
(2015) 04 RAJ CK 0040
In the Rajasthan High Court
Case No : Civil Writ Petition No. 3711/2015

Deepak Choudhary and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 07-04-2015

Acts Referred:

Citation : (2015) 04 RAJ CK 0040

Hon'ble Judges : M.N. Bhandari, J.

Bench : Single Bench

Advocate : Ashok Gaur and R.N. Mathur, Senior Advs., Ashvini Jaiman, Deepesh Sharma and Aslam Khan, for the Appellant; S.K. Gupta, Additional Advocate General, Advocates for the Respondent

Final Decision : Allowed

Judgement

M.N. Bhandari, J.—This writ petition has been filed with the following prayers, which are quoted thus:

"(i) To quash and set aside the instruction booklet issued for counselling being contrary to the rules.

(ii) To direct the respondents to conduct the counselling as per the Rules and include only those candidates as inservice candidates who fall in the same category as per the amended rules of 1963.

(iii) To direct the respondents to not to allow the person in the counselling as inservice candidate, who has already availed the benefit of inservice category and completed his PG.

(iv) Any other order or direction which this Hon''ble Court may deem just and proper in the facts and circumstances of the case in favour of humble petitioners including award of cost of this writ petition."

2. The controversy involved in this petition pertains to eligibility of candidates in the in-service category for admission in PG Medical Course, 2015. The entrance

test for it was conducted by the respondents followed by declaration of result.

3. The admissions in PG Medical Course are given from in-service and non-service category. The controversy in the present case is in respect of in-service category.

4. The Instruction Booklet for admission was issued by the respondents. The eligibility criteria for in-service category was mentioned so as for non-service category.

5. The grievance of the petitioners is against the list of eligible and ineligible candidates, issued by the respondents. According to the petitioners, list includes names of those candidates, who are not eligible to be in-service candidates, as per the Ordinance of Rajasthan University of Health Sciences (for short "the Ordinance") and Rajasthan Medical and Health Service Rules, 1963 (in short "Rules of 1963"). As per Ordinance 278-E-IV, one should be in possession of required qualification apart from three years service in rural area of State of Rajasthan or two years continuous service in rural area of desert/hilly/tribal parts. The rural area has been defined under Rule 22A of the Rules of 1963.

6. The candidates, who have not actually worked in the rural area with required length, have also been made eligible for PG Medical Course in the in-service category. It is not only in ignorance of the Ordinance but also the Rules of 1963. A prayer is accordingly made to include only those candidates in the category of in-service candidates, who are eligible as per Ordinance and Rules of 1963. A prayer for quashing of Instruction Booklet has also been made apart from other prayers.

7. Learned Additional Advocate General Shri S.K. Gupta submitted that admission in the PG Medical Course would be made strictly as per the statutory provision. The petitioners have approached this court under misconceived notion and apprehension. Coming to the legal position for admission in PG Medical Course, reference of Ordinance 278-E-IV was given. According to the learned AAG, if one has received rural allowance for the required period, then he would be eligible for in-service category and, for the aforesaid, compliance of Rule 22A of the Rules of 1963 is not necessary. It is more specifically in given circumstances when a candidate was initially posted in the rural area and, after shifting or by keeping him at the same place, a Notification was issued by the Revenue Department upgrading the area to the level of Sub-Tehsil/Tehsil headquarters. The Medical Department could not know about the Notification, thus continued the candidates at the same place and even paid rural allowance. They did not remain in rural area in strict terms of Rule 22A but aforesaid has no application to the present case. A reference of the Notification dated 26th December, 2011, issued by the Finance Department, has also been given. It is Rajasthan Civil Services (Revised Pay-scale) Rules, 2008 (in short "Rules of 2008"). It provides about rural allowance. According to learned Additional Advocate General, if one is getting rural allowance as per Notification, then he

would be treated to have posted in the rural area.

