

(2022) 03 GAU CK 0014
In the Gauhati High Court
Case No : Writ Petition (Civil) No. 914 Of 2022

Dr. Anjar Muhammad Tapadar

APPELLANT

Vs

State Of Assam And 3 Ors

RESPONDENT

Date of Decision : 07-03-2022

Acts Referred:

Assam(Regulation Of Admission Into Post Graduate Degree And Diploma Courses)
Rules, 2021 — Rule 4, 6

Citation : (2022) 03 GAU CK 0014

Hon'ble Judges : Sanjay Kumar Medhi, J

Bench : Single Bench

Advocate : J.M.A. Choudhury, B. Gogoi

Final Decision : Allowed

Judgement

1. Heard Shri J.M.A. Choudhury, learned counsel for the petitioner and Shri B. Gogoi, learned Standing Counsel, Health Department appearing for all the respondents. Also heard Shri I. Rafique, learned counsel for the applicant who has filed the I.A. No. 457/2022 for impleadment as party respondent no. 5, 6 & 7.

2. The petitioner is an aspirant for the Post Graduate Course in Medical Science. In 2015, the petitioner had obtained his MBBS from the Assam Medical College, Dibrugarh. On 19.01.2022, a notice was issued by the DME, Assam for counseling for admission into 50 % of Post Graduate Seats in the Medical Colleges of Assam under the State Quota for the Session 2021 to be held as per the Assam Medical Colleges (Regulation of Admission of Post Graduate Course) Rules, 2006 as amended upto 2012. The said notice was issued pursuant to an order dated 19.01.2022, passed by the Hon'ble Division Bench of this Court in WP(C) No. 211 / 2022, the subject matter of which was challenging the vires of the Rules of 2021. The learned counsel for the petitioner has drawn the attention of this Court to a notification dated 01.12.2021, wherein the name of the petitioner figures against Serial No. 14. By the said notification, issued by the Department, no objection was conveyed for the named officers for appearing in

the Post Graduate Entrance Examination. The Counseling was accordingly held and in the list dated 30.01.2022, the petitioner was shown to be selected and his name reflected against Serial No. 431.

3. On the same date, an Educational Notice dated 30.01.2022 was issued by the DME, scheduling the dates for admission as 01.02.2022 and 02.02.2022. On the next date i.e. 31.01.2022, a notice was published by the DME fixing 4.02.2022 as the date for verification of the documents. However, in the Admission Notice dated 04.02.2022, published by the DME, the name of the petitioner was missing, though no discernible reasons were assigned for such non-inclusion of the name of the petitioner. However, the petitioner could unofficially learn that in the understanding of the authorities, the petitioner did not complete the requirement of 5 years service in rural areas in the State which the pre-condition for availing the State Quota.

4. Assailing the said decision, Shri Choudhury, the learned counsel for the petitioner has drawn the attention of this Court to two certificates issued by the competent authority to demonstrate that the purported reason to exclude the name of the petitioner is apparently erroneous. In the first certificate which is dated 20.12.2021, the Joint Director of Health Services, Dima Hasao has certified that the petitioner had worked in the MMU Langting PHC (difficult area) w.e.f. 20.04.2015 to 19.04.2016 as a Medical Officer, MBBS for a period of one year. By the second certificate dated 17.12.2021, the Joint Director of Health services, Karimganj has certified that the petitioner had served as a Medical and Health Officer in the village Baraigram Mini PHC which is admittedly a rural area.

5. It is the contention of the petitioner that the contents of the aforesaid two certificates or the certificates for that matter are not matters of dispute. Therefore, by reckoning the period of service rendered till 31.05.2021, which is the cut-off date, the petitioner fully qualifies the requirement of serving for five years in a rural area.

6. By referring to the Rules of 2006 which have been amended in the year 2012, the learned counsel submits that under the existing Rule-4, the reservation was made for the State Health Quota for eligible persons who have completed 5(five) years or more service in rural areas and such service is required to be completed as on 31st of May of the year admission and the certificate is to be submitted in Appendix-III. It is the contention of the learned counsel for the petitioner that though Appendix-III has been specifically provided for giving such a certificate, the earlier period of service admittedly rendered by the petitioner in a Difficult Area cannot be ignored and therefore, the purported reason for excluding him from the benefit of State Quota could be apparently arbitrary and illegal. The learned counsel accordingly submits that a direction be issued to the respondent authorities to take into account the period of service rendered by the petitioner in Maibang, Dima Hasao in calculating the 5 years service. The learned counsel further submits that the last date of admission being 10th of March 2022, there is grave urgency in the matter as no admissions can be made beyond the said

date.

