IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

1009 WRIT PETITION NO. 13949 OF 2019

1. Dr. Mangesh Babasaheb Sanap, ...**PETITIONERS**
   Age-32 years, Occu- Service,
   R/o. Trimurti Niwas,
   Behind Vaidyanath Bank, Patoda,
   Tq. Patoda, Dist. Beed

2. Dr. Nagnath Dagdoba Yamgir,
   Age-33 years, Occu-Service,
   R/o. Memgirwadi, Post-Tandulwadi,
   Tq. Palam, Dist. Parbhani

VERSUS

1. The State of Maharashtra, ...**RESPONDENTS**
   Through it's Principal Secretary,
   Medical Education & Health Department,
   Maharashtra State, Mantralaya,
   Mumabai-32

2. Director of Medical Education & Research
   Government Dental College &
   Hospital Building, ST. George's
   Hospital Compound,
   Near VT, Mumbai-400 001

3. Director of Health Services,
   Arogya Bhavan, 6th Floor,
   St. George's Hospital Premises,
   P.D. Demelo Road,
   Mumbai-400 001

4. Deputy Director of Health Services,
Aurangabad, Near Baba Petrol Pump,
Aurangabad

5. Deputy Director of Health Services,
Akola

6. Commissioner,
Common Entrance Cell, Mumbai
CET-Cell (DMER) Government Dental College &
Hospital Building, St. George's Hospital
Compound, VT, Mumbai -400 001

7. Medical Council of India
Pocket-14, Sector -8, Dwarka,
New Delhi, 110 077
Through its Secretary

Mr. A. N. Nagargoje, Advocate for the petitioners
Mr. A. R. Kale, AGP for the respondents/State
Mr. S. K. Kadam, Advocate for the respondent No.7

AND
WRIT PETITION NO. 5071 OF 2020

Dr. Ganesh Vitthalrao Kale, ...**PETITIONER**
Age-32 years, Occu- Service Medical Officer,
MBBS Doctor/Student,
R/o. Woman's Hostel Quarters,
Chaman, Jalna

VERSUS

1. The State of Maharashtra, ...**RESPONDENTS**
Through Principal Secretary,
Public Health Department,
10th Floor GT Hospital Compound,

Mantralaya, Mumbai-32

2. Director Medical Education and Research
State of Maharashtra,
St. Gorje T Hospital Compound,
VT Mumbai

3. The Commissioner,
State Common Entrance Test Cell,
Maharashtra, Mumbai
Admission for Medical Postgraduate Courses
(MD/MS/Diploma)

4. Medical Council of India
Pocket-14 Sector 8, Dwarka,
New Delhi, 110 077
Through Its Secretary

Mr. S. S. Dambe, Advocate for the petitioner
Mr. A. R.Kale, AGP for the respondents/State
Mr. S. K. Kadam, Advocate for the respondent No.4

CORAM : RAVINDRA V. GHUGE &
ANIL L. PANSARE, JJ.

RESERVED ON : 16th June, 2022

PRONOUNCED ON : 12th July, 2022

JUDGMENT [PER: ANIL L. PANSARE, J.]

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned counsels for the parties.

2. The petitioners are doctors in service. They are seeking directions against the respondents to allot them 10% marks for each year of the service rendered by them in difficult/hilly/rural area as an incentive as per the Government Resolution dated 20-05-2010 and 03-05-2011. Their further prayer is to hold that the cases of the petitioners will be governed by these two government resolutions and not by new policy framed vide two government resolutions dated 19-03-2019 read with Corrigendum dated 26-03-2020.

3. The petitioners are seeking admission to the Postgraduate Medical Course under in service quota. According to the petitioners, Medical Council of India (for short 'MCI') has framed regulations namely the Postgraduate Medical Education Regulations 2000, which prescribed procedure for taking admission to the Postgraduate Medical Course. This regulation has been amended from time to time and lastly on or about May, 2018.

4. Initially, there was 50% reservation in Postgraduate Course for the in service candidates. The said reservation has been modified in the year

2009. The concerned State Government has been accorded power to allocate 10% additional marks for each year upto the maximum of 30% to the in service candidates who have worked in remote/difficult/rural area. The State Government, pursuant to 2009's amendment issued the Government Resolution dated 20-05-2010 and took a policy decision to allocate 10% additional marks to the in service candidates for each year. The said additional marks are to be added in the marks obtained by the concerned candidate in the NEET exam and after adding the said marks, candidate will be considered for the admission to the Postgraduate Course.