8. Referring to Annexure-4, it is submitted that an order was issued by the Director, Medical and Health Department to make the things clear. He admitted that only those candidates would be eligible for in-service category, who remained posted in rural area and received rural allowance after actual working. If any area was upgraded to the level of Tehsil headquarters, working of such candidate would be counted towards rural service, if the population thereof is below 5000. The letter dated 01.01.2015 (Annexure-4) makes it clear as to who would be eligible for in-service category. The stand of the Government may be considered in the light of the aforesaid letter, though it is going to cause hardship to the department because the list was prepared by treating the posting of the candidates in rural area even if rural area was upgraded to Tehsil headquarters. The list would be amended suitably, if direction is given.

9. Two applications were made for impleadment today itself and they were called to provide opportunity of hearing to the applicants as while passing interim order on 30th March, 2015, intimation regarding filing of application for impleadment was given with a prayer to provide opportunity of hearing to the candidates individually and in representative capacity. Shri Ashok Gaur and Shri R.N. Mathur, Senior Advocates, were heard accordingly by accepting the applications for impleadment.

10. Shri Ashok Gaur, Senior Counsel submitted that Rule 22A of the Rules of 1963 applies to appointment in service and not for admission in PG Medical Course. In view of the above, eligibility should be considered as per Ordinance 278-E-IV.

11. The petitioners have challenged the Instruction Booklet after appearance in the entrance test and remaining unsuccessful therein, thus they are estopped to challenge the Instruction Booklet. The petitioners have even failed to give details of those candidates who are said to be ineligible but their names have been included in the list of eligible candidates. In absence of it also, petition would not be maintainable.

12. Coming to the merit of the case, Mr. Gaur submits that applicant is one, who remained posted in rural area and received rural allowance as a consequence thereupon. The village was upgraded to a Tehsil headquarters. It was not in the knowledge of the applicant as well as the Medical Department. In these circumstances, a candidate should not be deprived to get benefit of quota meant for in-service candidate. A reference of Notification issued by the Finance Department on 26.12.2011 was also given. Therein, rural allowance has been made admissible even if it is a Tehsil headquarter but with the population below five thousand. If one was receiving rural allowance as per the aforesaid Notification, he is entitled for in-service quota for admission in PG Medical Course. The case is covered by the aforesaid Notification and the list of eligible candidates was issued by the government accordingly, thus it may not be

disturbed.

13. Learned Senior Counsel Shri R.N. Mathur submitted that the petition is quite unspecific and vague. The applicant is one who was posted in the rural area but an order was passed to post her in attached hospital due to urgent requirement of female Doctor. It was not in a rural area but posting is not in the domain of a candidate. On posting in an area other than rural, the applicant had no option but to join the post, otherwise, disciplinary action could have been taken. The applicant, however, received rural allowance, thus was rightly held to be eligible for the quota meant for in-service candidates. It is looking to the exceptional circumstances and reasons given above. A reference of Ordinance of the University so as the Notification issued by the Finance Department on 26.12.2011, was given to indicate as to who would be eligible for in-service quota for admission in PG Medical Course. According to him, Rule 22A of the Rules of 1963 has no application to the admission in PG Medical Course. Prayer is accordingly made to dismiss the petition while maintaining eligibility list issued by the government.

14. I have given earnest consideration to rival submissions made by the parties and perused the record so as relevant provisions of law.

15. The controversy involved in this petition is as to who is eligible for in-service quota for admission in PG Medical Course. The Instruction Booklet provides about eligibility but it would be gainful to refer Ordinance 278-E-IV. It is quoted hereunder for ready reference:

"278-E-IV - ELIGIBILITY FOR ADMISSION

All candidates seeking admission to MD/MS Courses must have completed satisfactorily one year's compulsory rotating internship after passing the final MBBS Examination latest by 30th April of the year of selection and must have registration with Rajasthan Medical Council.

(i) For seats referred at sub-clause (a) of Clause-II the Eligibility shall be laid down by the Govt. of India from time to time.

