

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision:01.07.2019.

W.P.(C) 2987/2017

SITANTA DAS

..... Petitioner

Through: Mr. Pardeep Dahiya, Advocate.

versus

GOVT OF NCT OF DELHI AND ORS

..... Respondents

Through: Mr. Sanjay Ghose, ASC for
GNCTD with Ms. Urvi Mohan,
Advocate.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT (ORAL)

ANU MALHOTRA, J.

1. Learned Standing Counsel for GNCT of Delhi is present for the sole respondent, in as much as vide order dated 10.04.2018, the respondent nos.2 to 4 have been deleted from the array of parties and vide order dated 13.04.2017, it is also indicated that the prayer made through the present petition is now confined to prayer clause (ii) made in the present petition, which reads to the effect:-

“(ii) Issue a writ of Mandamus directing the respondent No.1 to consider as RTRM Hospital, Village Jaffarpur Kalan as (a) Hospital in ‘remote/difficult’ areas as contemplated in Regulation 9(VII) of the Post Graduate Medical Education Regulation, 2000”

with it having been observed to the effect that the petitioner would be at liberty to file a fresh petition in terms of prayer clause 1, 3 & 4 thereof, which read to the effect:-

“(i) Issue a writ of Mandamus directing the respondent No.1 to make rule/provision for reservation of 50% of the seats in Post Graduate Diploma Courses for Medical Officers in the Government service in its affiliated colleges as per Clause VII of Regulation 9 of MCI 2000 Regulations;

(iii) Issue a writ of Mandamus directing the respondent Nos. 2 and 3 to consider the petitioner’s candidature for counselling of Post Graduate Diploma Courses in NEET-PG 2017 towards 50% of the seats in Post Graduate Diploma Courses so reserved as prayed in prayer (i) for Medical Officers in the Government service without insisting on the condition of passing MBBS from University of Delhi or Guru Gobind Singh Indraprastha University and give relaxation as per the proviso of Clause III of Regulation 9 of MCI 2000 Regulations;

(iv) Issue a writ of Mandamus directing the respondent Nos.2 and 3 to grant weightage in the marks obtained by petitioner in NEET-PG 2017 as an incentive at the rate 30% of the marks obtained in National Eligibility-cum-Entrance Test as per Clause IV of Regulation 9 of MCI 2000 Regulations;”,

in the event of the petitioner being successful in the present petition.

2. The petitioner is a senior Medical Officer of the Govt. of NCT of Delhi and at the time of filing of the petition was working with the Rao Tula Ram Memorial Hospital at Village Jaffarpur since the year 2002. The petitioner has acquired his MBBS degree from VSS Medical College, Sambalpur University, Odisha. The petitioner seeks to submit that he seeks to be selected for the Post-Graduate course in terms of Regulation 9 of the MCI Regulations, 2000 with reference to notification No. MCI-18(1)/2010- Mad/62052 dated 15.02.2012, which notification Regulation 9 provides to the effect:-

"9. Procedure for selection of candidate for Postgraduate courses shall be as follows:

I. There shall be a single eligibility cum entrance examination namely 'National Eligibility-cum-Entrance Test for admission to Postgraduate Medical Courses' in each academic year. The superintendence, direction and control of National Eligibility cum-Entrance Test shall vest with National Board of Examinations under overall supervision of the Ministry of Health & Family Welfare, Government of India"]

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III. In order to be eligible for admission to any postgraduate course in a particular academic year, it shall be necessary for a candidate to obtain minimum of marks at 50th percentile in 'National Eligibility-cum-Entrance Test for Postgraduate courses' held for the said academic year. However, in respect of candidates belonging to Scheduled Castes, Scheduled Tribes, Other Backward Classes, the minimum marks shall be at 40th percentile. In respect of candidates as provided in clause 9(11) above with locomotory

disability of lower limbs, the minimum marks shall be at 45th percentile. The percentile shall be determined on the basis of highest marks secured in the All-India common merit list in 'National Eligibility-cum-Entrance Test' for Postgraduate courses:

[Provided when sufficient number of candidates in the respective categories fail to secure minimum marks as prescribed in National Eligibility cum-Entrance Test held for any academic year for admission to Post Graduate Courses, the Central Government in consultation with Medical Council of India may at its discretion lower the minimum marks required for admission to Post Graduate Course for candidates belonging to respective categories and marks so lowered by the Central Government shall be applicable for the said academic year only.

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 candidate 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:

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.

V. No candidate who has failed to obtained the minimum eligibility marks as prescribed in sub-clause (II) shall be admitted to any Postgraduate courses in the said academic year.

VI. In non-Governmental medical colleges/institutions, 50% (Fifty Per cent) of the total seats shall be filled by State Government or the Authority appointed by them, and the remaining 50% (Fifty Per Cent) of the seats shall be filled by the concerned medical colleges/institutions on the basis of the merit list prepared as per the marks obtained in National Eligibility-cum/Entrance Test.

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.”

and the petitioner thus submits that in view of the Clause VII of the Regulation 9 of the MCI Regulations, 2000, 50% of the seats in the Post Graduate Diploma Courses have to be reserved for Medical Officers in the Government service, who have served for at least three years in remote and/or difficult areas with the condition that 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.

3. The petitioner has submitted that the grant of incentive marks to in-service candidates and 50% reservation in Post Graduate Diploma courses for them has been upheld by the Hon'ble Supreme Court in the case of ***“State of U.P. & Ors. Vs. Dr. Dinesh Singh Chauhan”***, Civil Appeal no.8047/2016 decided vide judgment dated 16.08.2016, whereby the Hon'ble Supreme Court considered the purpose behind the incentive and the reservation, which had been introduced to address the deficiency and lack of response to serve in remote or difficult areas in the State.

