

ORISSA HIGH COURT: CUTTACK

W.P(C) NO. 24673 OF 2022

AND

W.P.(C) NO. 25184 OF 2022

In the matter of applications under Articles 226 and 227
of the Constitution of India.

***AFR* In W.P.(C) No.24673 of 2022**

Dr. Sk. Fiyazul Haque
& Ors.

.....

Petitioners

-Versus-

State of Odisha
& Ors

.....

Opp. Parties

For Petitioners : Mr. B. Routray, Sr. Advocate
along with M/s. S.P. Nath,
S.Routray, S. Sekhar, J. Biswal,
A.K. Das and M. Panda,
Advocates

For Opp. Parties : Mr. A.K. Mishra,
Addl. Govt. Advocate
[O.Ps.No.1 & 2]

Mr. R.C. Mohanty, Advocate
[O.Ps. No. 3 & 4]

In W.P.(C) No.25184 of 2022

Dr. Nandita Barik

.....

Petitioner

-Versus-

State of Odisha & Ors

.....

Opp. Parties

For Petitioner : M/s. S.K. Samal, S.P. Nath,
S.Routray, S. Sekhar, J. Biswal,
and A.K. Das, Advocates

For Opp. Parties : Mr. A.K. Mishra,
Addl. Govt. Advocate
[O.Ps.No.1 & 2]

Mr. R.C. Mohanty, Advocate
[O.Ps. No. 3 & 4]

P R E S E N T:

**THE HONOURABLE DR. JUSTICE B.R.SARANGI
AND
THE HONOURABLE MR JUSTICE G. SATAPATHY**

DECIDED ON : 28.09.2022

DR. B.R. SARANGI, J. The petitioners, by means of these two writ petitions, seek direction to the opposite parties, more particularly opposite parties no. 3 & 4, to award additional weightage of marks for the period they have served in V1 institution, i.e., Pandit Raghunath Murmu Medical College and Hospital, Baripada (for short “PRM MC, Baripada”), at the rate of 2.5% per year, as per Post-Graduate (Medical) Selection Odisha Guidelines issued for Counseling and Admission of candidates for Post-Graduate (Medical) & Post-MBBS NBEMS Diploma

Courses in Govt. and Private Medical Colleges of the State 2022-23 under Annexure-3, and accordingly fix their position in the merit list, within a reasonable time to be stipulated by this Court.

2. Since the issue involved in both the writ petitions is similar, they were heard together and are disposed of by this common judgment.

3. For better appreciation, the factual matrix of W.P.(C) No.24673 of 2022 is taken up for consideration.

3.1 The petitioners, having successfully completed MBBS, are serving as Medical Officers under the State Government. While they are continuing as such, the Post- Graduate (Medical) Selection Odisha Guidelines for Counseling and Admission of candidates for Post- Graduate (Medical) & Post-MBBS NBEMS Diploma Courses in Government and Private Medical Colleges of the State 2022-23 were published in the month of June, 2022. The said guidelines were duly approved by the Government of Odisha, Department of Health and Family Welfare, vide Letter No.23601/H&F.W. dated

15.10.2020. It was laid down in the said guidelines that distribution of seats between in service and direct candidates would be on 50:50 basis and the academic session would be commenced from 1st May of each year unless notified. The category of candidates eligible to apply was prescribed under Clause-G of the guidelines. Consequentially, on 15.01.2022, a notice was issued by the National Board of Examination with regard to holding of the National Eligibility-cum-Entrance Test – Post Graduate (NEET) – PG-2022. In the said notice, it was notified that the application forms would be available from 15.01.2022 to 04.02.2022 and the examination would be held on 12.03.2022 and the result would be declared on 31.03.2022. Subsequently, vide notification dated 04.02.2022, the programme for NEET-PG-2022 was rescheduled, pursuant to the direction of the Ministry of Health and Family Welfare. As per the said notification, the date of submission of online application forms was fixed from 15.01.2022 to 25.03.2022, the date for issuance of admit cards was fixed to 16.05.2022, the date of examination was fixed to

21.05.2022 and the date for declaration of result was fixed to 20.06.2022.

