



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION. NO. 5502/2023

(DR.PRASHANT SAMRAT KALPANDE **VERSUS** THE STATE OF MAHARASHTRA & OTHERS)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri R.D. Hajare, counsel for the petitioner.

Shri A.A. Madiwale, Assistant Government Pleader for the respondent nos.1 to 4.

Shri N.S. Khubalkar, counsel for the respondent no.5.

CORAM : A. S. CHANDURKAR AND MRS.VRUSHALI V. JOSHI, JJ.

DATE : SEPTEMBER 01, 2023.

The petitioner who has obtained his M.B.B.S. degree in 2001 and has thereafter acquired the Diploma in Gynaecology and Obstetrics in 2007 is serving as Medical Officer (Gynaecology and Obstetrics) since 27.04.2015. He has been posted in Amravati district and is discharging duties there. The petitioner sought to acquire higher qualification and pursuant to the Government Resolution dated 24.07.2023 he appeared in NEET-PG 2023 Examination. He was placed at Serial Number 141 in the merit list as an in-service candidate. In the Provisional Selection List his name was shown at Serial Number 4955IB. This indicated that the petitioner was not entitled for any incentive marks for being considered from in-service quota. Reference has been made to Clause 4.6 in the Government Resolution dated 19.07.2023 in that regard. As per the said Clause, the persons who have worked for a period of three years in remote, difficult and rural areas are entitled to preference in seats reserved for the Post-Graduate candidates to the extent of 20%. Since it is the case of the petitioner that he was unable to discharge duties in any remote, difficult or rural area on the ground that the post of Medical Officer (Gynaecology and Obstetrics) was not available at the said area and he was required to discharge duties in the district place, he has sought declaration that Clause 4.6 of the Government Resolution dated 19.07.2023 is detrimental to his interest and therefore is not applicable in his case.

2. The petitioner on 23.08.2023 made a representation in this regard to the Commissioner, Health Services, Mumbai. While issuing notice on 25.08.2023 the Director, Health service was directed to decide the said representation. The same has been decided on 29.08.2023 and the request made by the petitioner has not been accepted. In this backdrop, the learned counsel for the parties have been heard.

3. Shri R.D. Hajare, learned counsel for the petitioner referred to the representation made by the petitioner on 23.08.2023 and submitted that since no posts were available at the remote, difficult or rural area the petitioner could not discharge duties there. As a result, he was deprived of any incentive marks that are awarded when services are discharged at such place. Referring to the Government Resolution dated 03.05.2011 it was submitted that the petitioner was entitled to the benefit thereunder. However, on account of retrospective application of the Government Resolution dated 19.07.2023, prejudice was caused to the petitioner. In that regard, he placed reliance on the decision in *Mangesh Babasaheb Sanap (Dr.) & Another Versus State of Maharashtra & Others* [2023(1) Mh.L.J. 138] and submitted that retrospective effect could not have been given to the Government Resolution dated 19.07.2023. It was further submitted that instead of restricting the in-service quota to 20%, same ought to be 50% in terms of the Government Resolution dated 20.05.2010.

4. Shri A.A. Madiwale, learned Assistant Government Pleader for the respondent nos.1 to 4 opposed the aforesaid submissions. According to him, the consideration of the petitioner's representation dated 23.08.2023 by the Director, Health Services was in accordance with law and no interference was called for. He pointed out that the post of Medical Officer (Gynaecology and Obstetrics) was available in remote, difficult and rural areas. However, the petitioner was not posted there. There was no question of giving any retrospective effect to the Government Resolution dated 19.07.2023. Since the earlier Government Resolution on which the petitioner sought to rely had been superseded, there was no question of any retrospective operation of the

subsequent Government Resolution. The writ petition therefore was liable to be dismissed.

5. We have heard the learned counsel for the parties and we have perused the documents on record. The issues raised by the petitioner in his representation dated 23.08.2023 are that there were no sanctioned posts of Medical Officer (Gynaecology and Obstetrics) in remote, difficult and rural areas for the petitioner to discharge duties. In this regard, it has been stated by the Director, Health Services that such posts were available at the Rural Hospital, Sub-District Hospital and Trauma Care Unit. The details with regard to the availability of such posts have also been indicated in the response dated 29.08.2023. Another issue raised was with regard to grant of 50% seats for the in-service candidates on the basis of the Government Resolution dated 03.05.2011. In this regard it is stated that the said Government Resolution has been superseded by the Government Resolution dated 19.03.2019 and therefore the request of the petitioner for reserving 50% seats could not be accepted.

6. It is seen that the Director, Health Services has considered the relevant aspects while answering the petitioner's representation. Since the post of Medical Officer (Gynaecology and Obstetrics) was available in the remote, difficult and rural areas, it cannot be said that the petitioner was deprived from rendering such services on the ground that no such posts were sanctioned. Similarly reliance placed on the Government Resolution dated 03.05.2011 is also unwarranted since it has ceased to operate in view of the subsequent Government Resolution dated 19.03.2019. Clause 4.6 of the Government Resolution dated 19.07.2023 prescribing reservation of 20% alongwith Clause 5.2 thereof is clear. The said clauses do not give any retrospective effect to what has been stated therein. Reference has been made to the earlier Government Resolution dated 19.03.2019 in that regard. Hence, the ratio of the decision in *Mangesh Babasaheb Sanap* (supra) would not apply to the facts of the present case.

7. For aforesaid reasons, we do not find that the petitioner can be granted any relief in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India. The writ petition is thus dismissed with no order as to costs.

(MRS. VRUSHALI V. JOSHI, J.)

(A. S. CHANDURKAR, J.)

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