

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 10912 OF 2022

Vidya Madhukar Shingare, ... **Petitioner**
Age 42 years, Occu: Service,
Presently working as Medical Officer
Group-A (Blood Transfusion Officer)
District Hospital Ahmednagar.

VERSUS

1. State of Maharashtra,
Through its Principal Secretary,
Public Health Department,
9th Floor, G.T. Hospital, Mantralaya
Mumbai.
2. The Commissioner & Competent Authority
State Common Entrance Trest Cell,
Maharashtra State, 8th Floor,
New Excelsior Building, A. K. Nayak,
For, Near CSMT, Mumbai.
3. The Director of Health Services, ... **Respondents**
Aarogya Bhavan, St. George Hospital
Compound, Mumbai.
4. The Deputy Director of Health Services,
Nashik Region, Nashik, Dist. Nashik
5. Civil Surgeon,
General Hospital, Ahmednagar
Tq & Dist. Ahmdnagar

Mr. Yuvraj V. Kakade Advocate for the petitioner,
Mrs. M. A. Deshpande, AGP for the Respondents-State
Mr. M. D. Narwadkar, Advocate for respondent No.2,

**CORAM : SMT. VIBHA KANKANWADI &
Y. G. KHOBRAGADE, JJ.**

DATE : 19th October, 2022

JUDGMENT (Per Y. G. Khobragade, J.):

1. Rule. Rule made returnable forthwith. With the consent of both the sides, the matter is heard finally at the stage of admission stage.

2. The petitioner, by way of present petition under Article 226 and 227 of the Constitution of India, has challenged the order dated 14.10.2022 passed by the learned Maharashtra Administrative Tribunal, Bench at Aurangabad in Original Application No. 873 of 2022 whereby the learned Tribunal has declared that the petitioner is not entitled for being recommended as in service candidate to get admission to PG Course on deputation

3. The petitioner advert that in the month of November, 2001, she completed M.B.B.S. Graduation from Shivaji University, Kolhapur and w.e.f. 09.01.2002 to 08.01.2003, she completed internship and thereafter she completed P.G. Diploma in Clinical Pathology (DCP) from Government College, Pune. Thereafter she was appointed under Bond Service during the period from 05.03.2012 to 04.03.2013 with Rural Hospital, Shevgaon, District Ahmednagar and then she was appointed as Medical Officer, Group-A (Blood Transfusion Officer) with District Hospital, Ahmednagar and working as such till date. On 24.11.2021, the State Government issued an order and declared that the petitioner has successfully completed the probation period on 25.04.2016 and therefore she is a permanent Government Medical Officer.

4. The petitioner intends to take admission for PG Course being in-service candidate Medical Officer for which 20% seats are reserved as per GR dated 26.09.2022. Therefore on 01.02.2022, she submitted an application to the Deputy Director of Health service, Nashik Region, Nashik and sought permission for appearance in NEET-PG scheduled on 21st May, 2022. Accordingly, the Deputy Director of Health Service issued NOC in her favour. Thereafter, the petitioner submitted online application for appearance for NEET -PG and admission card was issued in her favour. Accordingly, the petitioner appeared for NEET-PG on 21st May, 2022 and cleared said test by securing 289 marks out of 800 and her rank was 83612.

5. According to the petitioner, as per 20% reservation provided for in-service Medical Officers, total 282 seats are made available for in-service Medical Officers. The petitioner sought admission to PG course in Pathology for which two seats are made available for in-service Medical Officer category. On 26.09.2022, the State Common Entrance Test Cell published a revised schedule for processing Online Registration, Online Payment, Online Uploading of scanned original documents and Preference/Choice filling. The petitioner participated in the said process as per revised scheduled. However, vide communication dated 29.09.2022, respondent No.3- Director of Health Services informed her that she is not eligible for admission from in-

service quota but she is eligible only for Study leave in general quota for degree course in Pathology as per Clause 6.3 of the Government resolution dated 19.03.2019 and in view of the Government resolution dated 26.03.2020.

6. According to the petitioner, as per Government Resolution dated 19.03.2019, the Government has revised the regulation of selection of in-service Medical Officers for admission to PG/Diploma Courses. As per the revised regulation, she fulfilled all the conditions /criteria for admission to PG course. However, she has been denied admission to PG course being in-service candidate as per paragraph No. 6.3 of the G.R. dated 19.03.2019 which is not applicable to her on the ground that on 07.04.2014 till date she completed more than 7 years of service as Medical Officer (Blood Transfusion Officer) which is available only at District places and not at every declared institute. Therefore, paragraph No. 6.3 of the G.R. dated 19.03.2019 is not applicable to her. However, respondent no.3 failed to consider the said fact and arbitrarily declared her ineligible for admission to PG course as in-service candidate by communication dated 29.09.2022. Therefore, the communication dated 29.09.2022 issued by respondent No.3 Director of Medical Service is illegal, bad in law and prayed for quashing and setting aside the same.