3.2. Pursuant to the re-scheduled notice, as mentioned above, the petitioners submitted their online applications under the in-service category and accordingly they appeared in the examination held on 21.05.2022, pursuant to admit cards issued in their favour, and the result was published on 01.06.2022 prior to the reschedule date, i.e., 20.06.2022. After the result was published on 01.06.2022, the DMET suddenly issued a corrigendum on 18.06.2022, wherein it was indicated that the cutoff date for in-service category, as mentioned in the Guidelines for Post Graduate (Medical) and Post MBBS NBEMS Diploma Courses for the Academic Session 2022-23 shall be read as 31.05.2022 instead of 31.03.2022. Challenging the said corrigendum, petitioner no.1, along Dr. Manisha Vidyabhasini, approached this Court by filing W.P.(C) No.16772 of 2022 and this Court, after due adjudication, vide judgment dated 30.08.2022, quashed the said corrigendum dated 18.06.2022.

3.3 In the meantime, opposite party no.3 started the process of filling up of the State quota seats for in-service as well as direct category candidates. The revised guidelines were uploaded in the web portal on 13.09.2022 and the online application was extended from 14.09.2022. The petitioners applied under the in-service quota in respect of the State quota seats as per the schedule for the PG Medical Counseling and Admission, Odisha, 2022-23. Counseling was scheduled for online registration/application by candidates along with online payment from 15.09.2022 (10 A.M.) to 29.09.2022 (11.55 P.M.) and for verification of original documents at Old Auditorium SCB MCH, Cuttack from 17.09.2022 to 23.09.2022, excluding 18.09.2022, (10 A.M. to 5 P.M.). As per such schedule, the petitioners applied under the in-service category, but while selecting, on the web portal no additional weightage of marks was given for PRM MCH, Baripada. When the petitioners made query, the opposite parties stated that PRM MCH, Baripada has been excluded from the list of institutions for being awarded additional weightage of

marks according to the vulnerability grade. Since the last date of submitting the online application was scheduled to 20.09.2022, the petitioners, having no other alternative, submitted their applications, but no additional weightage of marks was awarded to them at the rate of 2.5% per each year. Thereby, when additional weightage of marks was not given to the petitioners, aggrieved thereby they have approached this Court by filing these writ petitions.

4. Mr. S. Routray, learned counsel appearing for the petitioners contended that in the guidelines issued under Annexure-3 it was clearly stated that the areas, which were included in the existing V1 V2 V3 or V4 category list, would be allowed additional weightage, as provided in the list appended thereto. It is further contended that the guidelines issued for previous academic years, i.e., 2020-21 and 2021-22, the newly constructed Medical Colleges BB MC, Bolangir, SLN MC, Koraput and PRM MC, Baripada have been included in the V1 category and, as such, the petitioners are eligible to get additional weightage @ 2.5% for each year, i.e.,

2.5% x 3= 7.5%, but the same has not been awarded to them. The guidelines under Annexure-3 having been approved by the State Government on 15.10.2020 and the PRM MC, Baripada having been included in the V1 category, the opposite parties are duty bound to award additional weightage of marks in respect of PRM MC, Baripada. It is further contended that the subject-matter of challenge involved in this case was before this Court in W.P.(C) No. 2380 of 2022 wherein the opposite parties had not awarded additional weightage of 2.5% marks for each year in respect of BB MC, Bolangir and a Coordinate Bench of this Court, vide order dated 02.02.2022, allowed the said writ petition directing the opposite parties to prepare a fresh merit list by giving weightage of 7.5% to each of the petitioners in terms of the corrigendum issued. Thereby, non-awarding of additional weightage at the rate 2.5% for the each year to the petitioners, which they are otherwise entitled to get as per guidelines, the action of the authorities is arbitrary, unreasonable, contrary to the provision of law and violates Article 14 of the Constitution of India.

