

ORDER RESERVED ON :16.06.2017

ORDER DELIVERED ON:21.06.2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2017

CORAM

THE HONOURABLE MR. JUSTICE RAJIV SHAKDHER
And

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

W.P.No.12423 of 2017 and
WMP.Nos.13180 to 13182/2017

Dr.N.Thiagu

..... 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 Secretary,
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.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorarified mandamus calling for all the records pertaining to the issue of prospectus dated 27.03.2017 on the files of the respondents 1 to 3 and quash the clauses 10(b) and 10(f) so far as it relates to the petitioner and consequently, direct the respondents 1 to 3 to receive the petitioner's application for admission to the PG Degree Course for academic year 2017-2018 and assign appropriate

place in the State Rank list by considering the petitioner's service in the remote and difficult area (Hilly Area) as defined in the prospectus annexure vii.

For Petitioner : Mr.G.Justin

For R1 to R3 : Mr.C.Mani Shankar,
Additional Advocate General
asst. by Mr.T.N.Rajagopalan
Spl.G.P

For R4 : Mr.V.P.Raman

JUDGMENT

(Order of the Court was delivered by R.SURESH KUMAR ,J.)

The petitioner has laid this writ petition, for a prayer of writ of certiorarified mandamus to call for the records and quash, clauses 10(b) and 10 (f) of the prospectus issued by the third respondent dated 27.3.2017 and consequently, to direct the respondents 1 to 3 to receive the petitioner's application for admission to the PG degree course for the academic year 2017 - 2018 and assign appropriate place in the State rank list, by considering his service, in the remote and difficult area (Hilly area) as defined in the prospectus annexure-VII.

2. The following short facts are required to be noticed for the disposal of this writ petition:

(i) As averred by the petitioner, he has completed his MBBS degree and diploma in Anaesthesiology. With these qualifications, he applied and got selected to the post of Assistant Surgeon, by the Medical Services Recruitment Board (MRB). Accordingly, he was appointed as Assistant Surgeon in Government Hospital, Hosur, Krishnagiri District, where the petitioner joined service on 24.04.2015.

(ii) After one year of service, the petitioner was transferred to Government upgraded Primary Health Centre (PHC), Mohanur, Namakkal District, where he is presently working.

(iii) Since the medical admissions, including admissions to Post Graduate Medical Courses, are to be made only based on the National Eligibility-cum-Entrance Test, the petitioner also had written the said examination called NEET PG 2017 examination, conducted by the National Board of Examinations. The petitioner had secured 1026.6963 marks out of 1500. By virtue of this,

according to the petitioner, he become qualified to be considered for admission to Post Graduate Medical courses. The further claim of the petitioner is that, since he is an in-service candidate, he could not apply for All India Quota and at the same time, even for the State Quota, the petitioner cannot make an application, in view of the conditions contained in the prospectus dated 27.3.2017, especially, that which is provided under clause 10(b), issued by the third respondent.

(iv) As per the said clause 10(b), one who has not completed two years of medical service in the State as on 31.3.2017, he shall not be eligible to make application for admission to PG Medical Course.

(v) Likewise, clause 10(f) of the said prospectus speaks about the consequences, if an in-service candidate, inspite of condition contained in clause 10(b), applies as a private candidate, by suppressing the fact that he is an in-service candidate, who is yet to complete two years of service as on 31.3.2017. The consequences being such a candidate would be debarred for two years and also open himself for further appropriate legal action. For better appreciation, we extract the relevant clauses hereunder:

"(b) Those Service candidates selected by TNPSC/MRB (through Competitive written Examination/Special qualifying Examination) who have put in LESS THAN TWO Years of continuous service as on 31.03.2017 either in Tamil Nadu Medical Service or in Local Bodies are not eligible to apply for PG Degree / Diploma Courses. Fractional values of a year will not be counted.

(f) If any Medical Officer including 10 (a) (i) candidates / Contract Medical Consultants after selection by TNPSC/MRB (through competitive written examination/Special qualifying Examination) apply as Private candidates suppressing the fact of their selection, they will be debarred for TWO years. Further appropriate legal action will be taken against them."