(ii) For seats reserved for in-service candidates as referred at clause (II-b) the candidates should be duly selected by the R.P.S.C. under Rajasthan Medical and Health Services Rules, 1963 or should be working as Medical Officer in Rajasthan Medical and Health Services on adhoc/temporary/contractual basis and should be below the age of 45 years and should have completed at least three years of service in the rural areas of the State of Rajasthan or two years of continuous service of Rural Areas of desert/Hilly/Tribal parts of the State. Rural area is defined as a Rural area where rural allowance is admissible to the doctors and should have actually served in the rural area. In service candidate who have served for at least three years in rural areas of the State of Rajasthan or at least two years in rural areas of desert/hilly/tribal parts of the State of Rajasthan shall be considered for admission to Degree (MD/MS) courses.

(iii) For seats not reserved in sub-clauses (a) and (c) of Clause- II, candidates must have passed Final M.B.B.S. examination from the University of Rajasthan or the candidates should have been nominee of the Rajasthan Government and was admitted to the M.B.B.S. course as State nominee in a Medical College outside the state of Rajasthan and has obtained the M.B.B.S. Degree from a Medical College from outside the State of Rajasthan, where they secured admission on All India Competitive basis. Besides, those Lady doctors/spouse who are not born in Rajasthan but because of their marriage they have become bona-fide residents of Rajasthan shall also be eligible, subject of the condition that they have passed their M.B.B.S. examination from a Medical College, recognised by Medical Council of India.

(iv) In case the candidate requires eligibility after passing Pre-P.G. examination in the subsequent year for admission in other specialist he/she will have to produce (i) Cancellation of Registration from the University of Rajasthan (ii) Certificate of acceptance of his/her resignation from the head of Institution, with the application of choice of subject and place before admission."

16. As per Ordinance quoted above, one is eligible for in-service quota, if possesses qualification and eligibility given therein. This includes three years rural service in State of Rajasthan or two years rural service in Hilly/Desert/Tribal parts. It further requires rural allowance and actual working in rural area as defined. Rule 22A has been referred by the petitioners, thus quoted hereunder for ready reference:

"22A. After recruitment on the post of Medical Officer, the person so appointed shall be posted by the Appointing Authority or Head of the Department in the Rural Area where he shall have to serve for a period of 3 years immediately after joining the service.

Explanation: "Rural Area" means a place other than Tehsil/Sub-Tehsil Headquarter and which is not a Municipal Town."

17. The aforesaid provision was amended in the year 2012. As per Rule 22A, rural service excludes posting at Sub-Tehsil/Tehsil headquarters and Municipal towns but, in my opinion, Rule 22A cannot be applied here when definition of "rural area" has been given in the Ordinance itself.

18. The Ordinance 278-E-IV provides as to who would be eligible for in-service category. A candidate needs to possess qualification given therein apart from actual rural service for the required period with admissible rural allowance. The "rural area" has been defined in the Ordinance in following words: "Rural area is defined as a rural area where rural allowance is admissible to the Doctors and should have actually served in the rural area".

19. As per the letter issued by the Director, Medical and Health Department, dated 01.01.2015 at Annexure-4, Rule 22A has relevance in PG Medical Course to determine eligibility of in-service candidate. A direction was given to prepare

the list but, in my opinion, Rule 22A cannot be applied to the extent it goes in contradiction to the Ordinance. The "rural area" has been defined under the Ordinance itself where rural allowance and actual working are relevant.

20. The Revised Pay Scale Rules of 2008, as amended by the Notification dated 26th December, 2011, provide as to who would be eligible for rural allowance. It excludes those Medical Officers/Sr. Medical Officers, who are posted in Municipal Towns or Tehsil headquarters having population above five thousand. The table of the aforesaid Notification is relevant to determine the eligibility of in-service candidates and is quoted hereunder:--

21. Learned Senior Counsel Shri Ashok Gaur and Shri R.N. Mathur made a contest regarding application of Rule 22A of the Rules of 1963 for admission in P.G. Medical Course and I agree with their argument. I find that for in-service candidate, the Ordinance is relevant and provides that one should be in service under the Rules of 1963 or working as a Medical Officer in Medical and Health Department on adhoc/temporary/contractual basis and should be below the age of 45 years with required length of service in rural area. The Ordinance 278-E-IV provides definition of "rural area" and, accordingly, one must have actually worked in rural area for three years or two years, if it is hilly/desert/tribal parts where rural allowance is admissible. The rural allowance is admissible as per Notification dated 26.12.2011. It is not admissible other than to a Medical Officer/ Sr. Medical Officer posted at Rural Dispensary or Primary Health Centre situated at a place other than Municipal Town and Tehsil Headquarters having population above five thousand.

