

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

WRIT PETITION NO.4091 OF 2018

Dr. Umakant S. Marawar ... Petitioner

Vs

Union of India and Ors. ... Respondents

WITH

WRIT PETITION NO.2880 OF 2019

Imtiyaz Mahiboob Bagwan ...Petitioner

Vs

The State of Maharashtra & Ors. ..Respondents

WITH

WRIT PETITION NO.3902 OF 2018

Dr. Abhijit Bhimrao Charthal and Ors. ...Petitioners

Vs.

Union of India,
Through the Secretary and Ors. ...Respondents

WITH

WRIT PETITION (ST) NO.11157 OF 2018

Dr. Sachin Uttamrao Raut ...Petitioner

Vs.

Union of India,
Through the Secretary and Ors. ...Respondents

...

Mr. V.M.Thorat with Ms. Pooja V Thorat, Mr. Anukul Seth I/by Mr. M.V.Thorat for the Petitioners.

Mr. Y.R.Mishra with Mr. N.R.Prajapati for the Respondent No.1.

Mr. S.B.Kalel, AGP for State in WP 4091 of 2018.

Mr. V.M.Mali, AGP for the State in WP 2880/19.

Mr. S.S.Panchpor, AGP for State in WP 3902/18.

Mrs. S.D.Vyas- 'B' Panel counsel for Respondent-State in WPST/11157/2018.

Mr. Rui A. Rodrigues with Mr. Dushyant Kumar advocate for Respondent-State CET CELL.

CORAM : B.R.GAVAI &
SANDEEP K. SHINDE JJ.
DATE : 12 MARCH, 2019

P.C. :

Rule. Rule made returnable forthwith.

2 Petitioners have approached this Court praying for direction to the Respondent-State to notify the areas which constitute as rural areas within the State of Maharashtra.

3 The Petitioners have approached this Court with a limited prayer that though the Union of India vide Notification dated 5th April, 2018 has notified Postgraduate Medical Education Amendment Regulations, 2018 and as per proviso to

sub-clause 9(4) of the said Regulations candidates who have rendered services in remote/difficult/rural areas are entitled to addition of certain percentage of marks to the marks obtained by them in the National Eligibility test since the Government has not issued Notification, students would be deprived of the said benefit.

4 Petitioners-Students claim that they have rendered services in rural areas and as such, they are entitled to benefit of additional marks.

5 It would be relevant to refer to Clause 4 of the said Notification which reads thus:

“(4) The reservation of seats in Medical College/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 Postgraduate Courses from the said merit lists only.

Provided that in determining the merits 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 upto 10% the marks obtained for each year of service in remote and/or difficult areas or Rural areas upto maximum of 30% of the marks obtained in National Eligibility-cum Entrance Test. The remote and/or difficult areas or Rural areas shall be notified by State Government/Competent authority from time to time.”

Proviso thereto clearly reveals that while determining the merits of the students who are in the service of the Government, additional weightage upto 30% marks given proportionate to the services rendered by the candidates in remote/difficult/rural areas. However, such areas are required to be notified by the State Government.

6 In Writ Petition No.3902 of 2018 the Division Bench of this Court vide order dated 26th April, 2018 had directed the State Government to complete exercise of notifying rural areas. However, almost period of one year has lapsed but the State has not yet notified the said areas.

7 Today, an affidavit is filed by Kiran Wahul, Deputy Secretary, Public Health Department, Mantralaya, Mumbai stating therein thus:

“2 I humbly say and submit that, the report of Dr. Doke Committee, guidelines for Post-Graduation admission to identify and redefine rural, remote/difficult areas was received on 08.03.2019 to the competent authority i.e. the respondent no.1 along with necessary document from Respondent No.2 i.e. Director, Health Service.

3 The State Government will issue Government Resolution defining rural areas, remote areas and difficult areas as per the regulation amended by the Medical Council of India on 05.04.2018 subject to approval of Election Commission of India, since the Model Code of Conduct is in place.”

8 It would be thus clear that now the entire material on the basis of the report of the expert is very much available with the State Government. What is now required to be done by the State is only issuance of Notification, thereby identifying the rural, remote and difficult areas, in respect of which services rendered would be entitled to additional weightage.

9 The learned AGP has placed on record affidavit stating therein that the State Government would issue Notification in that regard, subject to Rider that the same shall subject to taking prior approval of the Election Commission of India since Model Code of Conduct is in place.

10 We do not find that present issue has nothing to do with the election. It is not as if any policy decision is required to be taken by the State Government. What the State Government is required to do is only to complete exercise in accordance with the proviso to Clause 4 of Regulation 9 of the aforesaid Regulation.

11 In that view of the matter, we find that it will be just and necessary in the interest of justice to direct the State Government to immediately issue Notification in accordance with proviso to sub-clause (4) of Clause 9 of the Regulations.

12 The State Government is, therefore, directed to issue Notification notifying the rural, remote and difficult areas as provided under Sub-clause (4) of Clause 9 of the said Regulations. The same shall be done within a period of one week from today.

13 The counselling process for admission including verification of documents shall proceed.

14 However, all the candidates from this service category who are entitled to such weightage shall be given such weightage, in the event, Petitioners are found entitled to additional weightage in accordance with Sub-clause (4) of Clause 9 of the said Regulations such weightage shall be given prior to finalising admission.

15 Rule made absolute in the aforesaid terms with no order as to costs.

(SANDEEP K. SHINDE, J.)

(B.R.GAVAI, J.)