

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3035 OF 2019

Ojas Devendra Shah	..	Petitioner
Versus		
State of Maharashtra & Ors.	..	Respondents

WITH

CIVIL APPLICATION NO.646 OF 2019

Dr. Ramnath Dattu Andhale	..	Applicant
Versus		
State of Maharashtra & Ors.	..	Respondents

WITH

WRIT PETITION ST.NO.7486 OF 2019

Yash Bijender Sabarwal & Ors.	..	Petitioners
Versus		
State of Maharashtra & Ors.	..	Respondents

WITH

WRIT PETITION ST.NO.7648 OF 2019

Astha Rajeev Singh & Ors.	..	Petitioners
Versus		
State of Maharashtra & Ors.	..	Respondents

WITH

WRIT PETITION NO.2572 OF 2019

Digvijay Narendra Patil & Ors.	..	Petitioners
Versus		
State of Maharashtra & Ors.	..	Respondents

Mr. V.M.Thorat with Anukul Seth I/b. M.V.Thortat for the petitioners in all petitions

Mr. S.A.Rajeshirke for the applicant in C.A.646 of 2019

Mr. S.B.Kalel, AGP with Mrs. S.D.Vyas "B" Panel Counsel for respondents – State in all petitions

Mr. R.A.Rodrigues for respondent No.3, CET in all petitions.

CORAM : B.R.GAVAI &
DAMA SESHADRI NAIDU, JJ.

DATE : 13th March 2019.

ORAL ORDER:- (PER GAVAI, J)

Heard. Leave to amend. Amendments be carried out during the course of the day.

2] Rule. Rule made returnable forthwith. Heard by consent.

3] The petitioner in effect challenges the Government Resolution dated 24th November 2017 and the consequent clauses Nos. 8.13 and 8.17.6 of the information brochure published by the respondent No.1 prescribing the admissions for the post of graduate courses for medical colleges under the management of Government

as well as Corporation.

4] The facts in brief giving rise to the present petitions are thus:-

The petitioners have taken admissions for M.B.B.S. course for the period between 1st November 2011 till 24th November 2017.

5] The State Government has been prescribing various terms and conditions for submitting the bond for the students who have undertaken their studies in the Government/ Corporation colleges and also prescribing the bonds to be forfeited on failure of students in performing their duties in the Government / Corporation hospitals for the bond period.

6] Vide another Government Resolution dated 8th February 2008, the State Government made provisions for making compulsory the conditions of furnishing a bond for the students who had taken admission in the Government and Corporation colleges

and dental colleges stating that after completion of their M.B.B.S. and B.D.S. course, the candidate would be required to render one year service in the Government/ Corporation / defence service establishments. It will be relevant to refer to clause 1 and clause 3 of the said G.R. The true translated version thereof reads as under:-

“1.1 Candidates who took degree on studying MBBS or BDS course in government/municipal corporation medical or dental college are required to complete one-year service of government/local body /security force immediately thereon. If candidate denied to carry such government service or avoided for any reason, penalty shall be recovered to extent of Rs.5 lakh (Rupees five lakh only) for student admitted in educational year 2004-05 to 2007-08 and rupees 10 lakh (Rupees ten lakh only) for student admitting from educational year 2008-09.

1.2. Action should be taken as per serial number-6 of the Government Resolution dated 31 July, 2006 mentioned in course of giving such appointment to candidate after completing degree course.

1.3. One-year service condition is exempted as per government resolution dated 31 July, 2006 in the context of candidates who joined the post graduate course.

2.1. Students who have obtained post graduate

degree / post graduate diploma taking the education of M.D. / M.S. / Post Graduate Diploma from Government / Municipal Medical and Dental College are required to complete one-year service of government / local body / defense force. If any candidate denies to complete government service or defaults due any reason, the fine will be recorded to extent of Rs.15 lakh (In words Fifteen Lakh) from him.