4. It is essential to observe that the verdict in the case of ***“State of U.P. & Ors. Vs. Dr. Dinesh Singh Chauhan”*** (supra) relied upon on behalf of the petitioner, had been referred vide the order dated 13.04.2018 of the Hon'ble Supreme Court in ***“Tamil Nadu Medical Officers' Association & Ors. Vs. Union of India & Ors.”*** to the larger Bench of the Hon'ble Supreme Court.

5. The larger Bench of the Hon'ble Supreme Court in W.P.(C) No.196/2018 qua I.A. No.33686/2018 has reiterated that the decision in ***Dinesh Singh Chauhan*** (supra) holds the field, with it having been observed vide para 14 thereof, which read to the effect:-

“14. The decision in Dinesh Singh Chauhan holds the field. It is based on a construction of Regulation 9(IV) which, at least at the present stage, cannot be brushed aside. The principle which has been adopted in that decision is consistent with the primacy which is attributed by the Constitution to Entry 66 of List I. This is the clear intendment of the words “subject to” in Entry 25 of List III. The grant of any interim relief

at the present stage would amount to a mandatory final order which cannot be countenanced. MCI has, as an expert body, proceeded on a principled basis. Any attempt at this stage to read into Regulation 9(IV), a separate source of entry or a reservation for in-service candidates in degree courses would impinge upon Entry 66 of List I and the exercise of regulatory powers under the central statute.”

6. In view thereof, in view of the verdict of the Hon’ble Larger Bench of the Supreme Court in *“Tamil Nadu Medical Officers’ Association & Ors. Vs. Union of India & Ors.”* (supra), in view of observations in para 22 of the verdict of the Hon’ble Supreme Court in *“State of U.P. & Ors. Vs. Dr. Dinesh Singh Chauhan”* (supra), which read to the effect:-

“22. From the plain language of this proviso, it is amply clear that it does not envisage reservation for in-service candidates in respect of Post-Graduate “Degree” Courses with which we are presently concerned. This proviso postulates giving weightage of marks to “specified in-service candidates” who have worked in notified remote and/or difficult areas in the State- both for Post Graduate “Degree” Courses as also for Post Graduate “Diploma” Courses. Further, the weightage of marks so allotted is required to be reckoned while preparing the merit list of candidates.”

(emphasis supplied),

it is apparent that those working in the notified remote and/or difficult areas in the State are to be considered for the Post Graduate Degree Courses as well as for the Post Graduate Diploma Courses being

conducted by the MCI. It has been submitted by the petitioner that the petitioner has received a letter dated 07.03.2017 from the University of Delhi informing him that his request had been examined and could not be acceded to since the reservation and relaxation in admission in Post Graduate Diploma courses in lieu of services rendered in remote/rural area are not covered under the prevailing rules and regulations and that the University of Delhi has not received any notification from the regulatory bodies or Ministry of Health and Family Welfare, Govt. of India in this regard.

7. It is essential to observe that in terms of Regulation 9(1)(b) of the MCI Regulations, 2000, which read to the effect:-

“9. SELECTION OF POST GRADUATE STUDENTS.

....

....

(b) 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 difficult areas. After acquiring the PG Diploma, the Medical Officers shall serve for two more years in remote and/or difficult areas.”,

it is further stated that in Regulation 9(1)(b) after the words remote and/or difficult areas and in the proviso to the Clause 9(2)(d), the following shall be inserted in terms of notification published on 16.04.2010 and what has been inserted is to the effect:-

“As decided by the competent State authorities from time to time.”

8. It is significant that through the counter affidavit dated 11.04.2018 submitted as a short affidavit of the then Deputy Secretary of the Department of Health and Family Welfare, GNCT of Delhi, it has been stated therein that the Department of Health and Family Welfare, GNCT of Delhi had issued a letter dated 06.04.2018 bearing no. F.48/P& R/2017/H&FW/4032 to the Divisional Commissioner (Secretary Revenue), requesting to confirm/clarify whether the said Rao Tula Ram Memorial Hospital may be considered to be a hospital located in a remote/ difficult area, and the response to the same is currently awaited, which is stated to be the present status as well.

10. Through the rejoinder to the counter affidavit it has *inter alia* been submitted by the petitioner that the respondent must lay down objective criteria to determine the hard or difficult areas and then the SDM should consider whether the Rao Tula Ram Memorial Hospital falls under the hard or difficult areas.

11. It is apparent in view of the pleading on the record and also in terms of the Medical Council of India Post Graduate Medical and Education Regulations 2000 and the stipulations in Regulation 9(1)(a)(b) thereof and the insertion to the said notification as made on 16.04.2010 that the determination of the remote and/or difficult areas in terms of Clause 9(1)(b) of the Regulations 2000 of the MCI has to be decided by the Competent State Authorities from time to time.

12. As apparently, as submitted on behalf of the respondent by the learned Standing Counsel that there exists as of date no determination by the Govt. of NCT of Delhi and the remote and/or difficult areas qua clause 9(1)(b) of the MCI Regulations, 2000, it is apparent that the same which has been published and notified on 16.04.2010 needs to be determined expeditiously with an endeavour being made that the said determination of the remote and/or difficult areas is made by the Govt. of NCT of Delhi within a period of six months from today especially in view of the verdict of the Hon'ble Supreme Court in *Dinesh Singh* (supra) upheld in "*Tamil Nadu Medical Officers' Association & Ors. Vs. Union of India & Ors.*" (supra) vide verdict dated 24.04.2018.

13. After such determination, the petitioner may seek redressal, if any, in accordance with law.

14. The petition is disposed of accordingly.

ANU MALHOTRA, J

JULY 1st, 2019/NC