22. The applicants may be those who were initially posted in rural areas, but due to upgradation of the area or for the reason of posting other than in rural area, worked accordingly. They have shown their helplessness in posting and claim benefit of in-service quota as they were receiving rural allowance even if it was not admissible as per Notification dated 26.12.2011. If argument of the learned counsel for applicant-non-petitioners is considered on compassionate grounds or equities, it would be in violation of the Rules. The Ordinance 278-E-IV mandates actual working in the rural area where rural allowance is admissible.

23. If a candidate has not actually worked in the rural area where rural allowance is admissible, whether he would be eligible for in-service quota? The answer of the question would be in negative as per Ordinance 278-E-IV. In view of the above, the plea raised by the applicant-non petitioners cannot be accepted in violation of the provisions of law. This court should not issue direction contrary to legal provisions, as held by the Apex Court time and again. The legal provisions cannot be nullified in the garb of equities. It may be a hard case for the applicants-non-petitioners but, then, any benefit to them may result in violation of legal provisions.

24. The Government initially took plea of ignorance of the Notification issued by the Revenue Department for upgradation of certain rural areas to the level of

Tehsil/Sub-Tehsil headquarters but realizing the order of the Director, Medical and Health Department, learned AAG submitted that they would go as per the Ordinance 278-E-IV read with Notification dated 26.12.2011.

25. Learned counsel for the applicants raised certain objections about maintainability of the writ petition. Shri Ashok Gaur made a reference of prayer No. 1 ignoring other prayers. Even if Instruction Booklet is not quashed, which need not be, the admission in the PG Medical Course is yet to be made in consonance to the provisions applicable for it. The Instruction Booklet is not in conflict with the Ordinance 278-E-IV though one part is missing, which is nothing but serious lapse of the respondents, who had published the Instruction Booklet without making it strictly in consonance to the Ordinance. In any case, Instruction Booklet is only for guidance. It cannot be read contrary to the provisions of law but in consonance to it.

26. The prayer is to give admission to those who are eligible for in-service category, excluding others. The issue has been determined accordingly. It cannot be said that once the petitioners have appeared in the entrance test, they cannot question the subsequent eligibility list. They have not challenged the process of entrance test but eligibility list prepared subsequently, that too, contrary to the Ordinance 278-E-IV.

27. Learned Senior Counsel Shri R.N. Mathur raised issue about vagueness of the writ petition. After going through the writ petition, I do not find it to be vague because issue is very well framed by the petitioners. Since action of the State was challenged, they were not required to implead those, who are included in the list despite their ineligibility. In any case, individuals have also been heard, thus their representation exist. Hence, even on the aforesaid ground, petition cannot be dismissed.

28. In view of the discussion made above, I find merit in the writ petition. It is accordingly allowed. The respondent No. 3 is commanded with the direction to consider those candidates in in-service category who are in possession of qualification as given in the Ordinance 278-E-IV and, for it, candidate must have actually worked in the rural area with required length where rural allowance is admissible as per Notification dated 26.12.2011. If a candidate was given rural allowance, though not admissible to the area or not actually worked in the rural area, as defined under the Ordinance 278-E-(IV), he would not be entitled to in-service category as it would be in violation of the Ordinance. It is also clarified that if any area was upgraded and rural allowance did not remain admissible, continuance of such candidates would not be treated towards rural service contrary to the Ordinance 278-E(IV). It would also be necessary that such a candidate was posted in rural dispensaries or Primary Health Centre. The official respondents would give admission in in-service category as per the directions given above. Those, who are not found eligible for in-service category, can be considered for non-service category.

29. A direction is also given to fix the responsibility on those officers, who have given deputation to Medical Officer or Sr. Medical Officer in an area other than rural, in violation of the Rules.