2.2 List of remaining candidates shall be submitted with director, health services on filling posts vacant at director, medical education to appoint candidate on completing post graduate course.

2.3. 1 year service condition under 2(1) above is exempted for candidate joined super specialty course.

3.1 Candidate who obtained super specialty degree studying super specialty diploma course in government/municipal medical or dental college is required to do two years' service for government/ local body /security force. Rs.25 lakh (Rupees twenty-five lakh only) shall be recovered for penalty from him, if candidate denied to do such government service or if avoided for any reason.

3.2. List of remaining candidates shall be submitted with director, health services on filling vacant post at director, medical education to appoint candidate as mentioned in above 3(1) on completing super specialty diploma/degree course."

7] A perusal of the said G.R. would thus reveal that if the candidate who has undertaken studies in the medical colleges under the management of State Government or Corporation fails to render service in Government/ Corporation and defence establishments, then, a penalty would be recovered from such candidates who have taken admission for the academic year 2004-05 to 2007-08 at Rs.5 lakhs and Rs.10 lakhs for the candidates who have taken admission for academic years 2008 on wards.

8] Clause 3 thereof reveals that such of the candidates who have taken admission for P.G. course prior to 31st July 2006, in their case, the condition of one year's compulsory service shall stand relaxed.

9] Vide another G.R. dated 1st November 2011, the State Government again provided for eligibility criteria for entrance examination for P.G. medical seats for 2013. It would be relevant to refer to clauses 1, 2 and 7 of the said notification. They read thus:-

“(1) Candidate will be allowed to appear for PGM-CET only twice – first time for the examination conducted before the date of internship completion and second time for the examination conducted after the completion of mandatory internship period.

(2) Being eligible and allowed for two attempts as above, if candidate does not take admission to a postgraduate course, he or she will have to complete the Bond Service before taking subsequent attempts of PGM-CET.

(7) Candidate will be allowed to appear for PGM-CET only twice – first time for the examination conducted before the date of internship completion and second time for the examination conducted after the completion of mandatory internship period. While counting the attempts whether the candidate actually appeared for the examination or not, will not be taken into consideration.”

10] It could be thus seen that a candidate would be allowed to appear for P.G.Medical CET only twice; first after examination conducted before the date of internship and second time after the completion of mandatory internship period. Clause 2 further provides that after being eligible and allowed for two attempts as provided for in clause 1, if the candidate does not take admission for P.G. course, he or she will have to complete bond service before taking subsequent admission for P.G.Medical CET. It further

provides that the candidate would be allowed to appear for P.G. Medical CET only twice i.e. for the first time after the examination conducted before the date of internship and second time after the mandatory period of internship is over. It further provides that while counting the number of attempts, whether the candidate actually appeared or not will not be taken into consideration.

11] The position continued to exist from 1st November 2011 till 12th October 2017. Vide G.R. dated 12th October 2017, the Government again changed the condition. It will be relevant to refer to Clauses A, B, C and D of the said G.R. A true translation of the same reads as under:-

a]. In addition to completing bonded service of government in prescribed period after completing M.B.B.S.Course from Government / Municipal Medical College, such candidates will not be able to be decided as eligible for admission of MD / MS / Postgraduate courses.

b] In addition to completing bonded service of government in prescribed period by the candidate who completed post graduate degree / diploma course from Government / Municipal Medical College has not completed, such candidate cannot be decided eligible for admission of Super Specialty Course.

c] Students completing Super Specialty Course from Government / Municipal College will be bound to complete bonded service of government for 2 years period.

d] The said policy will be applicable since admissions in educational year 2018-19 of medical and dental post graduate and super specialty course. Hence, the aspiring Candidates for admission of post graduate or super specialty courses in 2018-19 will be required to complete government's bonded service before admission only.