(vi) The petitioner, therefore, states, because of the circumstances, as created by virtue of clauses 10(b) and 10(f), though he had become eligible / qualified after having secured 1026.6963 marks out of 1500 in NEET PG examination, he did not make any application for admission to PG Medical degree /

diploma course in the State, pursuant to the invitation of application through prospectus dated 27.3.2017, issued by the third respondent.

(vii) It is also the claim of the petitioner that, since he has already worked for one year, in a hilly area, as per the identification and notification of the State, for awardance of incentive marks, of course pursuant to clause 9(iv) of Post Graduate Medical Education Regulations 2000 (hereinafter referred to as MCI Regulations) issued by the Medical Council of India (MCI), he would also be entitled to get 10% of NEET marks as incentive / bonus marks. It is further averred if to the said marks 10% is added with the total NEET marks the petitioner's gross total would come as 1129.3659 and with these marks, it is the claim of the petitioner that, he would be entitled or eligible to get admission in PG Medical course / diploma as per his choice.

(viii) Since, the said clauses 10 (b) and 10(f) made the petitioner ineligible to make an application for PG admission, though he become qualified to apply the same, based on his marks obtained through NEET PG examination, the petitioner has come forward with this writ petition, challenging the said clauses i.e., 10(b) and 10(f).

3. In support of the said contention made by the petitioner, Mr.G.Justin, the learned counsel appearing for the petitioner, has submitted that, in view of the MCI Regulations and in view of the law declared by the Hon'ble Apex Court in the State of Uttar Pradesh Vs. Dinesh Singh Chauhan reported in 2016 (9) SCC 749, the respondents should have issued the prospectus only in consonance with the said Regulations. The learned counsel would further submit that if at all is there any bar for in-service candidate to make application for PG medical admissions, it must be only in the form of Regulation 9(VII), which, for the sake of convenience is extracted hereunder:

"VII. 50% of the seats in Post Graduate Diploma Courses shall be reserved for Medical Officers in the Government service, who have served for at least three years in remote and/or difficult areas. After acquiring the PG Diploma, the Medical Officers shall serve for two more years in remote and/or difficult areas as defined by State Government/Competent authority from time to time."

4. The learned counsel would further add that, only in respect of admission for PG diploma courses, such a prescription has to be made, under clause 9(VII), as has been made in the Regulations, that, without completing three years of service, the in-service candidates would not be eligible to make applications for PG Medical Diploma courses. There is no other explicit prohibition in any of the clauses of the said Regulations, and therefore, the present prescription, made in the prospectus, making ineligible the in-service candidates, who have not completed two years of service, for making application for PG Medical admission courses in the State, runs contra to the MCI Regulations and therefore, the learned counsel would submit that clause 10(b) is liable to be quashed.

5. Mr. Justin would also submit that, the petitioner, since has secured enough marks in NEET PG Exam and also become eligible to get 10% weightage, as incentive for his one year service in hilly area, he would have reached a respectable position in the ranking list, had the petitioner been permitted to apply. The learned counsel would further submit that because of the impugned clause, i.e., 10 (b) of the prospectus, the petitioner did not make application.

6. Mr. Justin would also submit that even as a private candidate, the petitioner cannot make an application, as clause 10(f) of the prospectus as it enables the respondents to debar candidates, who made an application for PG Medical admission, as a private candidate, without disclosing the fact that he/she is an in-service candidate.

7. Therefore, Mr. Justin would submit that, both ways, the petitioner has been prevented either from making an application as an in-service candidate or even as a non service candidate / private candidate, inspite of his credentials of getting respectable score in NEET PG examination with his eligibility to get 10% of incentive marks.

