

(2022) 01 SIK CK 0005
In the Sikkim High Court
Case No : Writ Petition (C) No. 02 Of 2022

Dr. Deoraj Gurung

APPELLANT

Vs

State Of Sikkim And Anr

RESPONDENT

Date of Decision : 19-01-2022

Acts Referred:

Citation : (2022) 01 SIK CK 0005

Hon'ble Judges : Bhaskar Raj Pradhan, J

Bench : Single Bench

Advocate : Tashi Raptan Barfungpa, Zigmee Dorjee Bhutia, Yadev Sharma

Judgement

Bhaskar Raj Pradhan, J

[1] Dr. Deoraj Gurung, the Writ Petitioner has preferred this Writ Petition challenging the impugned Office Memorandum No.1236/H&FW dated

08.12.2021 by which the Government of Sikkim prescribed the eligibility criteria to undergo higher medical courses

(DNB/MD/MS/Postdoctoral/Diploma) amongst the National Eligibility Entrance Test (NEET) qualified candidates under the State Quota Sponsored

Category (SQSC) Post Graduate seat allotted to the beneficiaries in clinical subject, at any institute/college recognized by National Medical

Commission. The eligibility criteria prescribed were :

â??(1) Candidate with 03 (three) years of service will qualify for higher Post Graduate Course. Preference shall be given to candidate

having minimum 01 (one) year rural posting, viz., Primary Health Center (PHC) and Community Health Center (CHC)/District Hospital

(DH);

(2) In case the Seat remains un-allotted to in-service candidate who has

completed 03 (three) years of service at the time of Counselling, the un-availed Seat will be allotted to other qualifying candidate;

(3) If the candidate has attained more than 45 (forty-five) years of age, their Post Graduate Course shall not be sponsored and he/she shall

have to apply for leave as per the Sikkim Government Service (Leave) Rules, 1982;

(4) All expenses for the Post Graduate Course as sponsored in-service candidate shall be borne by the Department and shall be reimbursed

by the Government when the funds are made available;

(5) In the event of no candidate fulfilling the above criteria, the seat will be allotted to other candidate in the following manner and order,

namely :-

i). The doctor working on temporary basis under the State Government,

ii). The doctor working on contractual basis under National Health Mission,

iii). Open category candidate possessing Certificate of Identification,

iv). Such Seat shall be allotted to candidates with the approval of the State Government through proper notice/advertisement.

Provided that the candidates shall bear the expenses of the course themselves.

(6) On selection of candidates for Post Graduate Course, the Departmental candidate shall be liable to execute the Surety and Agreement

Bond with the Department, in accordance with the Sikkim Service Rules.â??

[2] Heard Mr. Tashi Raptan Barfungpa, Learned Counsel for the petitioner, as well as Mr. Yadev Sharma, Learned Government Advocate who

appears on advance notice. At the outset, Mr. Yadev Sharma submits that he requires some time to file response to the Writ Petition as well as I.A.

No.01 of 2022 seeking stay.

[3] Admittedly, the counselling is scheduled to start from tomorrow.

[4] Prima facie, the record reveals that on 08.09.2021 the Health & Family Welfare Department, Government of Sikkim (Respondent No.2) had

granted permission to the petitioner to appear for the National Eligibility-cum-Entrance Test (NEET-PG, 2021) scheduled on 11.09.2021. According to

the petitioner, pursuant to the permission being granted, he appeared for the NEET-PG, 2021 and obtained a score of 408 out of 800 and a rank of

42677. The cut-off marks for NEET-PG, 2021 for OBC candidates to which the petitioner belongs was 265. After the petitioner appeared for the NEET-PG, 2021 and obtained the rank as aforesaid, the Respondent No.2 issued the impugned Office Memorandum dated 08.12.2021 prescribing the criteria of 3 years of service to be able to qualify for higher Post Graduate course. Although, it was with the permission of the Respondent No.2 that the petitioner had appeared for NEET-PG, 2021 it seems by the impugned Office Memorandum dated 08.12.2021 issued subsequently, he would not be able to appear for the counselling scheduled from tomorrow.

[5] The Writ Petition requires further examination. Issue notice upon the Respondents. The Learned Government Counsel accepts notice on behalf of the Respondents and waives formal notice thereof. As of now, on prima facie understanding of the case, this Court is of the view that in all fairness the petitioner must be allowed to sit for the counselling as per the law subject to the final outcome of the Writ Petition. It is accordingly so ordered.

[6] The Respondents shall file their response to the Writ Petition as well as interim application for stay within a period of four weeks as prayed for by the learned Government Advocate. Three weeks thereafter to the petitioner to file their rejoinder, if any. It is made clear that the petitioner shall not claim any equity due to the interim order passed by this Court today.

[7] List this matter on 15.03.2022.