12] It could thus be seen that for the first time on 12th October 2017, the Government has changed the condition as prescribed in Government Notification dated 1st November 2011 provided that unless the candidates who have passed their MBBS from Government/ Corporation colleges, complete their bonded service, they would not be entitled to apply for M.D./ MS/P.G. Diploma course. It further provides that insofar as the candidates who have completed their P.G. degree/ diploma from such colleges, they would not be entitled for admission to the super-speciality course. It further provides that such of the candidates who complete their super speciality course from the Government and Corporation colleges, they would be required to complete bonded service of two years in the Government institution. Clause D provides that the said

policy would be applicable for the P.G. as well as Super Speciality courses from the academic years 2018-19.

12] It appears that the students who had passed their examination in the academic year 2018-19, made representation to Government and, therefore, the Government vide notification dated 24th November 2017, issued a corrigendum to the G.R. dated 12th October 2017. It reads thus:-

“d. The said policy will be applicable since admissions in educational year 2019-20 of medical and dental post graduate and super specialty course. Hence, the aspiring Candidates for admission of post graduate or super specialty courses in 2019-20 will be required to complete government's bonded service before admission only.”

13] It would thus be seen that though the change of policy is effected from 12th October 2017, the State Government has by G.R. dated 24th January 2017, exempted the students who have been admitted in academic years 2018-19 and made it applicable from the year 2019-20.

14] Subsequently, the Government also issued a brochure

thereby prescribing the procedure for admission to the P.G.course. It will be relevant to refer to clause 8.13. It could thus be seen that the said clause has been inserted in the brchure only in order to give effect to the G.R. dated 17th October 2017.

15] In this background, the petitioners have approached this court contending that their admissions for the P.G. course could be governed only by the rules as were existing at the time of their admission for under graduate course. It is submitted that by change of rules in the year 2017, the Government cannot make applicable the change in policy which was in vogue for the students who have taken admission since 2011. The petition is vehemently opposed by Mr. Rajeshirke, learned Counsel who seeks to intervene on behalf of some students who have completed bond and Mr. Kalel and Mrs.Smt. Palsule-desai, learned AGP for State.

16] It is submitted that the change in policy has been effected since it was found that in the hospitals run by State Government in the rural, tribal and remote areas, qualified Doctors are not available. It is, therefore, subitted that in order to make

available the services of Doctors, it has been decided that the candidates passing MBBS examination will first have to complete the bonded service of one year and only then he would be made /considered eligible to apply for P.G. course.

17] At the outset, we would like to state that the scope of our interference while exercising the powers under Article 226 of the Constitution of India, is very limited, unless the policy is found to be arbitrary, unreasonable, irrational or made in order to suit a particular class.

18] No doubt that the change in policy made by the State Government of making it compulsory for medical student who has graduated from Government colleges or Corporation Colleges to serve in the Government or Corporation hospitals for a period of one year is a laudable policy. However, in the present matter we are not called upon to consider as to whether the said policy withstands the test of Article 14 of the Constitution or not. The only question that we are called upon to answer is, as to whether the candidate who has taken admission to the MBBS course between 1st November

2011 till 12th October 2017, can be subjected to a change of policy which has been effected for the first time on 12th October 2017.

19] The policy as was in existence on the basis of 2018 circular as well as 2011 notification, prescribed a candidate to furnish a bond of Rs.5 lakhs for the students who has taken admission between 2004-05 and 2007-08 and a bond of Rs.10 lakhs for students who have taken admission after 2008-9 till 2017-18. The clause further provides that provisions of the said G.R. dated 8th February 2008 exempted such students who have taken admission for P.G. course prior to 31st July 2006. Rightly understanding that even the provisions of the G.R. dated 8th February 2018 could not have been made applicable retrospectively, the State Government exempted the class of students who had taken admission for P.G. course. The policy undergone further change by G.R. dated 1st November 2011, which provided that a candidate who has passed MBBS or BDS degree from Government/ Corporation Medical colleges, will be entitled to appear for P.G.M. CET examination only twice. It provided that the first of such attempt would be permitted prior to the completion of internship and second such attempt would

be permitted immediately after completion of mandatory internship period. It further provides that if a candidate is eligible and allowed for two attempts and does not take admission to P.G. course, he /she will have to complete bond service before taken subsequent attempt of P.G.M C.E.T.. Clause 7 provides that the Candidate will be allowed to appear for C.E.T. only twice. It further provides that if whilst counting number of attempts whether the candidate actually appeared for examination or not will not be taken into consideration.

