

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2020

CORAM:

THE HONOURABLE Mr. JUSTICE N. ANAND VENKATESH

W.P.NO.27709 of 2018

and

WMP No.32224 of 2018

D. Sasirekha

... Petitioner

-Vs-

The Assistant Secretary
Medical Council of India
Pocket-14, Sector-8, Dwarka Phase - 1
New Delhi 110 077

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus or any other appropriate Writ, Order or direction in the nature of a Writ of Certiorarified Mandamus calling for the records relating to the impugned letter of the Respondent herein dated 06.04.2016 in No.MCI-201(EC14-10053)/2016-Eligi/101078, and quash the same and direct the respondent herein to forthwith issue the eligibility certificate to the petitioner to register herself with the Medical Council of India.

For Petitioner : Mr.K. Selvaraj

For Respondent : Mr. V.P.Raman

ORDER

This Writ Petition has been filed challenging the impugned letter issued by the respondent dated 06.04.2016 rejecting the request made by the petitioner to issue the eligibility Certificate under Section 13(4B) of the Indian Medical Council Act, 1956.

2. The case of the petitioner is that she completed her Higher Secondary examination during March 2012. The petitioner was not able to get a medical seat in the State of Tamil Nadu and therefore, she applied for the same in an University at Ukraine. She underwent the course and completed the same during June 2018.

3. The petitioner, in the meantime, applied for an Eligibility Certificate before the Medical Council of India on 07.10.2013 and the same was rejected by the Medical Council of India through the impugned letter dated 06.04.2016 on the ground that the age of the petitioner was below 17 years when she joined MBBS course at Ukraine in the year 2012. Aggrieved by the same, the present Writ Petition has been filed before this Court.

4. The learned counsel for the petitioner submitted that the petitioner had applied for the eligibility certificate in the year 2013 itself and the same was rejected in the year 2016, nearly after 3 years, and in the meantime, the petitioner had also joined the Specialty Course and it was completed in the year 2018. Therefore, the learned counsel submitted that the entire effort made by the petitioner to complete the medical course will go waste if the Medical Council of India does not give Eligibility Certificate to the petitioner. The learned counsel further submitted that a similar case arose before the Andhra Pradesh High Court, wherein the petitioner therein also faced a similar problem and the Andhra Pradesh High Court after considering the facts and circumstances of the case had directed the Medical Council of India to issue Eligibility Certificate. The learned counsel submitted that this judgment of the Andhra Pradesh High Court was subsequently confirmed by the Hon'ble Supreme Court by an order dated 11.11.2016. Therefore, the learned counsel sought for a similar relief in the present Writ Petition also.

5. Mr.V.P.Raman, learned counsel appearing on behalf of the Medical Council of India, submitted that completing 17 years at the time of joining the MBBS course is mandatory and the same cannot be relaxed under any circumstances. The learned counsel submitted that the fixation of the age as 17 years became a subject matter of challenge before this Court and the Division Bench of this Court in W.A.No.1270/10, by an order dated 28.06.2011, had upheld the fixation of the age limit. Therefore, the learned counsel submitted that the minimum age of 17 years cannot be relaxed under any circumstances.

6. The learned counsel further submitted that the judgment of the Andhra Pradesh High Court will not have a binding effect on this Court and even if this Court takes cue from the said judgment, certain observations that have been made in the said judgment should not be taken into consideration since it runs contrary to the judgment of the Division Bench of our High Court. The learned counsel further submitted that even if this court is inclined to grant the relief to the petitioner, the same should not be taken as a precedent in any case, more particularly, in a case where a student seeks for admission without even completing 17 years of age as per the regulations.

The learned counsel therefore prays for the dismissal of the Writ Petition.

7. This Court has carefully considered the submissions made on either side and the materials available on record.

8. This Court does not find any major controversy regarding the facts of the case. It is a fact that the petitioner at the time of joining the MBBS course in Ukraine had completed only 16 years 11 months and 18 days and she had not completed 17 years as per the requirements in the regulations. The petitioner had joined the course in the year 2012 and she had applied for the eligibility certificate before the respondent only on 09.10.2013. The petitioner ultimately completed the course in the year 2018. In the meantime the respondent had rejected the eligibility certificate sought for by the petitioner through the impugned letter dated 06.04.2016.