5. Pursuant to notice issued, opposite parties no. 3 and 4 entered appearance through learned counsel Mr. R.C. Mohanty and filed counter affidavit contending that the claim of the petitioners for award of additional weightage of marks at the rate of 2.5% for each year of service they have rendered in V1 institution, i.e., Pandit Raghunath Murmu College and Hospital, Baripada for pursuing Medical Course as per the Guidelines issued for Post Graduation (Medical) Selection, Odisha and to fix the position of the petitioners accordingly, cannot sustain in the eye of law, in view of the fact that as per the provisions contained in the guidelines the terms and conditions of the guidelines will remain valid until further orders and that the Government reserves the right to change any of the clauses as per need, as and when required. As such, the Director, Medical Education and Training (DMET), Odisha has been authorized to change constitution of the committee, schedule dates or any other changes as per requirement with intimation to the Government. Thereby, power has been vested with the DMET, Odisha to change the conditions, as and

when required, and pursuant to such authorization, the DMET, Odisha issued Annexure-A/4 dated 18.06.2022 with regard to the changes in the approved PG (Medical) and PG (Dental) admission guidelines/prospectus for the academic session 2022-23. In Paragraph-9 of the counter affidavit it has been specifically mentioned that necessary steps by the DMET, Odisha were taken with regard to method of counseling for Post-MBBS Diploma and to the provision of additional weightage. Accordingly, necessary changes in the approved PG (Medical) and PG (Dental) admission guidelines/prospectus were made for the academic session 2022-23. It is also contended that District Headquarters Hospital, Baripada was not included as a remote area and on up-gradation to PMR MC, Baripada it is not coming under the zone of consideration of the vulnerability for award of additional weightage and, as such, the said institution was not included in the list appended to the guidelines for award of additional weightage. Thereby, the claim of the petitioners for award of additional weightage @ 2.5% marks per year of service rendered by them does not

arise and consequentially seeks for dismissal of the writ petition.

6. This Court heard Mr. S. Routray, learned counsel appearing for the petitioners and Mr. R.C. Mohanty, learned counsel appearing for opposite parties no.3 and 4 in hybrid mode. Since the guidelines under Annexure-3 are under challenge and the matter relates to opposite party no.4, who is answerable, there is no need for hearing other opposite parties. The opposite party no.4 has filed counter affidavit after serving a copy thereof on the learned counsel for the petitioner. Therefore, pleadings having been exchanged between the parties, with the consent of learned counsel for the parties, the writ petition is being disposed of finally at the stage of admission.

7. The Post-Graduate (Medical) Selection Odisha Guidelines for Counseling and Admission of Candidates for Post-Graduate (Medical) & Post-MBBS NBEMS Diploma Courses in Govt. and Private Medical Colleges

of the State 2022-23 clearly states under Annexure-B as follows:

“List of institutions and their vulnerability grade for awarding additional weightage for pursuing PG medical course in stage of Odisha.

(Additional weightage @ 2.5, 5%, 7.5% and 10% per year of service in institutions of vulnerability grade V1, V2, V3 and V4 respectfully shall be allowed)

The area of newly established or upcoming Medical Colleges which were established or will be established by upgrading the DHH after 21.03.2016, and are included in 10% per year category list but not included in the existing V1 V2 V3 or V4 category list, shall be included in V1 category.

Such areas if already included in the existing V1 V2 V3 or V4 category list shall be allowed for additional weightage as it is in the list.”

In view of aforementioned provisions, PRM MC, Baripada is coming under the second category since it was included in the existing V1 category for the guidelines issued for academic sessions 2020-21 and 2021-22. As such, the newly constructed Medical Colleges, namely, BB MC, Bolangir, SLN MC, Koraput and PRM MC, Baripada have been included in the V1 category and in the present guidelines, it has been clearly mentioned that the areas which were included in the existing V1 V2

V3 or V4 category shall be allowed additional weightage and admittedly the institution, which is situated in the Baripada Block, was included in the V1 category in the previous academic years, i.e., 2020-21 and 2021-22. The vulnerability of the said institution having been notified and the in-service doctors passed from the said institutions, having been awarded 2.5% additional weightage of marks, have already got PG admission in the previous academic session, therefore, the said benefit cannot be denied to the petitioners. Furthermore, when the entrance test has already held, by issuing corrigendum dated 18.06.2022, the claim of the petitioners cannot be frustrated and, as such, the action of the opposite parties is grossly hit by principle of estoppels. Reason being, on the basis of guidelines issued by the Government, the petitioners applied for admission to Post Graduate Course and on due scrutiny they were permitted to appear in the entrance test and thereafter the result was published. Thus, the State authorities are estopped from changing their own

guidelines to the detriment of the petitioners, as the same is hit by the principle of estoppels.