20] It would thus be seen that the effect of conjoined reading of various clauses in 2011 notification is very clear. The candidate who passed his MBBS/ BDS degree from a Government/ Corporation medical college would be entitled to two chances for appearing for the PGM CET. First chance would be during internship period and second chance would be immediately after completion of internship period. It is further provided that if a candidate who, after completion of internship period, is entitled to appear for the first examination conducted thereafter, but for some reason choose not to appear, then, such non appearance will also be taken into account as exhausted chance. For example if a

candidate completes his internship period in December 2016 and immediate examination is available in March 2017 but if he chooses not to appear for the said exam, then, the second chance will be deemed to be exhausted and he will have no other alternative but to complete bond service before he again becomes entitled to participate in PGM CET.

21] The policy which was in vogue from 1st November 2011 has been now sought to be changed for the first time on 12th October 2017. By this change in policy it is now made mandatory that a candidate would not be entitled to appear for PGM CET unless he completes the bonded service. No doubt, that as observed hereinabove, no fault can be found with the policy since it is being effected in order to provide service in the Government- run hospitals in rural and tribal areas. However, the candidates who had taken admission between 1st November 2011 to 12th October 2017, will have to be governed by the policy which was in existence during that period. The candidates have taken admission during this period on the basis that their admission for P.G. course would be governed by 2011 notification. It will be relevant to refer to the judgement of

Apex Court in the case of **Dr. Dinesh Kumar and Ors. Vs. Motilal Nehru Medical College, Allahabad and Ors., reported in (1985) 3 S.C.C. 22.**

22] It could thus be seen that authorities cannot change and apply the Rules retrospectively to the detriment of students who have proceeded to take up their career on the basis of the rules existing on the date of admission. It could thus be seen that though we do not find any reason to interfere with the policy, we are of the considered view that making the policy applicable retrospectively to the students who have taken admission before 12th October 2017, would not be sustainable in law. It could further be seen that the Government itself realising that such a change would not be possible to applicable retrospectively, has issued a corrigendum on 27th November 2017 making the change applicable from academic year 2019-20. Apart from that it is to be noted that such of the candidates who would be entitled to be admitted for P.G.course from Government/ Corporation colleges would also be required to furnish bond for rendering service in Government hospitals. Even in the understanding of petitioners, after completion of their super

speciality course they will be required to complete three years service in the Government colleges i.e. one year towards their bond for the under graduate course and one year for their admission to the P.G. course and one year for super speciality course. Even insofar as candidates who have been admitted between November 2011 to 12th October 2017, even if they undertake their P.G. studies in the Government colleges, they will be required to render two years Government service one year on account of bond for P.G. course and one year on account for under graduate course.

23] In that view of the matter, we find that the petitions deserve to be allowed. We, therefore, hold and declare that the G.R. dated 12th October 2017 and consequent rules i.e. 8.13 and 8.17.6 which require the candidate who has taken admission between 1st November 2011 and 12th October 2017 to compulsorily discharge bond for a period of one year, would not be applicable to such of the students who have taken admission for P.G. course between 1st November 2011 till 12th October 2017. We clarify such condition would be applicable to all such candidates who have taken admission for their undergraduate course after 12th October 2017.

24] Needless to state that the civil application stands disposed of in view of disposal of these petitions.

(DAMA SESHADRI NAIDU, J)

(B.R.GAVAI, J)