9. The Andhra Pradesh High Court had an occasion to deal with a very similar case wherein the petitioner therein also did not complete 17 years on the date of joining and the eligibility certificate sought for by him was also rejected. Under such circumstances, the Andhra Pradesh High Court in the case of Vanama Sri Venkata Dheeraj vs. The Union of India, rep. by its secretary in W.P.No.36316 of 2015 dated 22.08.2016 held as follows:

However, vide impugned letter dated 10.09.2015, the petitioner has received communication from the respondent that as per the regulation of the Council, the petitioner has not completed the age of 17 years on or before 31st December of the year of admission, and therefore, the petitioner is not eligible to receive eligibility certificate.

Learned counsel for the petitioner submits that a similar issue came up for consideration before a Division Bench of Allahabad High Court reported in Ankit Chaturvedi vs. Union of India and other (2014 Law Suit (all) 814) wherein, the petitioner therein was admitted to MBBS course in Universal College of Medical Sciences, Nepal in the academic year 2004-05. He did not apply and obtain the eligibility certificate from the Medical Council of India before seeking admission and pursuing his studies. An application was made by him on 16.09.2009 to the Medical Council of India for eligibility certificate after a period of four years after he was admitted to the Medical College in Nepal. But the application was rejected by the Medical Council of India on the ground that he had not completed 17

years of age on or before 31st December of the year of his admission.

The Division Bench of High Court of Allahabad while relying upon other cases, observed as under:

"In the cases of Ms. Bhagwasri Goli and other similar placed cases considered by the Board of governors in its meeting dated 27.09.2012, provisional certificate was granted despite the fact that she had not completed 17 years of age at the time of admission in MBBS course. The explanation was that she had applied and erroneously issued eligibility certificate. He case and the other cases, in which provisional registration was granted, are not similar to the case of the appellant (therein). The resolution of the board of Governors of Medical Council of India in its meeting dated 27.09.2012 in the matter of Ms. Bhagysri Goli is quoted as below:-

"Consideration for grant of Provisional Registration to Ms. Bhagyasri Golia and other similarly placed cases wherein provisional Registration and/or Eligibility Certificate was issued by the Medical Council of India to the candidates who did not complete the age of 17 years at the time of admission in MBBS course. The board of governors further decided that this will not be considered as precedence in future and the Eligibility Section should be careful in issuing Eligibility Certificate to the candidates and ensure that all requirements are fulfilled by the candidate (s) as per provisions of the Graduate Medical Education Regulations, 1997. The Board of Governors further decided that candidates aspiring to pursue MBBS course from Medical College/university abroad be informed that it is necessary to obtain Eligibility Certificate before proceeding for admission and they must fulfill all requirements in terms of the eligibility criteria".

In para-18, it is opined that there was no requirement as prescribed under clause 4(1) of the Graduate Medical Education Regulations, 1997 for completing 17 years of age before applying and taking admission.

Learned counsel for the petitioner submitted that the petitioner is now going to complete 24 years of age in the month of September and he is now eligible for issuance of eligibility certificate, which does not give him the licence to practice. He has appeared for screening test, and if he gets admission, only thereafter, he can pursue his PG course and practice in India.

Learned Standing counsel for the respondents filed counter affidavit and contends that the present petition is contrary to the statutory, mandatory and binding regulations framed by MCI with the prior approval of the Government of India. The respondent-MCI, which is a statutory authority constituted by the Central Government under an Act of Parliament, namely, Indian Medical Council Act, 1956.

The duty of the MCI is to maintain the highest standard of medical education and, as such, the Supreme Court in case of State of Kerala vs. T.P.Roshana [(1979) SCC 580] had observed as under:

"...the Indian Medical Council Act, 1956 has constituted the Medical Council of India as an expert body to control the minimum standards of medical education and to regulate their observance. Obviously, this high-powered council has power to prescribe the minimum standards of medical education. It has implicit power to supervise the qualifications or eligibility standards for admission into medical institutions. Thus, there is an overall invigilation by the Medical Council to prevent sub-standard entrance qualifications for medical courses.."