8. This question has already been considered by this Court in ***Dr. Manisha Vidyabhasini v. State of Odisha & Ors*** (W.P.(C) No.16772 of 2022, disposed of on 30.08.2022) and after elaborate discussion made thereon, this Court quashed the corrigendum notice for PG Guidelines 2022-23 issued on 18.06.2022 with regard to change of cutoff date from 31.03.2022 to 31.05.2022, as the same was issued after the examination was over. Applying the said principle to the present context, this Court is of the considered view that if the opposite parties are willing to change their own terms and conditions, they could have done it much before the issuance of the advertisement or before the examination started. Once the applications have been entertained and scrutinized and the petitioners have been permitted to appear in the examination and the result has been published, the authorities cannot change the rule of game after the game was played, which is clearly impermissible.

9. In ***Black's Law Dictionary, 7th Edn.*** at page 570, '*estoppel*' has been defined to mean a bar that prevents one from asserting a claim or right that contradicts what one has said or done before or what has been legally established as true.

10. In ***B.L. Sreedhar v. K.M. Munireddy***, (2003) 2 SCC 355, the apex Court held that 'Estoppe', commeth of a French work '*estoupe*' from whence the English word stopped and it is called an '*estoppel*', or conclusion, because a man's owne act or acceptance stoppeth or closeth up his mouth to allege or plead the truth [Stroud's Judicial Dictionary, 4th Edn., page. 943].

It is further held that 'Estoppel' is based on the maxim *allegans contraria non est audiendus* (a person is not to be heard to allege the contrary), and is that species of presumption '*juries et et jure*' (absolute or conclusive or irrebuttable presumption), where the fact presumed is taken to be true, not as against all the world, but against a particular party, and that only by

reason of some act done, it is in truth a kind of *agrummentum ad hominem*.

11. In ***Mahindra and Mahindra Ltd. v. Union of India***, (1979) 2 SCC 529, the apex Court held that ‘estoppel’ can arise only if a party to a proceeding has altered his position on the faith of a representation or promise made by another.

12. In the case of ***H.R. Basavaraj v. Canara Bank***, (2010) 12 SCC 458, the apex Court while dealing with the general word, ‘estoppel’ stated that ‘estoppel’ is a principle applicable when one person induces another or intentionally causes the other person to believe something to be true and to act upon such belief as to change his/ her position. In such a case, the former shall be estopped from going back on the word given. The principle of *estoppel* is only applicable in cases where the other party has changed his positions relying upon the representation thereby made.

13. In ***Secretary, A.P. Public Service Commission v. B.Swapna and others***, (2005) 4 SCC

154, the apex Court lays down the proposition that "once the process of selection starts, the prescribed selection criteria cannot be changed. The logic behind the same is based on fair play. In Paragraph-14 of the said Judgment, the apex Court ruled as follows:-

"14. The High Court has committed an error in holding that the amended rule was operative. As has been fairly conceded by learned counsel for Respondent 1 applicant it was the unamended rule which was applicable. Once a process of selection starts, the prescribed selection criteria cannot be changed. The logic behind the same is based on fair play. A person who did not apply because a certain criterion e.g. minimum percentage of marks can make a legitimate grievance, in case the same is lowered, that he could have applied because he possessed the said percentage. Rules regarding qualification for appointment if amended during continuance of the process of selection do not affect the same. That is because every statute or statutory rule is prospective unless it is expressly or by necessary implication made to have retrospective effect. Unless there are words in the statute or in the rules showing the intention to affect existing rights the rule must be held to be prospective. If the rule is expressed in a language which is fairly capable of either interpretation it ought to be considered as prospective only."

14. In ***K.Manjusree v. State of Andhra Pradesh and another***, (2008) 3 SCC 512, the apex Court laid down the law that introduction of requirement of minimum marks for interview, after the entire selection process (consisting of written examination and interview)

was completed, would amount to changing the rules of the game after the game was played which is clearly impermissible.