7. Being aggrieved by the said order, the petitioner filed Original Application No. 873 of 2022 before the Maharashtra Administrative Tribunal and also prayed for interim relief to stay the effect and operation of the order dated 29.09.2022 passed by the respondent No.3 Director of Health service and to consider her candidature for admission to PG in Pathology as per her merit. On 14.10.2022, the learned Tribunal passed the impugned order holding that as per G. R. dated 29.03.2019, for recommendation as in-service candidate to get admission for PG course on deputation, the candidates concerned must have worked for three years in most remote, difficult and rural areas but the petitioner has not worked in any of the remote/difficult or triable area but she worked for more than eight years in urban area i.e. Government Hospital at Ahmednagar, hence, the petitioner is not entitled for being recommended as in-service candidate to get admission to PG course on deputation. However, as per clause 6.03 of the G.R. dated 19.03.2019, if any candidate has worked for more than 5 years in Government Hospital or Institution, such Medical Officer is entitled for study leave of two years for pursuing PG courses and also entitled for earned leave, half pay leave or commuted leave for the period of four months and can also be granted extra ordinary leave for remaining period of eight months. The said order of the Tribunal is challenged in this petition.

8. Mr. Kakade, the learned counsel appearing for the petitioner vehemently submitted that the learned Tribunal failed to consider that the petitioner did diploma in clinical pathology and working as Medical Officer, Group-A and the post of the petitioner is only available in Blood Bank situated at District Hospitals. Therefore, the petitioner has worked as per her schedule of terms and conditions of job. The learned Tribunal has not considered the Government Resolution dated 26.09.2022 under which only 20% seats are reserved for in-service Medical Officers and as per the GR dated 19.03.2019, the petitioner is eligible for study leave being in-service candidate. The learned Tribunal wrongly held that as per clause 6.5 of the Government Resolution dated 26.03.2020, the petitioner is not eligible for admission to PG Course being in-service candidate on deputation. Therefore, the order is illegal, bad in law and prayed for quashing and setting aside the same.

9. Per contra, the learned AGP vehemently canvassed that the petitioner prayed for permission to appear for the PG course being in-service candidate as per GR dated 19.03.2019. However, paragraph 06.3 of the said GR provides that, if any candidate is working for more than 5 years in the Government Hospital or Institution and if such Medical Officer intends to pursue PG course, he/she would entitle for study leave of two years for pursuing PG courses and also entitle for earned leave, half pay leave or commuted leave for the period of four

months and extra ordinary leave for remaining period of eight months and also such candidate will be entitled for the leave salary of the post from which he/she applies for the PG course. Since the petitioner, being not worked in remote, difficult or rural area and she only worked in urban area for more than 8 years, she is not entitled for recommendation as in-service candidate for admission to PG course on deputation and the learned Tribunal has considered the applicability of the GR dated 19.03.2019 and declined to grant interim relief for pursuing PG course as in-service candidate on deputation. Therefore, the impinged order is just and proper. Hence prayed for dismissal of the writ petition.

10. Having regard to the submissions canvassed on behalf both the sides, we have gone through the record. The grievance of the petitioner that as per revised Regulation dated 19.03.2019, she fulfilled all conditions and criteria for admission to PG course in pathology as in- service medical officer. It is not in dispute that as per GR dated 26.09.2022, 20% seats are reserved for PG course for in-service medical officers and the respondent No.3 granted permission in favour of the petitioner for appearance to NEET-PG scheduled on 21st May, 2022. Further, on 26.09.2022, the State Common Entrance Test Cell published a revised schedule and the petitioner participated in the process as per revised schedule. However, vide communication dated 29.09.2022,

respondent No.3 passed an order and held that the petitioner is not eligible for admission from in service quota but she is eligible only for study leave in general quota for degree course in Pathology as per Clause 6.3 of the Government Resolution dated 19.03.2019 and in view of the Government resolution dated 26.03.2020.

11. For pursuing the PG course being in-service Medical Officer, the candidate is required to fulfill the criteria as prescribed in Para 4 of the G.R. dated 19th March, 2019. Para 4.6 of the said GR provides that a candidate, who is held eligible in NEET-PG and complies with criteria prescribed paragraphs 4.1 to 4.5 of said G.R. and served in remote, difficult and rural area (including tribal, naxalite area) for three years, should be entitled for reservation of 50% for admission to PG diploma. Paragraph 6.1 of said G.R. provides about incentive marks to the candidates who have completed one year's service but less than three years. Paragraph No. 6. 3 of said G.R. provides that, the Medical Officer who has not completed regular service of one year in scheduled/declared Institute, but rendered 5 years or more service in other area and if such Medical officer is held eligible for admission on his merits for admission, in that circumstance, he would be entitled for study leave of two years for pursuing PG courses and also entitled for earned leave, half pay leave or commuted leave for the period of four months and can also be granted extra ordinary leave for remaining

period of eight months. Such candidate also would be entitled for leave salary of the post from which he/she applied for PG course. Therefore, considering the literal interpretation of Clause 6.3 of the G.R. dated 19.03.2019, the present petitioner, having not been worked in any remote, difficult or triable area but worked for more than 8 years at Government Hospital, Ahmednagar, which is urban area. Therefore, in our conscious view, the petitioner has certainly not fulfilled the criteria for recommendation as in-service candidate to get admission to PG course on deputation.

12. The learned Tribunal has passed the impugned order after considering clause 6.3 of the said G.R. and rightly held the petitioner is not entitled for being recommended as in-service candidate to get admission to PG course on deputation and refused to grant interim relief. Therefore, no manifest error, perversity appears in the order. Hence the petition is liable to be dismissed. Accordingly we proceed to pass the following order:

O R D E R

Writ petition stands dismissed. No order as to costs.

(Y. G. KHOBRAGADE, J.)

(SMT. VIBHA KANKANWADI, J.)

JPChavan