
(2012) 06 GAU CK 0006
In the Gauhati High Court
Case No : Writ Petition (C) No. 553 of 2012

Arinbdam Das (Dr.) and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 01-06-2012

Acts Referred:

Constitution of India, 1950 — Article 16(4)

Citation : (2012) 5 GLT 436

Hon'ble Judges : Indira Shah, J; Amitava Roy, J

Bench : Division Bench

Advocate : R.M. Deka, Mr. D.P. Chaliha, Mr. M. Rana, Mr. U.P. Chaliha and Ms. A. Mahanta, for the Appellant; A. Verma, SC, APSC, Mr. C. Baruah, D.K. Mishra and Mr. G.Z. Ahmed, for the Respondent

Final Decision : Dismissed

Judgement

Amitava Roy, J.—The amendment to Rule 4(3)(i) of the Assam Medical College (Regulation of Admission to Post Graduate Courses) Rules, 2006 occasioned by the Assam Medical College (Regulation of Admission to Post Graduate Courses) (Amendment) Rules, 2012 (for short, hereinafter referred to as the 2012 Rules") embodied in the Notification No. HLB.400/09/58 dated 11.1.2012 issued by the Government of Assam in the Health & Family Welfare (B) Department has been impeached to be constitutionally invalid in the present proceedings. As a relief consequential to the above declaration, a writ of mandamus has been sought for to mandate that the Teacher's Quota of seats as contemplated in the unamended provision of the Rules be retained at 20 and the petitioners be directed to be accommodated against the same for the session 2012-2013 in the Post Graduate Courses of the Medical Colleges of the State of Assam. We have heard Mr DP Chaliha, Senior Advocate for the petitioners; Mr. D Saikia, learned Addl. Advocate General, Assam for the State respondents and Mr DK Mishra, Senior Advocate assisted by Mr GZ Ahmed, Advocate for the self impleaded private respondents.

2. Having outlined the contour of the redressal sought for, the rival pleadings in their bare essentials are indispensable to provide the factual conspectus. The petitioners having completed their M.B.B.S. degree on being duly selected for the corresponding course by the Assam Public Service Commission, were appointed as Demonstrators/Registrars in various disciplines in the three Medical Colleges of the State of Assam in the year 2006. With the enhancement of the entry level educational qualification for the posts of Registrar/Demonstrator or the posts equivalent thereto from M.B.B.S. Degree to Post Graduate Degree in the concerned subject vide the Notification dated 4.10.2006 issued by the Government of Assam in the Health & Family Welfare (B) Department and the prescription of this upgraded qualification to be a condition of eligibility for promotion to the next higher post of Assistant Professor by the Medical Council of India, the Assam Medical College (Regulation of Admission to Post Graduate Courses) Rules, 2006 (for short, hereinafter referred to as "the 2006 Rules") were framed in supercession of the earlier Rules. As per Rule 4(3)(i) thereof (the 2006 Rules), reservation of 5 seats for teachers in the subject of Anatomy, Physiology, Biochemistry, Pharmacology, Microbiology, SPM & Forensic Medicine was provided for. Subsequent thereto, the 2006 Rules underwent amendment ushered in by the Assam Medical College (Regulation of Appointment to Post Graduate Courses) (Amendment) Rules, 2010 (for short, hereinafter referred to as "the 2010 Rules") enhancing the number of seats allocated for the Teacher's Quota from 5 to 20 for the sessions 2010 and 2011. The amended Rule 4(3)(vi) provided a maximum of 4 seats in a subject allowable in each session for the Teacher's Quota. The norms of eligibility for being accommodated against these seats were also prescribed.