15. In ***Mohd. Raisul Islam v. Gokul Mohan Hazarika***, (2010) 7 SCC 560, the apex Court while deciding the question as to whether the amended rule would operate prospectively or retrospectively, held “the effect of amendment to rules on seniority of persons recruited in selection process initiated prior to amendment, the applicable rules are those on basis of which selection process was commenced.”

16. In ***A.A. Calton v. The Director of Education***, AIR 1983 SC 1143, the apex Court held that law as it stood at the point of time when the process of selection commenced will be the law according to which the selection has to be completed.

Similar view has also been taken by the apex Court in ***P. Mahendran v. State of Karnataka***, AIR 1990 SC 405.

17. Therefore, the guidelines issued under Annexure-3, basing on which the process of selection was commenced, is the principle, according to which the selection has to be completed.

18. Similar view has also been taken by this Court in the matter of recruitment of Ad hoc Additional District Judges under the Orissa Judicial Service (Special Scheme) Rules, 2001, in pursuance of the advertisement issued by the High Court of Judicature, Orissa, Cuttack by Advertisement No. 1 of 2003, in ***Mrs. Madhumita Das v. State of Orissa***, 100 (2005) CLT 465.

19. In the judgment rendered in the case of ***Dr. Smrutisudha Pattnaik v. Acharya Harihar Regional Cancer Centre***, 2017 (1) ILR CUT-1077, of which one of us (Dr. Justice B.R. Sarangi) was the author, similar view was also taken by holding that the action challenged being arbitrary, unreasonable and hit by the principle “once game is played the rule of game cannot be changed in the midst”.

20. It appears that similar question had come up for consideration before this Court in **Aviram Panda V. State of Odisha**. (W.P.(C) No.2380 of 2022, disposed of on 02.02.2022), wherein Mr. R.C. Mohanty, learned counsel appearing for opposite parties had raised similar contention as is raised herein, but the Coordinate Bench of this Court repelled the contention raised by Mr. Mohanty and issued direction in paragraphs-6 & 7 to the following effect:

“6. The net result is that the cases of both the Petitioners shall be once again considered by the said Selection Committee and they shall be given weightage of 7.5% each in terms of the corrigendum issued. A fresh merit list shall be prepared and released today itself.

7. The Selection Committee be informed of this order by Mr. Mohanty, learned counsel for the Opposite Party Nos.2 to 4 immediately for them to take appropriate action without waiting for the downloaded copy of the order which in any case will be made available before 5 pm”.

21. Considering the factual and legal aspects, as discussed above, this Court is of the considered view that the petitioners are entitled to get additional weightage at the rate of 2.5% per year, as claimed by them, pursuant to guidelines under Annexure-3 issued

by the Government. It is brought to the notice of this Court that in W.P.(C) No.24673 of 2022 petitioner no.1 has rendered 1143 days, petitioner no.2 has rendered 1096 days, petitioner no.3 has rendered 1100 days and petitioner no.4 has rendered 1098 days in service and the petitioner in W.P.(C) No.25184 of 2022 has rendered 865 days in service. Thereby, additional weightage at the rate of 2.5% per year has to be calculated and requisite percentage of additional weightage has to be extended to each of the petitioners. Consequentially, this Court directs the selection committee to extend the requisite percentage of additional weightage strictly adhering to the guidelines under Annexure-3 issued by the Government, without being influenced by any subsequent guidelines promulgated by the State after examination is over. Needless to say, the entire exercise shall be done, by giving the petitioners opportunity to participate in the process of selection, as expeditiously as possible, without waiting for the downloaded copy of the judgment, on the basis of communication of the verdict of this case to be made in course of the day by

Mr. R.C. Mohanty, learned counsel appearing for opposite parties no.3 & 4.

22. In the result, both the writ petitions are allowed. However, there shall be no order as to costs.

(DR. B.R. SARANGI)
JUDGE

G. SATAPATHY, J.

I agree.

(G. SATAPATHY)
JUDGE

Orissa High Court, Cuttack
The 28th September, 2022, Alok

