

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3394 OF 2018

1. Dr. Rupali Govindrao Shastri,
Age : 30 Years, Occupation Service,
(As Dental Surgeon,GMC, Latur),
Deshpande Colony, AUSA Road,
Latur.
 2. Vipulkumar Govindrao Diwan,
Age : 37 years, Occupation Service,
(as Dental Surgeon, Rural Health
& Training Centre, Paithan),
R/o. Flat No. 8, G Wing,
Sara Harmony, Kanchanwadi,
Aurangabad.
- ... PETITIONERS

VERSUS

1. The State of Maharashtra
Through its Secretary,
Medical Education and Drugs
Department, M.S., Mantralaya,
Mumbai - 32.
 2. The Commissioner and Competent
Authority, State CET Cell,
M.S., Mumbai.
 3. The Director of Medical Education
& Research, Mumbai.
 4. The Dean,
Government Medical College,
Latur.
 5. The Dean,
Government Medical College,
Aurangabad.
- ... RESPONDENTS.

Mr. Avinash S. Deshmukh, Advocate for petitioners.
Mr. S.Y. Mahajan, AGP for respondents.

**CORAM : R.M. BORDE &
K.K. SONAWANE, JJ.**

DATE : 18th April, 2018.

ORAL JUDGMENT [PER R.M. BORDE,J.]:-

Heard. Rule. With the consent of parties, the petition is taken up for final hearing at admission stage.

2] The petitioners are objecting to the decision of the respondent admission authorities thereby holding them ineligible to secure admission to the post graduate course as against in-service quota, on the ground that the petitioners do not possess post-confirmation experience of 3 years, as required under para. 2 of Govt. Resolution dated 4.12.2017.

3] Rule 8.14.1 of NEET (MDS) 2018 Rules, provides that in-service candidates opting for in-service quota reservation should have obtained minimum required percentile marks in NEET (MDS) 2018. They should also fulfill the eligibility criteria as per the provisions mentioned in Govt. Resolutions dated 4.12.2017 and 29.1.2018 and any other Government Resolution issued in that regard from time to time. Rule 8.14.4 provides that in service candidates will also be covered by the relevant general eligibility criteria.

4] It is an admitted fact that the names of the petitioners appear at Sr.No.82 and 980, respectively in the State Merit List prepared by the respondents for the purposes of admitting candidates for the Post Graduate Courses. The second paragraph of the Government Resolution dated 4.12.2017, provides for the eligibility criteria and it is prescribed that a candidate having experience of 3 years service in the Government Dental Colleges and hospitals, Government Medical Colleges and Hospitals and on the establishments under the Health Services as Dental Surgeon, would be considered eligible for securing admission to Post Graduate Courses as in-service candidate.

5] It is the contention of the respondents that the petitioners do not have 3 years post-confirmation experience for being eligible for admission to post graduate courses. The analogy adopted by the respondents is clearly outside the Government Resolution dated 4.12.2017. It is nowhere provided in the aforesaid Government Resolution that the candidates securing admission for Post Graduate courses as in-service candidates shall have 3 years post-confirmation experience. Even otherwise, the analogy adopted by the respondents is quite illegal and amounts to misreading of the Government Policy. In the instant matter, the petitioners do possess 3 years experience as Dental Surgeons. It is not a matter of dispute that, initially, the petitioners were appointed on temporary basis by virtue of Government Resolution dated 15th June, 2017. The services of the petitioners came to be confirmed, however, it was provided in the Government Resolution that the petitioners would not be entitled to claim monetary and service benefits, retrospectively. The aforesaid condition also appears to have been removed by virtue of Government Resolution dated 13.11.2017. The State Government has adopted the policy to condone the break in service of employees who have been confirmed. The past service of the petitioners on temporary basis has been considered valid for grant of annual increments and Earned Leave.

6] The contention of the respondents appears to be that since the petitioners have not been held eligible to claim monetary and service benefits in respect of past service, they are not entitled to claim eligibility for securing admission to post graduate courses as in service candidates. The Government Resolution dated 15.6.2017, dis-entitles the petitioners to claim service and monetary benefits, which restriction also appears to have been partly relaxed by subsequent Government Resolution dated 13th November 2017. The benefits in respect of higher education, have not been, and cannot be denied to the petitioners. The petitioners do fulfill the eligibility criteria provided under the Government Resolution dated 4th

December, 2017, which also deserves to be considered in view of Rule 8.14.1 prescribing the eligibility condition for in-service candidates provided under NEET-MDS 2018 Rules.

7] The analogy adopted for holding petitioners in-eligible for securing admission to post graduate courses as in service candidates, is erroneous and concluded upon misreading of the Government Resolution dated 15th June, 2017 and NEET-MDS 2018 Rules read with Government Resolution dated 4th December, 2017. Consequently, the adverse decision taken by the admission authorities holding the petitioners in-eligible to secure admission as in-service candidates is erroneous and deserves to be quashed and set aside. Same is accordingly quashed and set aside. The petitioners shall be considered eligible to secure admission to Post Graduate Courses as in-service candidates. Their claim for admission should be considered in accordance with the relevant Rules.

8] Rule is made absolute in above terms. Writ petition is accordingly allowed and disposed of. No costs.

[K.K.SONAWANE, J]

[R.M. BORDE, J]

grt/-