Learned Standing Counsel further submits that the Regulations of Medical Council of India have binding effect as has been decided by the Apex Court. Accordingly, the case of the petitioner has been rejected on the ground that he had not applied for eligibility certificate before entering education into MBBS course.

Heard learned counsel for the parties.

It is not in dispute that in certain cases, the Medical Council of India has granted exemption to the applicants for grant of eligibility certificate when they had taken admission at the age of less than 17 years. Accordingly, the High Court of Allahabad directed the respondent that the required consideration shall be made by the Board of Governors of Medical Council of India, preferably, within a period of three months.

In another judgment of Delhi High Court reported in batch of petitions, WP(C) No.18600 of 2005 in case of Jishalakshi Embrandiri and others vs. Medical Council of India and others, wherein, on a similar circumstances vide its judgment dated 05.04.2006 allowed the petition and directed the respondents to issue eligibility

certificate. The cases mentioned above attained the finality as not challenged by the respondents.

This Court put a specific query to the learned counsel for the respondents that in case of Ankit Chaudary (supra) the petition therein was allowed and thereafter Jishalakshi Embrandiri (supra), as noted above was also allowed. moreover, in the other case as discussed above, Medical Council of India had relaxed the age and accordingly, issued the eligibility certificate.

....

In view of the above discussion and the facts and circumstances of the present case, I hereby direct the second respondent-Medical Council of India to issue eligibility certificate to the petitioner with two (2) weeks from the date of receipt of a copy of this order.

10. The judgment was taken on appeal by the Medical Council of India before the Hon'ble Supreme Court in SLP(C) No. 31683 of 2016. The Hon'ble Supreme Court, by an order dated 11.11.2016, refused to interfere with the orders passed by the Andhra Pradesh High Court and the SLP was dismissed.

11. In the present case, it is seen that the petitioner was short of 17 years only by 12 days when she joined the MBBS course. The petitioner has also completed the course in the year 2018. It will be too harsh to deny the eligibility certificate to the petitioner after the petitioner has put in so much of effort and the difference in the age was not too much and it only falls short by 12 days. For the purpose of granting this relief, the judgment of the Andhra Pradesh High Court also has a persuasive value and therefore, this court is inclined to grant the same relief to the petitioner.

12. This Court has taken into consideration the peculiar facts and circumstances and also of the fact that the petitioner had completed her course which she undertook for 6 years and she was only falling short by 12 days from the fixed age limit. Therefore, this judgment cannot be taken as a precedent in any other case, where a candidate falls short of the minimum age of 17 years fixed by the regulations of the Medical Council of India.

13. The Andhra Pradesh High Court, in the above judgment, had made certain observations to the effect that the minimum age limit of 17 years must be given a go bye and it should be reconsidered by the Medical Council of India. In the considered view of this Court, this observation runs contrary to the Division Bench judgment of this Court in W.A.No.1270 of 2010 dated 28.06.2011, wherein, this Court had upheld the fixation of

the age limit as 17 years. To that extent, this Court is not in agreement with the observations made by the Andhra Pradesh High Court. The mandatory requirement of fixing 17 years as the minimum age for joining the MBBS course cannot be relaxed at any point of time by stating the present judgment as a precedent. This will apply to both the cases where the application was made before the admission and after the admission to the MBBS course.

14. In the result, the impugned letter of the respondent dated 06.04.2016 is hereby quashed and there shall be a direction to the respondent to issue the eligibility certificate to the petitioner within a period of three(3) weeks from the date of receipt of copy of this order to enable the petitioner to register herself with the Medical Council of India.

15. It is also brought to the notice of this Court that the petitioner had also written the Screening Test conducted by the National Board of Examination and the result has been withheld due to the non production of the eligibility certificate. It is open to the petitioner to produce the eligibility certificate as and when the certificate is issued by the Medical Council of India and thereafter, the result shall be published.

16. In the result, this Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-III)

// True Copy //

Sub Assistant Registrar

bga

To

The Assistant Secretary
Medical Council of India
Pocket-14, Sector-8, Dwarka Phase - 1
New Delhi 110 077

+1cc to Mr.K.Selvaraj, Advocate, SR.No.22728.
+1cc to Mr.V.P.Raman, Advocate, SR.No.23089.

W.P.NO.27709 of 2018

TM(CO)
CSR: 20/03/2020