3. According to the petitioners, following such enhancement in the Teacher's Quota seats, persons similarly situated like them could avail the benefit thereof and consequently enroll themselves in the Post Graduate courses in their field (s) of teaching. That, amongst others, the amended Rule 4(3)(i) of the 2010 Rules had been unsuccessfully challenged before this Court in WP(C) 3280/2010 has been mentioned. The petitioners, however, have asserted that inspite of the aforestated negation of the assailment only 10 out of 20 seats in the Teacher's Quota were made available to the concerned candidates for the session 2011 leaving behind 18 candidates serving as Demonstrators/Registrars/ Residents in various Medical Colleges of the State waiting in bonafide expectation to derive the benefit of such allocation in the Teacher's Quota. It was at this juncture that the impugned amendment has been introduced reducing the number of seats in the Teacher's Quota from 20 to 5. The Notification dated 11.1.2012 carrying the amendment made it obvious that the 2012 Rules would be applicable to regulate admission of students into Post Graduate/Diploma Course in the Medical Colleges of Assam and would cover the academic session from 2012. Repudiating this amendment to be apparently arbitrary, irrational and whimsical thereby denying them of their constitutional right to pursue Post Graduate Courses against the Teacher's Quota seats under the Rules, the petitioners have sought for panacean

intervention of this Court in the exercise of its writ jurisdiction.

4. The Director of Medical Education, Assam (respondent No. 4) has filed his affidavit wherein it has been asserted that in view of the entry level academic qualification of M.B.B.S. degree only many of the Registrars/ Demonstrators could not be promoted to the next higher post resulting in stagnation and vacancies in the higher ranks and causing dislocation in the department wise staffing pattern stipulated by the Medical Council of India. As this was a direct fall out of lack of Post Graduate degree of the serving Registrars/Demonstrators in particular, on one hand the entry level academic qualification was upgraded to that of Post Graduate Degree and on the other, Rule 4(3) of the 2006 Rules was amended to increase the number of Teacher's Quota seats from 5 to 20 as a one time measure for the sessions-2010 and 2011. This was feasible also in view of award of additional Post Graduate seats in the session 2010. The deponent reaffirmed the rejection of the impugnement of the amendment to Rule 4(3) of the 2006 Rules occasioning increase in the number of Teacher's Quota seats by this Court. According to the answering respondent, however, in view of the intervening litigation and non-availability of the full quota of seats, only 10 could be filled up from the eligible serving teachers. The affidavit discloses the plea that enhancement of Teacher's Quota seats from 5 to 20 was only for the sessions-2010 and 2011 and that with the exercise undertaken as contemplated, there are at present only a few teachers left without Post Graduate degree who can be accommodated within the next few years by retaining 5 seats in the quota per year with a maximum of 2 seats per subject. The answering respondent has insisted that having regard to the regulated nature of the amendment of Rule 4(3)(i), with the lapse of the 2011 session, the enhanced quota of 20 has ceased. It has been stated further that the teachers are eligible to apply for open quota seats as well.

5. The private respondents in their counter while dismissing the challenge laid to the amendment to Rule 4(3)(i) vide the 2012 Rules, have endorsed in general the justification provided by the official respondents. Terming the amendment to Rule 4(3)(i) of the 2006 Rules effecting enhancement of the Teacher's Quota seats from 5 to 20 as an imperative of institutional requirements to ward off, amongst others, the imminent risk of de-recognition of the Medical Colleges of the State by the Medical Council of India, they have asserted that having regard to the limited duration for which the Teacher's Quota seats had been increased, no unassailable right in the petitioners is discernible to seek a writ of mandamus as endeavoured by them. According to these respondents, the amendment of Rule 4(3)(i) by the 2012 Rules is valid and adapted to the prevailing institutional exigencies and, thus, does not merit any interference by this Court.

6. Mr Chaliha has argued that as would be evident from the affidavit filed on behalf of the Health & Family Welfare (B) Department of the State in WP(C) 3280/2010 (Dr. Sushil Agarwalla & Ors. Vs. State of Assam & Ors.) that the enhancement in the Teacher's Quota seats occasioned by the 2010 Rules was

contingent on the increase in the number of Post Graduate Degree seats for the sessions 2010 and 2011, reduction thereof to 5 in the face of successive increase of seats in the consecutive sessions is obviously arbitrary, unreasonable and irrational resulting in hostile discrimination. As the serving teachers bereft of the Post Graduate Degree would, thus, be deprived of an opportunity to make up their academic deficiency for further advancement of their career, the impugned provision of the Rules being violative of their fundamental right to equal opportunity in public employment, ought to be adjudged unconstitutional, null and void, he urged. Mr Chaliha dismissed the plea of the official respondents that the petitioners were eligible to compete for the open quota seats as, admittedly, they lack in the essential norm of rural service. The learned senior counsel, thus, urged that the impugned provision of the 2010 Rules being without any intelligible basis, be annulled.