7. On the other hand, Shri Gogoi, the learned Standing Counsel, Health and Family Welfare Department makes the following submissions :-

(i). The requirement of working in a Rural Area for 5 years should be continuous in nature.

(ii). The certificate given by the authorities of Dima Hasao in Appendix -II is only in connection for getting 3 % additional marks as per Rule.

(iii). The said certificate under Appendix-II which has now placed relied upon was never placed before the authorities and therefore, no error apparent on the face of the records was committed by the authorities in calculating the period of 5 years for the petitioner. He further submits that 10th March of 2022 being the last date of admission, the seats are likely to be filled up and it will be difficult to accommodate the petitioner.

8. Shri I. Rafiq, learned counsel who has filed the application for impleadment of party respondent nos. 6, 7 & 8 submits that the said applicants have been admitted and in case the writ petition is allowed, atleast admission of one of them may be required to be cancelled which will cause prejudice.

9. Rejoining his submissions, the learned counsel for the petitioner has referred to the order dated 03.03.2022 passed by the Hon'ble Division Bench which has recorded the submission of the learned Advocate General of the State that seats are vacant wherein candidates can be accommodated .

10. I have duly considered the rival submissions and the materials placed before this Court have been carefully examined.

11. The issue which arises for determination is whether the period of service rendered by the petitioner at Maibang, Dima Hasao should be taken into consideration while reckoning his total length of service rendered in a rural area.

12. Shri Gogoi, the learned Standing Counsel submits that Appendix-II to the Rules is for altogether a different purpose namely to get the benefit of additional 3 % marks subject to a ceiling and therefore, the same is not a part of the scheme to record the total period of service which can be done only by a certificate in Appendix- III.

13. This Court has noticed that the certificate under Appendix -II has been issued as prescribed in Rule-6 of the Rules of 2021. Under Rule-6, the candidates who had served atleast one year continuously in the remote and difficult area shall be given weightage in the marks as an incentive of 3 % of the marks obtained in the entrances examination against completion of each year of service in the remote and difficult areas subject to a ceiling. Apart from the fact that for the time being the said Rules of 2021 are not in force as per orders of the Hon'ble Division Bench, this Court is of the view that the contents of the certificate not being disputed, a candidate who has served in a difficult / remote

area which is admittedly also a Rural area should not be denied in calculating the total period of service in a Rural area to be eligible to get the benefit of the State Health Quota. Though a contention was raised on behalf of the Department that the period of 5 years should be continuous in nature, in absence of such stipulation in the present Rules, this Court is unable to accede to the said submissions of the Department.

14. Shri Gogoi, the learned Standing Counsel however may be correct in contending that the certificate under Appendix-II which has now been sought to be relied upon was never placed before the authorities and therefore, there could not be any consideration / application of mind in that direction. However, in the interest of substantial justice and also considering that the writ petition was filed on 08.02.2022 which is a month back, a direction is liable to be issued for taking into consideration the period covered by the certificate dated 20.12.2021 under Appendix II to calculate the total period of service of the petitioner in a rural area. The petitioner has also brought on record that even for the period from 17.12.2016 to 23.02.2017, the petitioner had served under the National Health Mission, Karimganj District in a Rural Area in a contract basis and Shri Gogoi, the learned Standing Counsel fairly submits that service under a contract is also liable to be taken into account.

15. In view of the aforesaid discussion and taking into consideration all the attending facts & circumstances, this Court directs that the case of the petitioner be reconsidered and in doing so, the rejection should not be on the account of lack of service of 5 years in a Rural Area as stipulated by the Rule.

16. This Court is also of the view that since the petitioner stands above the applicants who are seeking impleadment in the merit list, the authorities are also at liberty to take any consequential action as merit has to be given priority. If as recorded by the Hon'ble Division Bench in the order dated 03.03.2022, the petitioner can be accommodated without disturbing the three applicants, that option can also be explored by the authorities which has to be within the permissible limits as per law.

17. As regards the submission of the Department for requirement though it appears that in an intermediate amendment made in the year 2010, the expression "continuous" was a requirement for 5 years service, the said requirement appears to have been done away with consciously in the Rules of 2012 which is holding the field as on date.

18. The writ petition accordingly stands allowed.

19. Since 10.03.2022 is the last date, the petitioner may submit the necessary documents including the Appendix-II certificate immediately so that the same may be acted upon before the last date.

20. No order as to cost.