Assisted by
Mr.V.Anandhamurthy,
Additional Government Pleader

For Respondent 4 : Mr.V.P.Raman

ORDER

This Writ Petition has been filed seeking for a direction to the respondents 2 and 3 to implement Regulation 9(4) of the Post Graduate Medical Education Regulations, 2000 by adding 30% mark on the marks secured by the petitioner in the NEET examination while preparing the rank list for admission to Post Graduate Course in 50% reserved category for Government

Servants for the academic year 2017-2018.

2. The Writ Petitioner is a Doctor having completed his M.B.B.S degree and joined Government service through MRB Exams. He was posted as Assistant Civil Surgeon at Government Primary Health Centre, Sholayar Nagar, which is notified as tribal remote hilly area as per the Government Order of Tamil Nadu. The petitioner had appeared for the post graduate entrance examination (NEET PG) for the academic year 2017-2018 and secured 874.5825 marks and obtained All India 26525th Rank. As the petitioner had served in the tribal area, he is eligible for incentive marks at the rate of 10% of the marks obtained for each year of service up to the maximum of 30% of the marks obtained in National Eligibility cum Entrance Test. The petitioner being an in-service candidate, is not eligible for the All India quota and he can apply only under the State quota.

3. The challenge in the Writ Petition is now to the clause in Chapter VI, which deals with the merit list in the prospectus for the Tamil Nadu Government Post Graduate Degree/Diploma

Courses in Tamil Nadu Government Medical Colleges, Government seats in Self Financing Medical Colleges affiliated to the Tamil Nadu Dr.M.G.R Medical University and Rajah Muthiah Medical College (Annamalai University) 2017-2018. The said merit list as mentioned in the prospectus, shows that the list will be drawn for a total mark of 100 by computing the Entrance Examination (NEET PG 2017) marks and the marks for experience (90 Entrance Examination (NEET PG 2017) + 10 marks for experience). Clause 17(b) says that service candidates shall be awarded one mark per year of service in rural areas, two marks per year of service in hilly and remote / difficult areas and two marks per year of service in any Government Hospitals, Primary Health Centres and Government Medical Colleges, Hospitals of Thiruvavur, Nagapattinam and Ramanathapuram Districts limited to a maximum of 10 marks. Altogether, the total marks awarded for experience will be restricted to 10 marks to all candidates including candidates from rural, hilly and remote / difficult areas and three districts mentioned above. Accordingly, the marks awarded for Entrance examination (NEET PG 2017) is Maximum 90 marks. Experience marks for all candidates (both

service and non-service) is limited to a maximum of 10 (i + ii + iii).

i) One mark per year for experience after CRR I (All candidates)

ii) Marks for service candidates served in rural, hilly and remote / difficult areas:

a) Rural area - 1 mark per year

b) Hilly area - 2 marks per year

c) Remote / difficult area - 2 marks per year

iii) Two marks per year of service candidates who have worked in any Government Hospitals, Primary Health Centres and Government Medical College Hospital of Thiruvavur, Nagapattinam and Ramanathapuram Districts.

This method of computation is now being challenged by the petitioner.

4. Heard Mr.G.Justin, learned counsel appearing for the petitioner, Mr.T.N.Rajagopalan, Special Government Pleader (Education), Assisted by Mr.V.Anandhamurthy, Additional Government Pleader appearing for respondents 1 to 3 and

Mr.V.P.Raman, learned counsel appearing for R4 and perused the materials available on record.

5. According to the Writ Petitioner, Regulation 9 of the Post-graduate Medical Education Regulations, 2000, prescribes the procedures for selection of candidates for post-graduate courses. Clause IV of Regulation 9 is as follows:-

IV. The reservation of seats in medical colleges/institutions for respective categories shall be as per applicable laws prevailing in States / Union Territories. An all India merit list as well as State-wise merit list of the eligible candidates shall be prepared on the basis of the marks obtained in National Eligibility-cum-Entrance Test and candidates shall be admitted to Post Graduate courses from the said merit lists only:

Proviso to the said Clause, 14 is added by Noti.No.MCI-18(1)/2010-Med./62052, dated 15.02.2012 (w.e.f.27.02.2012).

The proviso to the said Regulation reads as follows:-

"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."

As per the above clause, the petitioner is entitled for 10% of the marks obtained to be added along with the marks he had obtained in NEET for every completed year of service. Therefore, the petitioner is entitled for 30% of the marks obtained to be added with his NEET marks. It is stated that the petitioner had obtained 874.5825 marks out of 1500 in the NEET and 30% if added to the marks, would make it 1136.95725 out of 1500. Therefore, the contention of the learned counsel for the petitioner is that while considering 50% reserved quota for Government service candidates, he should be ranked as per his marks as calculated above (i.e) 1136.95725. In this regard, the petitioner also had given a representation to the second respondent to comply with the provisions of Regulation 9 of Post Graduate Medical Education Regulations, 2000, formulated by the Medical

Council of India.

6. It is contended by the learned counsel for the petitioner that the petitioner was posted to serve in the hilly area of Sholayar Nagar, Government Primary Health Centre, Coimbatore District and has been serving there for three years and therefore, he is eligible for the award of 30% of marks while preparing the rank list for the service candidates.

7. The learned Special Government pleader appearing for respondents 1 to 3, while admitting that the petitioner had served in the hilly area, contended that the petitioner having applied for the Tamil Nadu Service Candidates Quota, is bound by the prospectus for admission to the Post Graduate Degree / Diploma Courses in Tamil Nadu Government Medical Colleges etc for the academic year 2017-2018. He further argued that without challenge to the said prospectus, having applied under the same, it is not open to the petitioner to contend that the calculation as per Clauses 16 and 17 are not maintainable.

8. It is an admitted fact that the prospectus for admission to the Post Graduate Degree / Diploma Courses in Tamil Nadu Government Medical Colleges, Government Seats in Self Financing Medical Colleges affiliated to the Tamil Nadu Dr.M.G.R Medical University and Rajah Muthiah Medical College (Annamalai University) 2017-2018 was issued as per G.O.(D) No.704, Health and Family Welfare (MCA-1) Department, dated 27.03.2017. It is pertinent to note that the said prospectus itself was issued only subject to the assent of His Excellency The President of India to T.N.L.A. Bill No.8 of 2017. Admittedly, the said assent was not granted till today. Therefore, the said prospectus is not binding on the petitioner. Insofar as the binding nature of Regulation 9 of the Post Graduate Medical Education Regulations, 2000 is concerned, the Hon'ble Supreme Court in **2016 (9)SCC 749 [State of Uttar Pradesh and Others vs. Dinesh Singh Chauhan]** has elaborately considered that "Regulation 9 is a self-contained code regarding the procedure to be followed for admissions to medical courses. It is also well established that the State has no authority to enact any law much less by executive instructions that may undermine the

procedure for admission to post graduate medical courses enunciated by the Central legislation and regulations framed thereunder, being a subject falling within Schedule VII List I Entry 66 of the Constitution. The procedure for selection of candidates for the Post Graduate Degree courses is one such area on which the Central legislation and Regulations must prevail".

9. The Hon'ble Supreme Court has further held in para 25 is as follows:-

"25. Thus, we must first ascertain whether Regulation 9, as applicable to the case on hand, envisages reservation of seats for in-service Medical Officers generally for admission to Post Graduate "Degree" Courses. Regulation 9 is a composite provision prescribing procedure for selection of candidates - both for Post Graduate "Degree" as well as Post Graduate "Diploma" Courses.

25.1 Clause (I) of Regulation 9 mandates that there shall be a single National Eligibility-cum-Entrance Test (hereinafter referred to as NEET) to be conducted by the designated Authority.

25.2 Clause (II) provides for three per cent seats of the annual sanctioned intake capacity to be earmarked for candidates with locomotory disability of lower limbs. We are not concerned with this

provision.

25.3.Clause (III) provides for eligibility for admission to any Post Graduate Course in a particular academic year.