7. The learned Addl. Advocate General, Assam, in reply, has reiterated the pleaded stand of the Government to contend that not only the enhancement of the Teacher's Quota seats in the attendant compelling circumstances was temporary for the sessions-2010 and 2011 only and that as the objective thereof has meanwhile been substantially achieved, the restoration of the original quota of seats cannot be faulted with. Contending that the impugned provision of the 2012 Rules is an inevitable corollary of the enjoinder of Rule 4(3)(i) of the 2010 Rules and that having regard to the nature and the purpose thereof, the petitioners cannot claim violation of any enforceable right of theirs, Mr Saikia has submitted on instructions that in case they apply for relaxation of the norm of rural service so as to enable them to compete for the open quota seats, the same would receive due consideration of the Government.

8. In supplementation of the above, Mr Mishra has maintained that the allocation of the Teacher's Quota seats being in the nature of reservation for a particular category of candidates to pursue an academic course, it is a matter of discretion of the authorities concerned and not one of constitutional duty or legal compulsions. The learned senior counsel has, therefore, urged that not only the petitioners cannot claim any enforceable right to demand continuance of the Teacher's Quota as prescribed by the 2010 Rules, their impugment of Rule 4(3)(i) of the 2012 Rules and their prayer for a writ of mandamus to restore 20 seats in such quota for their accommodation against the same is wholly misconceived. Mr Mishra, to reinforce his contentions, placed reliance on the decisions of the Apex Court in *C.A. Rajendran Vs. Union of India (UOI) and Others*, ; *Ajit Singh and Others Vs. The State of Punjab and Others*, and of this Court in *Dr. Sushil Agarwalla and Others Vs. State of Assam*, .

9. The pleadings of the parties and the arguments advanced on the basis thereof have received our due consideration. Admittedly, the process of admission to the Post Graduate courses in the Medical Colleges of the State is governed by a set of Rules which were in the form of the 2006 Rules contemplating 5 Teacher's Quota seats as is relevant for the purposes of the present adjudication. The

background in which the 2010 Rules had to be introduced is also not in dispute. In between, the entry level academic qualification for the posts of Demonstrator/ Registrar had been enhanced/ upgraded from that of M.B.B.S. to a Post Graduate Degree. Lack of Post Graduate Degree of the existing incumbents in these offices prohibited their promotion to the next higher rank of Assistant Professor and upwards to that of Professor in the various disciplines/ departments. This criterion of eligibility for promotion was imperative in nature being prescribed by the Medical Council of India's guidelines. Lack of Post Graduate Degree at the entry level posts, thus, precipitated stagnation as well as vacancies in the higher ranks. As the upgradation in the entry level academic qualification from M.B.B.S. to a Post Graduate Degree only failed to appropriately meet the situation which grew alarming with the imminent risk of de-recognition of the Medical Colleges of the State for their failure to adhere to the staffing pattern prescribed by the Medical Council of India, enhancement in the Teacher's Quota seats was construed to be a remedial initiative. The number of seats in the Teacher's Quota prescribed by Rule 4(3)(i) of the 2006 Rules was enhanced to 20 for the sessions-2010 and 2011 in the following terms: (i) in sub-rule (3),--

(a) for clause (i), the following shall be substituted namely :-

(i) 20 seats shall be reserved for each session namely sessions 2010 and session 2011 only in degree courses for the teaches belonging to the three Medical Colleges of Assam who have joined service after due selection through the Commission or whose services were regularized by the Commission. They shall have to appear before the Selection Board constituted under clause (i) of this sub-rule:

Provided that if any of the Teacher's Quota seats are not filled up due to non-availability of an eligible candidate in a particular year, then the vacant seat shall be filled up by candidates from the merit list of the respective year in order of merit.