8. On the contrary, Mr. A. Mani Shankar, the learned Additional Advocate General appearing for respondents 1 to 3, has invited our attention on the Notification No.07/2014, dated 09.11.2014 issued by the Medical Services Recruitment Board (in short, 'MRB'). The learned Additional Advocate General would heavily rely upon the undertaking part under the heading "Undertaking by the candidate", especially clause '3', which reads thus:

"i)

ii)

iii) He / She shall abide by the condition that if he is selected and appointed as Assistant Surgeon (Speciality), after joining duty, he/she shall not be permitted to undergo any course within the period of two years excluding the period of leave.

iv)

v)"

9. The learned Additional Advocate General, by relying upon the averments made in the counter affidavit filed by the third respondent, has submitted that, the petitioner at the time of appointment itself, as Civil Assistant Surgeon, had been clearly indicated that he would not be eligible to make any application for any course much less the post graduate medical courses, unless he completes two years full service, excluding leave period. In this regard, the learned Additional Advocate General would rely upon paragraph 8 of the counter affidavit which reads thus:

"8. It is submitted that even in the appointment order given to the petitioner, it is stated as follows:

The individual should serve in Government for a period of not less than three years excluding any period spent on training, leave or higher education. Also the individual should abide by the conditions that after joining duty he/she will not be permitted to undergo Post Graduate course within the period of two years excluding the period of leave.

After accepting the above terms and conditions stipulated in the appointment order, the petitioner has joined the service. Now, praying to remove the relevant clauses i.e. 10(b) and 10(f) from the Prospectus which quote the above terms, is not sustainable under the law and liable to be rejected in limine."

10. The Additional Advocate General would also submit that, the petitioner, on appointment, had joined duty on 24.4.2015. As on 31.3.2017, being the cut-off date which was fixed through the prospectus issued by the third respondent, the petitioner has

not, admittedly, completed the required two years service. So by virtue of Clause 10 (b) of the prospectus, he becomes ineligible to make application for admission to PG medical courses for the academic session 2017-18. After having accepted this fact, the petitioner did not make any application, pursuant to the said prospectus. As per the time schedule of the prospectus, the last date for on-line registration was 04.04.2017 upto 5.45 p.m and the last date of submission of print out of on-line application was 05.04.2017 upto 5 p.m.

11. The learned Additional Advocate General would also submit that since, admittedly, the petitioner has not chosen to make any application on or before the said cut-off date, of course by accepting clause 10 (b) of the prospectus, the petitioner cannot now, turn around and say, that his application must be accepted now.

12. The learned Additional Advocate General would further submit that, even though, there is no express provision in the MCI Regulations prohibiting the in-service candidates, who have not completed a particular years of service, for making application for PG medical courses admission, it is also the fact that there is no specific or express provision prohibiting the State Authorities to have such a condition prohibiting the in-service candidates, who have not completed a particular years of service, to make application for PG medical admission.

13. In this regard, the learned Additional Advocate General by relying upon the law declared by the Supreme Court in 2016 (9) SCC 749 (cited supra) would submit that, the Regulations of MCI is a complete code, which gives certain discretion to the State Government concerned. Accordingly, the State Government has prescribed the two years Rule for in-service candidates, whereby, the in-service candidates are prohibited from making applications for PG medical admissions without completing two years service.

14. The learned Additional Advocate General would also submit that this classification was made in the context that, doctors, who have been selected and appointed in Government hospitals spread over the State both in rural and urban areas, if moved away from service for some years to complete their PG Medical courses, as in-service candidates, immediately, on their being appointed, that would highly make difficult for the State to provide adequate and necessary medical facilities / services to the needy people, especially, in rural areas. Only in that context, the said two years period has been fixed for in-service candidates.

15. The learned Additional Advocate General would also make his submission that, even for PG medical diploma admissions, three years rule has been prescribed under clause 9(VII) of MCI Regulations for making reservation of 50% of the seats for Post Graduate diploma courses for in-service candidates. Since the Hon'ble Supreme Court has declared the entire regulations of MCI as a complete code, where also, under clause 9(VII), such a prescription of minimum years of service of in-service candidates since have been provided, the present prescription of two years rule for the in-service candidates to make applications for PG admission, is certainly, based on the MCI's Regulations only and therefore, the same cannot be termed as a faulty one.