5. The State Government, in order to give benefits of 10% additional marks has earmarked the area as remote area, difficult area and rural area as prescribed in the aforesaid government resolution. The Health Centres situated in 33 districts have been notified as situated in remote area, difficult area and rural area. Thus, in service candidate who has served in the said areas would be entitled to the benefits under the 2010's Government Resolution.

6. Another Government Resolution came to be issued on 03-05-2011 by the State Government laying down the procedure and the entitlement of the candidates for getting additional incentive marks. It is specifically mentioned in the said Government Resolution that the procedure would be applicable for the academic year 2011-2012 onwards.

7. The said procedure laid down in 2011's Government Resolution was being followed till the year 2018. However, on 05-04-2018 the MCI has amended the regulation of 2000. The State Government has been given authority to notify the remote/difficult/rural areas from time to time in order to give benefit of additional 10% marks per year to in service candidate. Accordingly, the State Government has issued the impugned Government Resolutions dated 19-03-2019 prescribing the procedure for allotting the additional marks on the basis of facilities available in the concerned area where Health Centres are situated. Marking system has been put in place, to define remote/difficult/rural area etc. For example, if Health Centre is situated in tribal area, 3 marks will be allotted. If it is situated in Naxalite

area, 2 marks will be allotted. If it is situated in hilly area, 2 marks will be allotted. If it is situated in rural area, 1 mark will be allotted etc.

8. The area will be classified as remote area if overall marks fall between 6.1 to 10. The in service candidates working in such Health Centres would be awarded 10% additional marks per year. The difficult area is the one where the marks fall between 3 to 6. The in service candidate working in such centre would be awarded 7% additional marks per year. The rural area is where the marks would be less than 3. The in service candidate working in such centre would be awarded 4% additional marks per year.

9. On the basis of such marking, fresh centres have been notified under the impugned government resolutions. Primary Health Centre, Rayagaon where the petitioners in writ petition No.13949/2019 were working is notified under the category of rural area. Thus, the petitioners will now be entitled to get only 4% additional marks per year. Similar is the situation of the petitioner in writ petition No. 5071/2020. The petitioner worked from 2016 as

Government Medical Officer Group-1, category of PHC of village Rajgad, Tq. Kinwat, Dist. Nanded. This centre would also fall under the category of rural area and thus he will now get only 4% additional marks per year.

10. Thus, the State authorities have changed the earlier policy. In the previous policy there was no such bifurcation and all the candidates working under the remote/difficult/rural areas were entitled to get 10% additional incentive marks. However, the policy has been completely changed under the impugned Government Resolution.

11. The grievance of the petitioners is that, this policy has been given retrospective effect vide Corrigendum dated 26-03-2020, and therefore, they have approached the court challenging the decision taken by the respondents.

12. We have given thoughtful consideration to the submissions made by both the parties.

13. Petitioner No.1 was initially appointed in Rural Hospital, Lonar vide order dated 06-10-2016.

However, on 29-04-2017 he was transferred to Primary Health Centre, Rayagaon which is remote area as defined in 2010's Government Resolution. Petitioner No.2 has served at Primary Health Centre, Teerthpuri, Tq. Ghansawangi, Dist. Jalna from 2013 to 2016. Thereafter, he came to be appointed as a Medical Officer, Group 'A' at Primary Health Centre, Rayagaon a remote area. The petitioner in writ petition No. 5071/2020 was appointed in Primary Health Centre, Rajgad, Tq. Kinwat, Dist. Nanded vide order dated 23-04-2016 which comes under remote/difficult/hilly trival, naxalite undeveloped area.

14. The petitioners claim that the policy prevailing at that time was to encourage the doctors like petitioners to serve in remote/difficult/rural areas. The petitioners have decided to join the Government service and to serve in the said areas in anticipation of getting 10% additional marks for each year's service. The petitioners have also executed necessary bonds to serve in the remote areas in order to get admission in the Postgraduate Course. Thus, the petitioners were otherwise entitled to get 10% additional incentive marks per

year up to maximum limit of 30% marks but by virtue of the impugned government resolutions, the petitioners would now get only 4% additional incentive marks per year.

15. There is no dispute that when the petitioners were appointed as Medical Officers, they were governed by the provisions of 2010's Government Resolution. In that sense, they were entitled to the benefits provided under the said Government Resolution for getting admission in the Postgraduate Course. There is further no dispute that the Government Resolution dated 19-03-2019 was issued pursuant to the amendment in MCI Regulations in the year 2018.

