

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2020

CORAM :

The Hon'ble Mr.AMRESHWAR PRATAP SAHI, THE CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.589 of 2018
and W.M.P.No.732 of 2018

Dr.G.Jaysiya

.. Petitioner

-vs-

- 1.The Union of India,
Rep. by its Secretary,
Ministry of Health and Family Welfare,
New Delhi 110 011.
- 2.The Medical Council of India,
Sector-8, Pocket-14, Dwarka,
New Delhi 110 077.
- 3.The Govt. of Tamilnadu,
Rep. by its Secretary,
Dept. of Health and Family Welfare,
Secretariat, Chennai.
- 4.The Director,
Directorate of Medical Education,
Kilpauk, Chennai 600 010.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Declaration to declare null and void of the impugned Amendment Notification No.MCI 12(1)/2017-Med.Misc./115698 dated 05.06.2017 issued by the 2nd respondent medical council of India by bringing M.D./M.S. and with below 40 years as Senior Residents in the Broad Speciality Category and in Super Speciality category herein, which is totally illegal, ultra vires of the Constitution of India, unfair and opposed to the right of Diploma Holder Doctors like the petitioner who may lose her present job including the future promotion avenues and consequently direct the respondents to implement the Amended Regulation dated 06.07.2017 issued by the MCI 2nd respondent herein in their Frequently Asked Questions

(FAQ) dated 06.07.2017 for the petitioner's concern by replacing the old rules having since 1998 to till today.

For Petitioner : Mr.C.Kanagaraj

For Respondents : Mr.V.P.Raman
for R-2

: Mr.E.Manoharan
Spl.G.P. For RR 3 and 4

ORDER

(Order of the Court was made by The Hon'ble Chief Justice)

Heard learned counsel for the petitioner and also learned counsel for the respondents.

2.The challenge raised in this petition is to the validity of the notification dated 05.06.2017 issued by the Medical Council of India under the powers exercised under Section 33 of the Indian Medical Council Act, 1956, whereby the minimum qualifications for teachers in Medical Institutions has been amended. The petitioner was appointed as an Assistant Surgeon and is a holder of post-graduate diploma in Radio Diagnosis. The petitioner contends that after long years of functioning, the introduction of the impugned minimum qualifications by bringing in only post-graduate M.D./M.S. degree for the post of Senior Residents is widely affecting the rights of the petitioner and even future promotions as well. The petitioner apprehends displacement by post-graduate degree holders and it is, therefore, urged that the said notification should be struck down as ultra vires, being arbitrary and violative of Article 14 of the Constitution of India.

3.Learned counsel has further submitted that the impugned notification is not in conformity with the rules and regulations framed by the Medical Council of India and upon a clarification sought in this regard, the Medical Council of India has itself given a reply on 06.07.2017, which reflects that the Medical Council of India has admitted that the said amended regulations would apply prospectively and even otherwise, residents already working on the post of Senior Residents after passing a diploma course will continue to hold the same post. It is, therefore, the contention of the petitioner that this position having been acknowledged, there is no reason to deny any other future benefits including that of promotion, treating the diploma

holders having service experience to be at par with degree holders in possessing the requisite qualifications for appointment on teaching posts.

4. It is also the contention of the petitioner that the State Government has also while attempting to make transfers and postings indicated that they will not be disturbing the petitioner or any such similarly situated candidate and not only this, in order to remove this anomaly of qualifications and to acknowledge the experience of working candidates like the petitioner, a Bill has already been introduced in the Parliament for equating these qualifications and to remove the anomaly so that the petitioner, who is a diploma holder of post-graduate, is not put to any disadvantage as against the persons holding the qualification of post-graduate degree course. It is also argued that the State Government has also forwarded recommendations to the Centre to the advantage of the petitioner and other similar Doctors.

5. We have considered the submissions raised and also perused the questions and answer dated 06.07.2017 relied on by the learned counsel for the petitioner referred to above.

6. What we find is that the qualifications which have been prescribed by the Medical Council of India are well within the competence of the Medical Council of India. If the State Government has made any recommendations or any Bill has been staged in the Parliament, the outcome thereof may or may not be advantageous to the petitioner depending upon the nature of any decision taken in this regard. But, so far as the impugned rules are concerned, we do not find any incompetence in the Medical Council of India to prescribe higher qualifications, namely, post-graduate degree course, for the purpose of teaching assignments, which squarely falls within the prescription of qualifications, and the regulation being framed under the Medical Council of India Act, 1956, is clearly saved keeping in view the powers so conferred in terms of Entry 66 of List I of the Seventh Schedule to the Constitution of India. We, therefore, do not find any lack of competence and so far as arbitrariness is concerned, it is always open to an employer to prescribe a higher qualification. In this regard, it is not disputed that the regulations have been made applicable prospectively and therefore, it cannot take away any such rights which have accrued in favour of such candidates who have been previously appointed, of course subject to the regulations which have been made, which will obviously apply prospectively.

7. In the given circumstances, we do not find any ground for striking down the law as being ultra vires or being manifestly arbitrary and hence, we consign the writ petition to records without prejudice to the rights of the petitioner that may be available to the petitioner in case any such law is framed in future in this regard. The disposal of this writ petition will not affect the present functioning of the petitioner subject to any orders being passed by the State Government or by the competent authority. No costs. Consequently, W.M.P.No.732 of 2018 is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

sra
To

1. The Secretary to Govt. of India,
Ministry of Health and Family Welfare,
New Delhi 110 011.
2. The Medical Council of India,
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New Delhi 110 077.
3. The Secretary to Govt. of Tamilnadu,
Dept. of Health and Family Welfare,
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W.P.No.589 of 2018

VBA (CO)
SP(25/08/2020)