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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 940 of 2020**

Dr. Richa Nayak, daughter of Shri J.R.Nayak, aged about 26 years, resident of HD-40, Phase II, Kabir Nagar, Raipur, Tahsil and District Raipur, Chhattisgarh.

---- Petitioner**Versus**

1. State of Chhattisgarh, through the Secretary, Health & Family Welfare Department, Mahanadi Bhawan, Mantralaya, Atal Nagar, Mantralaya, Nawa Raipur, Chhattisgarh.
2. The Director, Directorate of Medical Education, Old Nurses Hospital, DKS Bhawan Praisar, Raipur, District Raipur, Chhattisgarh.
3. The Director, Directorate of Health Services, Indravati Bhawan, Capital Complex, Nawa Raipur, Chhattisgarh.
4. The Medical Council of India, through its Chairman, Pocket - 14, Phase I, Sector 8, Dwarika, New Delhi.

---- Respondents

For Petitioner	: Shri H.S.Patel, Advocate.
For State/Respondent No. 1 to 3	: Shri Vikram sharma, Deputy Govt. Advocate.
For Respondent No. 4/MCI	: Shri R.S.Marhas, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****Order on Board****P.R. Ramachandra Menon, Chief Justice****17.03.2020**

1. The Petitioner has moved this Court with the following prayers:

"10.1 To issue an appropriate writ or order and declare that the action on the part of the respondents by not allowing the petitioner to fill form and thereby denying to participate in admission process of post graduate medical courses for State of Chhattisgarh is bad in law and also to declare that eligibility criterion mention, which has not been declared unconstitutional by this Hon'ble Court in WP(C) No. 1338/2019 is valid and effective in eyes of law.

10.2 To issue an appropriate writ or order and direct the respondents to allow the petitioner to participate in the

admission process for seats of Post Graduate Medical Courses in the State of Chhattisgarh for year 2020 and to allow the petitioner to fill the form in the interest of justice.

10.3 Any other relief/reliefs which may deem fit and proper in the facts and circumstances of the case, may also be allowed."

2. The sum and substance of the case, as projected by the learned counsel for the Petitioner is that admission to Medical PG course can be aspired in terms of the Chhattisgarh Medical Post Graduate Entrance Rules, 2018 which provides 50% seats under the State Quota (with reference to Rule 4 of the said Rules). As per the said Rule, only those candidates who were having domicile of the State of Chhattisgarh (except the in-service candidates) or who have done the MBBS degree from the Medical Colleges situated in the State of Chhattisgarh are entitled to be treated under the State Quota.
3. The case of the Petitioner is that she has done her MBBS outside the State, but she happens to be of the domicile of the State of Chhattisgarh. This being the position, though the relevant rule i.e. Rule 4(b) of the Rules has been struck down as unconstitutional by a Division Bench of this Court as per Annexure P/5 judgment, since the Rule, as it originally stood, clearly exempted in-service candidate, it cannot have any adverse consequence as far as the admission to the Medical PG course for the Petitioner is concerned, and hence the writ petition.
4. We heard Shri H.S. Patel, the learned counsel for the Petitioner, Shri Vikram Sharma, the learned Deputy Government Advocate representing the State and Shri R.S.Marhas, the learned Standing Counsel for the Medical Council of India.
5. Shri Vikram Sharma, the learned counsel representing the State points out that the Petitioner does not have any *locus standi* to file this writ petition as she is not a candidate who can be considered under the State Quota, being employed elsewhere.

6. With reference to the additional documents produced alongwith the covering memo dated 17.03.2020, the learned counsel for the Petitioner points out that as borne by the appointment order bearing No. 10/01/2019/admin/1714, dated 23.11.2019 she has been appointed to the post of Junior Resident and is working in the All India Institute of Medical Sciences, Raipur (*for short 'the AIIMS'*).
7. According to the learned counsel for the State, the employer of the Petitioner is not the State Government and hence, she is not eligible to be considered under the State Quota. It is stated that the 'AIIMS' is a separate entity of its own, having been created under the All India Institute of Medical Sciences Act, 1956 which later came to be amended in the year 2012. It is also relevant from the document produced by the Petitioner herself, that the offer of appointment dated 20.03.2019 itself mentions the subject matter as "Offer of Appointment to the post of Junior Resident under the Govt. of India's Residency Scheme, in All India Institute of Medical Sciences, Raipur, (C.G.)". The term 'in-service candidate' has been defined under Rule 2(ठ) of the 2018 Rules, which reads as under:

"2. (ठ) "सेवारत अभ्यर्थी" से अभिप्रेत है छत्तीसगढ़ राज्य शासन के अधीन संचालनालय चिकित्सा शिक्षा एवं संचालनालय स्वास्थ्य सेवाएं के अधीन सेवारत कर्मचारी (नियमित/तदर्थ/संविदा), जिन्होंने परीक्षा वर्ष के 31 जनवरी में 3 वर्ष पूर्ण कर ली हो, सेवारत अभ्यर्थी के रूप में पात्र होंगे;"

Insofar as the Petitioner is not an employee of the State Government and the document produced by the Petitioner does not mention the employer-employee relationship between the Petitioner and the State of Chhattisgarh, the exclusion clause, even if is to be pressed into service, cannot tilt the balance in any manner.

8. Regarding the scope of the Rules, the following observation/declaration has been made by the Division Bench of this Court as per Annexure P/5, paragraphs 16 and 17 of which are relevant, hence, they are reproduced below:

"16. In view of aforesaid consideration, the only inescapable conclusion would be that Rule 4 'ख' to the extent it provides "छत्तीसगढ़ राज्य का वास्तविक निवासी हो (केवल नियमित सेवारत अभ्यर्थी को छोड़कर) (परिशिष्ट – एक) के अनुसार" is unconstitutional and violative of Article 14 of the Constitution of India. Accordingly, it is held unconstitutional and violative of Article 14 of the Constitution of India and, therefore, inoperative in law.

17. This declaration would mean that the resident/domicile of State of Chhattisgarh who have pursued and obtained MBBS degree in the Medical Colleges situated outside the State would not be eligible only on the basis of domicile, to compete for Post Graduate seats in the State quota in the Medical Colleges of the State of Chhattisgarh."

From the above, it is quite clear that a person who has completed the MBBS course in a State other than the State of Chhattisgarh, though is having a domicile in this State, cannot contest for the post of Medical PG Seat with reference to the State Quota.

9. After hearing both the sides in the light of the materials on record, we do not require any second thought to hold that the Petitioner, not being an employee of the State Government, does not come within the purview of the 50% State Quota for admission to the Medical PG course.
10. This being the position, we find no merit in the writ petition. It is dismissed accordingly.

Sd/-

(P.R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge