
(2014) 04 BOM CK 0225

In the Bombay High Court

Case No : Writ Petition Nos. 1255, 1284 and 1311 of 2013

Ashish Subhash Bodhade

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 30-04-2014

Acts Referred:

Citation : (2014) 4 ALLMR 364 : (2014) 7 BomCR 702 : (2014) 4 MhLj 646

Hon'ble Judges : V.A. Naik, J;A.S. Chandurkar, J

Bench : Division Bench

Advocate : Y.S. Gorle, Advocate for the Appellant; S.M. Ghodeswar and Ketki Joshi, Asstt. Govt. Pleaders, Advocate for the Respondent

Judgement

V.A. Naik, J.—Since the issue involved in these writ petitions is identical and they arise from a common order of the Maharashtra Administrative Tribunal. Nagpur dated 30/03/2012, they are heard together and are decided by this common judgment. Rule. Rule made returnable forthwith. The petitions are heard finally with the consent of the learned counsel for the parties.

2. The petitioner in Writ Petition No. 1255 of 2013 has secured an M.D.S. degree in the subject of Oral Pathology and Microbiology, whereas the petitioner in Writ Petition No. 1284 of 2013 has secured a M.D.S. degree in the subject of Periodontics. Also, the petitioner in Writ Petition No. 1311 of 2013 has secured a M.D.S. degree in the subject of Oral Pathology and Microbiology. It is not in dispute that while securing admission to the post graduate course in dental education, the petitioners were required to sign a bond to serve the Government for a period of two years, failing which they were required to pay a sum of Rs. 5,00,000/- to the Government. All the petitioners had signed the bond as aforesaid, while applying for admission to the post graduate course. After the completion of the post graduate course, the petitioners, who had secured M.D.S. Degree in the subject of Oral Pathology and Microbiology were appointed as Assistant Lecturers for teaching the subjects of Prosthodontics and Orthodontia. So also, the petitioner, who had secured the M.D.S. degree in Periodontics was

appointed as a lecturer for teaching the subject of Orthodontia. None of the petitioners were willing to join on the post of Assistant Lecturer in the subjects of Prosthodontics and Orthodontia. According to the petitioners, the State Government ought to have appointed them as lecturers only in the subjects of Oral Pathology and Microbiology and Periodontics as per their specialisation. Since the petitioners declined to serve in the Government Dental Hospital as Assistant Lecturers in the subject of Prosthodontics and Orthodontia, the Government issued a communication asking the petitioners to pay a sum of Rs. 5,00,000/- in accordance with the bond. The said communication was challenged by the petitioners before the Maharashtra Administrative Tribunal in separate original applications. The Maharashtra Administrative Tribunal, by the impugned order dated 30/03/2012, dismissed the original applications filed by the petitioners. The petitioners have challenged the order of the Maharashtra Administrative Tribunal dated 30/03/2012 by these petitions.

3. Shri Gorle, the learned counsel for the petitioners, challenges the order of the Maharashtra Administrative Tribunal as also the impugned communication issued by the Government on two grounds. Firstly, according to the learned counsel, it was necessary for the State Government to ask the petitioners to serve as Assistant Lecturers only in the subjects of their specialisation. It is submitted that two petitioners had secured M.D.S. degree in the subject of Oral Pathology and Microbiology and they could not have been appointed to teach the subjects of Prosthodontics and Orthodontia. It is submitted that the petitioners were ready to serve as Assistant Lecturers in the subjects of Oral Pathology and Microbiology and Periodontics in which they are specialised and they could not have been appointed as Assistant Lecturers to teach a subject, other than the two subjects in which they had secured the masters degree. Secondly, according to the learned counsel, though Dr. Monish Naidu, Dr. Gaurav Kulkarni and Dr. Saoumil Sarin had also refused to join as Assistant Lecturers to teach the subjects other than the subjects in which they had secured the masters degree, the Government relaxed the conditions of the bond by accepting only a sum of Rs. 1,00,000/- from them. It is submitted that the State cannot be permitted to discriminate in cases of similarly situated graduates. It is submitted that the petitioners should also be permitted to pay only a sum of Rs. 1,00,000/- as was done in the other three cases. The learned counsel relied on the unreported judgment of the Division Bench at the Principal Seat of the Bombay High Court, dated 07/11/2012 in Writ Petition No. 1862 of 2012 : Dr. Vinod Shankarlal Sharma and 61 Others Vs. The State of Maharashtra and Another, to substantiate his submission.

4. The learned Assistant Government Pleaders appearing on behalf of respondents, supported the order of the Tribunal and submitted that the Tribunal had rightly dismissed the original applications after recording cogent reasons for upholding the action of the State Government in directing the petitioners to pay a sum of Rs. 5,00,000/- in view of the breach of the condition of the bond. It is submitted that the State Government incurs considerable expenditure for

meeting the expenses of graduate and post graduate education of students in the colleges run by it, as the fees charged by the colleges do not meet the cost of education. It is submitted that since the Government incurs substantial amount for meeting the expenses of the educational courses in the Government colleges, the Government expects the students to serve either the State Government or the local self governing bodies for a short period and hence a bond is got executed from the candidates securing admission to the graduation and post graduation courses in the colleges run by the State Government. It is submitted that while securing the admission, the petitioners had willingly signed the bonds and had agreed to serve the Government for a period of two years, failing which they were liable to pay a sum of Rs. 5,00,000/- to the Government. It is submitted that having signed the bonds, the petitioners cannot be permitted to wriggle out of the contract on a baseless plea that they should be appointed as Assistant Lecturers only in the subjects in which they had specialisation. It is submitted that the petitioners have studied the subjects of Prosthodontics and Orthodontia at the graduation level and the petitioners, therefore, cannot refuse to teach the said subjects on the ground that they have secured the masters degree in Oral Pathology and Microbiology and Periodontics. According to the learned Assistant Government Pleaders, the Tribunal has rightly considered these aspects of the matter while dismissing the original applications filed by the petitioners. It is submitted that the unreported judgment dated 01/11/2012 is distinguishable on facts and cannot come to the rescue of the petitioners for effectively challenging the impugned order.

5. On hearing the learned counsel for the parties and on a perusal of the impugned order, it appears that there is no scope for interference with the impugned order, in exercise of the writ jurisdiction. All the petitioners had signed the agreement-bond while securing admission to the post graduate course in the subject of Oral Pathology and Microbiology and Periodontics. It is clearly stated in the bond that the student agrees that immediately after the completion of the post graduate course, the student will serve the Government in the capacity to which he may be appointed according to the relevant service Rules on the salary as he may be entitled to. The bond-agreement further mentions that on the failure of the student to do so, he would be liable to pay an amount of Rs. 5,00,000/- to the Government. On a reading of the bond, it is clear that there was an agreement between the parties that the petitioners would, on the completion of the post graduate course, serve the Government in the capacity to which they may be appointed according to the relevant service Rules. There is nothing in the agreement-bond to show that the State Government was liable to appoint the petitioners to teach only the subjects in which they had secured the masters degree. It is not the case of the petitioners that they are not appointed in the capacity of Assistant Lecturers to teach the subjects according to the relevant service Rules on a salary payable under the relevant Rules. The petitioners claim that they could have been appointed to teach the subjects in which they had specialised. The agreement bond signed by the petitioners,

however, does not state so. There is nothing in the agreement to show that the State Government was under an obligation to appoint the petitioners on the posts in the areas of their specialisation. The petitioners were appointed as Assistant Lecturers for teaching at the graduation level in Dentistry, i.e. B.D.S. Course in accordance with the vacancies available at the Government Dental College, from where the petitioners had done their post graduation. The Tribunal rightly considered that the subject of Prosthodontics and Orthodontia were a part of the curriculum at the degree level and the petitioners had studied the subjects while securing the B.D.S. Degree. It was not the case of the petitioners before the Tribunal that the petitioners are unable or incapacitated to teach the subjects of Prosthodontics or Orthodontia. The Tribunal was justified in dismissing the original applications after giving a thought to these aspects of the matter.

6. The Government is required to incur enormous expenditure for meeting the expenses of graduate and post graduate education in the colleges run by the Government as the fees charged by such colleges do not meet the cost of education. Since the expenditure for the education of such courses is met through the public exchequer, the State Government ensures that some services are rendered by the students after the completion of the degree or the post graduation degree course. In this background the State Government secures a bond from the candidates securing admission at the graduation and post graduation level. The petitioners had admittedly signed the bond and had agreed to serve the Government for a period of two years in the capacity in which they may be appointed under the relevant service Rules failing which they would be liable to pay an amount of Rs. 5,00,000/- to the Government. Having signed the agreement bond at the time of securing admission at the post graduation level, the petitioners cannot refuse to teach the subjects which they had studied at the graduation level on a plea that the Government should appoint them as Assistant Lecturers only in the subjects of their specialisation. A person securing admission to the graduate and post graduate course after signing the agreement bond may as well decline to serve the Government, but in such a case he should be willing to pay the amount of Rs. 5,00,000/- to the Government for the expenditure incurred by the Government for his education at the graduate or post graduate level. There may be cases where a doctor would like to immediately start his private practice and may decline to serve the Government for a period of two years. He may happily do so, but after paying a sum of Rs. 5,00,000/- to the Government in terms of the bond.

7. The petitioners were appointed to teach the subjects, which they had studied at the graduation level, in the college from which they had done their post graduation, by the Dean of the very college, who was competent and responsible enough to judge and decide whether the petitioners were suitable for appointment to teach a particular subject in Dentistry. It is rightly observed by the Tribunal that the Dean of the Government Dental College rightly judged the suitability of the petitioners for appointment on the post of Assistant Lecturers to teach the subjects of Prosthodontics and Orthodontia. The Tribunal was further

justified in observing that the Tribunal had very little room to interfere with the action of the Dean of the Government Dental College in appointing the petitioners to teach the particular subjects. The Tribunal observed that it was not possible for the State to always ask a graduate or a post graduate to serve only in the subjects taught at the post graduation level as there are as many as 21 subjects taught at the degree level (B.D.S.) whereas the subjects of specialisation or post graduation are only 8. The Tribunal went on to add that even assuming that there may be overlapping in the subjects taught at the degree level (B.D.S.) a policy to appoint post graduates to teach only in the areas of their specialisation would preclude the Government from identifying a post graduate, who may be eligible for teaching at the graduate level (B.D.S.) for rest of the subjects. We appreciate the approach of the Tribunal in deciding the issue. It is rightly observed that if qualified post graduate candidates are permitted to say that they should be appointed only in the subjects in which they have specialisation, there would be no Assistant Lecturers to teach the other 13 subjects at the degree level (B.D.S.), for ensuring that the conditions of the bond are satisfied. We, therefore, find no force in the submission made on behalf of the petitioners that the petitioners could have been appointed for teaching the subjects of Oral Pathology and Microbiology and Periodontics only.

8. The other submission made on behalf of the petitioners that the State Government has applied different set of rules to similarly situated doctors is also ill founded and is liable to be rejected. The respondents have specifically denied that they have recovered only a sum of Rs. 1,00,000/- from Dr. Monish Naidu, Dr. Gaurav Kulkarni and Dr. Saoumil Sarin. It is clearly stated on behalf of the respondents that an amount of Rs. 5,00,000/- is sought to be recovered from Dr. Monish Naidu, Dr. Gaurav Kulkarni and Dr. Saoumil Sarin. It is stated that the bank guarantees furnished by them were forfeited and the balance amount is demanded from the three. It appears that the State Government has not relaxed the conditions of the bond for the other doctors as claimed by the petitioners.

9. The unreported judgment dated 07/11/2012 in Writ Petition No. 1862 of 2012 and another cannot be helpful to the petitioners in seeking a reversal of the order of the Maharashtra Administrative Tribunal. In the cases in the unreported judgment, the doctors securing the post graduate degree were asked to work as Registrars and Senior Residents, failing which they were required to pay a penalty of Rs. 15,00,000/- and Rs. 25,00,000/- to the Government. In the cases in hand, the petitioners were not appointed as Registrars and Senior Residents but were appointed as Assistant Lecturers to teach the subjects at the graduation level.

10. As the order of the Maharashtra Administrative Tribunal does not call for any interference, the writ petitions are dismissed with no order as to costs. Rule stands discharged.

11. At this stage, the counsel for the petitioners states that the respondents have withheld the post graduate degrees of the petitioners on their failure to pay a

sum of Rs. 5,00,000/- to the Government. It is stated that the respondents may be directed to release the degree certificates of the petitioners on the payment of Rs. 5,00,000/-. If the respondents have not released the degree certificates of the petitioners for non payment of Rs. 5,00,000/- as demanded, the respondents are directed to release the degree certificates of the petitioners as soon as they pay a sum of Rs. 5,00,000/- to the Government.

Order accordingly.