16. The learned Additional Advocate General has also produced the undertaking bond given by the petitioner, at the time of joining his service, as Assistant Surgeon, pursuant to the selection and appointment, where, the petitioner has given a clear undertaking that he would not make application for PG medical admission within a period of two years of service.

17. We have also heard Mr.V.P.Raman, the learned counsel appearing for the fourth respondent.

18. His contention was that the Regulation 9(VII) of MCI, in fact has put the Rule of three years for in-service candidates in the context of 50% reservation for in-service candidates in Post Graduate diploma courses admission.

19. He would state, therefore, that the three years Rule is not in any way prohibiting the in-service candidates to make applications for PG medical admissions. However, Mr.Raman would add that, since discretion has been given to the State for prescribing necessary conditions, of course, without offending or running contra to the MCI Regulations, it is for the State to make such prescription, as the one presently under challenge.

20. The respective submissions made by the learned counsels and the supporting materials placed before this Court were considered carefully, by us.

21. The admitted fact is that, the petitioner is an in-service candidate, who has joined service on 24.4.2015. He has, admittedly, not completed two years service as on 31.3.2017, being the crucial date, as prescribed under the prospectus, issued by the third respondent, for the academic year 2017-18.

22. It is also an undisputed fact that, at the time of selection and appointment, the petitioner has given an undertaking / bond to the State that he would not make application for any PG medical courses unless he completes the two years service. Only in consonance with these prescriptions, the said condition of two year Rule has been imposed, by the third respondent, by clause 10(b) of the prospectus.

23. The said factor, having been made known to the petitioner, and in fact having accepted the same, the petitioner has, admittedly, not made any application for the year 2017-18, even though he has appeared and scored marks in NEET PG Examination.

24. It is also an admitted fact that, the petitioner, though well aware of the last date for making application for PG medical admissions for the year 2017-18, as the same was over as early as on 05.04.2017, has not chosen to make any application, on or before the said last date.

25. It is also an admitted fact on the part of the petitioner that, only because of clause 10(b), he has not chosen to make an application.

26. If at all the petitioner has got any grievance over clause 10(b) or even under clause 10(f) of the prospectus, which is directly prohibiting the petitioner for making an application for PG medical admission, as he has, admittedly, not completed the two years service as on 31.3.2017, the petitioner could have very well initiated a challenge in respect of the impugned two clauses, as has now been done by him through the present writ petition, which admittedly, has been filed only on 09.5.2017.

27. Before the petitioner filed the present writ petition, the last date for making application for 2017-18 was over, the applications were processed and the ranking list were released.

28. Though the petitioner averred that, he has not filed application, as he knew that, his application would be rejected by the authorities, and in this regard, some instances of such rejection has also been quoted before this Court, the said excuse cannot cure the initial defect, on the part of the petitioner, that is, not approaching the Court within time. There is a punitive clause available in clause 10(f) of the Regulations, which is also under challenge in this writ petition, that those who are in-service candidates suppressing the said fact, if they made applications, as private candidates, they would be liable to be debarred for two years and further legal action would also follow. In view of the said clauses 10

(b) and 10(f), if application is not filed, as claimed by the petitioner, certainly, the petitioner, has impliedly, accepted the said conditions / prescriptions made by the third respondent in the prospectus.

29. Moreover, the petitioner has executed a bond / undertaking that he would not make application for PG medical courses admission without completing two years service, excluding leave period, and the said undertaking, having not been questioned by the petitioner, even till date, in our view, the petitioner is clearly disabled from making any challenge to the said clauses, i.e., clauses 10(b) and 10(f) of the prospectus at this point in time.

30. In view of the foregoing reasons, we are not inclined to give any relief to the petitioner.

31. In the result, the writ petition is dismissed. Consequently, connected miscellaneous petitions are closed. However, no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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,
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4. The Medical Council of India,
Represented by its Secretary,
Pocket 14, Sector 8,
Dwarka Phase I, New Delhi.

+1cc to Mr.G.Justin, Advocate, S.R.No.44144
+1cc to Mr.V.P.Raman, Advocate, S.R.No.44022

W.P.No.12423 of 2017

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