10. The amendment to Rule 4(3)(vi) predicated a ceiling of 4 seats in a subject allowable in each session for the Teacher's Quota. That one of the reasons for enhancement in the Teacher's Quota seats as above was increase in the number of Post Graduate Degree seats for the session 2010-2011 is, however, evident from the affidavit filed by the State respondents in WP(C) 3280/2010 [Dr. Sushil Agarwalla & Ors. (supra)]. The official respondents therein as well reiterated their averments as made in their counter in the instant proceedings justifying the enhancement of the Teacher's Quota seats. They inter alia stated as well that at that point of time there were 45 Registrars/ Demonstrators lacking in Post Graduate Degree and that the enhancement in the Teacher's Quota seats had been conceived of so as to facilitate their acquisition of the Post Graduate Degree for rendering them eligible for promotion to the higher posts as per the enjoinders of the Medical Council of India guidelines. That the enhancement in the Teacher's Quota seats from 5 to 20 as effected by the 2010 amendment was not spurred by the increase in the number of the Post Graduate Degree seats for

the session-2010 alone is, thus, apparent on the face of the records. The plea raised on behalf of the petitioners that increase in the Teacher's Quota seats was invariably relatable only to the increase in the Post Graduate Degree seats so much so that no reduction thereof under any circumstance is permissible is, thus, untenable being too simplistic in essence as well as casually dismissive of the other determinants contributing to the amendment of Rule 4(3)(i) by the 2010 Rules.

11. In course of the arguments, Mr Saikia has apprised this Court that meanwhile out of 45/48 then existing non-Post Graduate Demonstrators/ Registrars, 30 have pursued/ have been pursuing the Post Graduate course by availing the benefit of enhancement in the Teacher's Quota seats for the sessions-2010 and 2011 and that those remaining can very well be accommodated with time against the seats now prescribed by the 2012 Rules. This proposition, however, has not been refuted on behalf of the petitioners.

12. A bare perusal of the amended Rule 4(3)(i) designed by the 2010 Rules would unequivocally testify that the enhancement of the Teacher's Quota seats to 20 had been intended only for the sessions-2010 and 2011, a fact noticed by this Court in *Sushil Agarwalla & Ors.* (supra). Therein the justifications narrated by the departmental authorities therefor had been duly taken note of with approval. The challenge to Rule 4(3)(i) of the 2010 Rules, on a detailed consideration of the pleaded facts and the law attendant thereon, was negated.

13. The allocation of the Teacher's Quota seats, having regard to the framework of the scheme and the selection process for admission to the Post Graduate courses is obviously by way of reservation in favour of a particular category of candidates in order to facilitate their participation in the Post Graduate Course of study. That such reservation is a matter of discretion of the concerned authorities has been held by a Constitution Bench of this Apex Court in *C.A. Rajendran* (supra) rendered in the context of Article 16(4) of the Constitution of India. Their Lordships with reference to the issue of reservation for the Scheduled Castes and Scheduled Tribes contemplated under the aforementioned provision, ruled that the same did neither vest any right on the claimants nor cast any constitutional duty on the Government and that it only conferred a discretionary power on the State to make appropriate provisions in favour of the backward classes of the citizens which, in its opinion, was not adequately represented in its services. This view was reiterated by another Constitution Bench of the Apex Court in *Ajit Singh & Ors. (II)* (supra) which as well reversed a contrary view taken in two earlier decisions. Their Lordships propounded that no mandamus could be issued either to provide for reservation or for any relaxation of any prescribed norm.

14. Having regard to the backdrop in which the Teacher's Quota seats had been enhanced by the amendment of Rule 4(3)(i) vide the 2010 Rules and the developments subsequent thereto as has been projected in the pleadings of the parties, we are of the unhesitant opinion, in the teeth of the law enunciated by the Apex Court as above, that no interference as sought for is warranted. The

reasons/justifications furnished by the State respondents in endorsement of the 2012 Rules qua Rule 4(3)(i) are relevant and cogent and merit acceptance. The impugnement of the amendment of Rule 4(3)(i) by the 2012 Rules is hereby rejected.

15. Consequently, the relief by way of a writ of mandamus is also declined. It is, however, made clear that this determination notwithstanding, if the petitioners submit appropriate representation(s) before the concerned departmental authorities for relaxation of the norm of rural service so as to enable them to compete for the open quota seats to pursue the Post Graduate courses in the three Medical Colleges of the State of Assam, the same would be duly and expeditiously considered in accordance with law. Subject to the above, the petition stands dismissed. No costs.