25.4 Clause (IV) is the relevant provision. It provides for reservation of seats in medical colleges/institutions for reserved categories as per applicable laws prevailing in States/Union Territories. The reservation referred to in the opening part of this clause is, obviously, with reference to reservation as per the constitutional scheme (for Scheduled Caste, Scheduled Tribe or Other Backward Class Candidates); and not for the in-service candidates or Medical Officers in service. It further stipulates that All India merit list as well as State wise merit list of the eligible candidates shall be prepared on the basis of the marks obtained in the NEET and the admission to Post Graduate Courses in the concerned State shall be as per the merit list only. Thus, it is a provision mandating admission of candidates strictly as per the merit list of eligible candidates for the respective medical courses in the State. This provision, however, contains a proviso. It predicates that in determining the merit of candidates who are in-service of Government or a 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 specified

remote or difficult areas of the State upto the maximum of 30% of the marks obtained in NEET. This provision even if read liberally does not provide for reservation for in-service candidates, but only of giving a weightage in the form of incentive marks as specified to the class of in- service candidates (who have served in notified remote and difficult areas in the State).

10. The learned Special Government pleader endeavored to impress upon the Court by stating that even as per the proviso to Regulation 9 (4), weightage in the marks may be given by the Government/Competent Authority as an incentive and argued that it is not a mandatory clause. In this regard also, the Hon'ble Supreme Court cited *supra*, has dealt with in para 35 as follows:-

"35.As aforesaid, Regulations have been framed by an Expert Body based on past experience and including the necessity to reckon the services and experience gained by the in-service candidates in notified remote and difficult areas in the State. The proviso prescribes the measure for giving incentive marks to in-service candidates who have worked in notified remote and difficult areas in the State. That can be termed as a qualitative factor for

determining their merit. Even the quantitative factor to reckon merit of the eligible in-service candidates is spelt out in the proviso. It envisages giving of incentive marks at the rate of 10% of the marks obtained for each year of service in remote and/or difficult areas up to 30% of the marks obtained in NEET. It is an objective method of linking the incentive marks to the marks obtained in NEET by the candidate. To illustrate, if an in-service candidate who has worked in a notified remote and/or difficult area in the State for at least one year and has obtained 150 marks out of 200 marks in NEET, he or she would get 15 additional marks; and if the candidate has worked for two years, the candidate would get another 15 marks. Similarly if the candidate has worked for three years and more, the candidate would get a further 15 marks in addition to the marks secured in NEET. 15 marks out of 200 marks in that sense would work out to a weightage of 7.5% only, for having served in notified remote and/or difficult areas in the State for one year. Had it been a case of giving 10% marks enbloc of the total marks irrespective of the marks obtained by the eligible in-service candidates in NEET, it would have been a different matter. Accordingly, some weightage marks given to eligible in-service candidate linked to performance in NEET and also the length of service in remote and/or difficult areas in the State by no standard can be

said to be excessive, unreasonable or irrational. This provision has been brought into force in larger public interest and not merely to provide institutional preference or for that matter to create separate channel for the in-service candidate, muchless reservation. It is unfathomable as to how such a provision can be said to be unreasonable or irrational."

The Hon'ble Supreme Court having held that Regulation 9 itself is a complete code, it does not permit the preparation of two merit lists.

11. The State Government in the absence of any basis, is trying to give a go-by to the MCI Regulations. The Post-Graduate Medical Education Regulations, 2000, was formulated in exercise of the power conferred by Section 33 read with Section 20 of the Medical Council of India Act, 1956, with the sanction of the Central Government. While so, the State cannot adversely affect the standards laid down by the Centre. The above Regulations are binding and the States cannot make any law which is in conflict with or adversely impinge upon the Regulations made by the MCI. The award of incentive marks for in-service candidates

is linked to the performance NEET and also the length of service in remote and difficult areas in the State. Therefore, the State cannot have its own rationale to arrive at a different calculation in awarding of the weightage marks.

12. Accordingly, the respondents 2 and 3 are directed to follow Regulation 9 (4) of the Post Graduate Medical Education Regulations, 2000, by adding 30% marks on the marks secured by the petitioner in the NEET examination while preparing the rank list for admission to the Post Graduate Course in 50% reserved category for Government Servants for the academic year 2017-2018, as Regulation 9 is the only effective and permissible basis for granting admission to in-service candidates. It is made clear that admissions can and ought to be made only on the basis of the above.

13. With the above direction, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

17.04.2017

Note: Issue Order Copy on 17.04.2017

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Index: yes/No

Internet: yes

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