16. The question is, whether the respondents were right in giving retrospective effect to the impugned government resolutions. The answer, would certainly be in the negative for the reasons to follow.

17. The impugned government resolution dated 19-03-2019 would provide that the government resolution dated 19-06-2010 stands superseded. The second

government resolution of even date i.e. 19-03-2019, which laid down the procedure for granting benefits of marks would provide that the regulations would be applicable for the admissions for the year 2019-2020. The corrigendum dated 26-03-2020 provides, amongst others, that the provisions of government resolution dated 19-03-2019 will be applicable for in service doctors who have served at the rural areas during the period from 2010 to 2019. The petitioners therefore will be entitled only for 4% additional marks in terms of the impugned government resolutions read with corrigendum. The impugned government resolution, therefore, takes away all the benefits acquired by the petitioners.

18. The law on the said point is well settled. The subsequent policy in the form of subordinate legislature or otherwise which is detrimental to the interest of citizens/ beneficiaries of earlier policy cannot be given retrospective effect. The Hon'ble Supreme Court in the case of *Dr. Dinesh Kumar and others Vs Motilal Nehru Medical College, Allahabad and others reported in (1985)3 SCC 22 and in the case of G. J. Raja Vs Tejraj Surana dated 30-07-2019, reported in 2019 (5) Mh.L.J.* held that the

provisions which are in penal nature to the interest of person cannot be given retrospective effect.

19. The impugned government resolutions are hit by principles of legitimate expectations. The petitioners have served at remote/difficult/rural locations with the legitimate expectation of getting additional benefits of 10% marks per year. Therefore, the respondents, ought not to have issued impugned government resolutions giving retrospective effect.

20. The petitioners have relied upon the judgment in writ petition No. 8268/2017 dated 05-07-2017 [Alia Kausar Mohammed Shafee Vs State of Maharashtra and others] with connected matters. The issue involved was in respect of eligibility of the candidates in getting admissions to the MBBS course from the Maharashtra State quota. The policy prior to 2017 was that the candidates who have passed 10th std examination from the institution situated out side the Maharashtra but who have passed 12th std examination from the institution situated in the State of Maharashtra and who are domicile of Maharashtra were eligible for getting admission

through the Maharashtra State quota. However, in the year 2017, the rule was changed. The modified clause was that the candidates who have passed 10th and 12th standard examination from the institution situated in the State of Maharashtra were also eligible for admission through the Maharashtra State quota. The amended policy was challenged before the Hon'ble High Court. The High Court held that amended policy would not apply to the petitioners therein who have passed 10th examination from outside Maharashtra prior to the year 2017.

21. The petitioners have then referred to the writ petition No.3035/2019 dated 13-03-2019 [Ojas Devendra Shah Vs State of Maharashtra and ors] with connected petitions. The petitioners therein were admitted in the MBBS course between the period from 01-11-2011 to 24-11-2017 and at that time, there was no policy of giving bond by them and the said policy was made applicable vide Government Resolution dated 12-10-2017 and Government Resolution dated 24-11-2017. The said Government Resolutions were challenged before the Principal Seat of High Court at Bombay. The High Court held that since the said policy was not in force when the petitioners therein

were admitted in MBBS course, the policy could not be made applicable subsequently.

22. The respondents have submitted that Postgraduate Medical Education Regulations 2000 were amended in the year 2018 to include rural areas in the category of tribal difficult areas so as to extend benefit of additional incentive marks for the service extended in the rural areas as well. It is argued that the petitioners will also get benefits of the modified policy as they have worked in rural area. We are not convinced that said provision is beneficial to the petitioners. The overall effect of the policy is adverse to the interest of the petitioners. The petitioners will now get 4% additional marks as against 10% in terms of old policy. The modified policy if implemented retrospectively, will take away the benefits caused in favour of the petitioners. Therefore, the bifurcation of the areas envisaged in the impugned government resolution and it's benefits could only be made applicable with prospective effect.

23. The sum and substance of the above discussion is that, the policy decision taken by the

respondents through the two impugned government resolutions dated 19-03-2019 read with corrigendum dated 20-03-2020 will have prospective effect. The impugned government resolutions dated 19-03-2019 and corrigendum dated 20-03-2020 will not be applicable to the cases of the petitioners.

24. The petitioners are, therefore, entitled to 10% additional incentive marks per year as provided under the Government Resolution dated 20-05-2010 and 03-05-2011. The petitions are accordingly partly allowed. Rule is made absolute in the above terms. No order as to costs.

[ANIL L. PANSARE, J.] **[RAVINDRA V. GHUGE, J.]**

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