
(2011) 10 BOM CK 0103

In the Bombay High Court

Case No : Writ Petition No. 1440 of 2011 and Chamber Summons No's. 228, 230, 271, 274 and 275 of 2011

Dr. Kabeer Umakumar and Others

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 20-10-2011

Acts Referred:

Constitution of India, 1950 — Article 19

Citation : (2011) 113 BOMLR 4066

Hon'ble Judges : Nishita Mhatre, J;B.H. Marlapalle, J

Bench : Division Bench

Advocate : A.V. Anturkar with Mr. S.B. Deshmukh WP No.1440/11 and WP L No. 1619 of 2011, Mr. S.B. Deshmukh WP No. 1639 of 2011 and for interveners in Ch/s No.271/11, Mr. Ketan Chothani with Ms. Manasvi Tilwani instructed by Mr. Y.N. Adhia WP L Nos.1834 and 1835 of 2011 and for interveners in Ch/s Nos. 230 and 228 of 2011, for the Appellant; M.D. Naik, AGP For Respondent Nos.1 to 3 in WP Nos. 1440/11 and 1639/11, Ms. Sindha Shridharan, AGP For Respondent Nos.1 to 3 in WP(L) No.1619/11, Mr. R.S. Apte with Ms. S.M. Modle For Respondent no.4 in WPNo.1440/11, WP (L) No. 1619/11, WP No. 1639/11, Ms. G.R. Shastri, AGP For Respondent Nos.1 to 3 in WP (L) Nos.1834 and 1835 of 2011, Mr. S.U. Dhakephalkar For interveners in Ch/s No. 274/11, Mr. V.M. Thorat with Ms. P.V. Thorat For Intervenors in Ch/s No. 275/11 and Mrs. A.R. Lambay with Mr. Vikas K. Singh instructed by y Lambay and Co. For Intervenors in Ch/s. No. 283 of 2011., for the Respondent

Judgement

B.H. Marlapalle, J.—Heard the learned counsel for the petitioners.

2. Rule.

3. Respondents waive service. Petitions have been heard finally after the interlocutory orders came to be passed from time to time.

4. The main challenge in this group of petitions is to the State Government's decision of posting the petitioners and similarly qualified doctors with Super Specialty, Broad Specialty and PG Diploma holders on the assignments which are

not commensurate with their professional qualifications, while enforcing the bond that the petitioners have signed as per the GR dated 8th February, 2008 and, therefore, these petitions have been heard together and are being decided by this common judgment.

5. In Writ Petition No. 1440 of 2011 and Writ Petition (Lodging) No. 1619 of 2011, the petitioners are the doctors with super specialty qualifications i.e. DM/M.ch, in Writ Petition No. 1639 of 2011 and Writ Petition (Lodging) No. 1835 of 2011, the petitioners are the doctors with Broad Specialty qualifications i.e. MD/MS and in Writ Petition (Lodging) No. 1834 of 2011, the petitioners are the PG Diploma holders in various broad specialties.

6. On 9th June, 2011, the Director of Medical Education and Research issued a letter addressed to some of the Medical Colleges at Mumbai and Pune and informed that the Super Specialty/Broad Specialty doctors passing out from their respective colleges would be required to serve for one year under the State Government and they be posted accordingly. The remaining students be referred to the Director, Medical Education and Research and unless the one year bond is served, no objection certificate, original papers, degree certificates, attempt certificates and transcript etc. shall not be issued/returned. The bonded doctors, who would not join at the given postings, would be fined and unless the fine is paid, the certificates/documents shall not be returned. The petitioners have also, therefore, taken exception to this communication dated 9th June, 2011.

7. During the current academic year, the number of the doctors who have passed with Super Specialty, Broad Specialty and PG Diploma are as under:

(a)

Super Specialty

59

(b)

MS/MD

609

(c)

PG Diploma Holders

239

It was submitted before us, at the outset, that none of the petitioners are averse to comply with the bond condition, namely, to serve with the Government of Maharashtra for one year. Limited grievance raised in these petitions is for a posting as Assistant Professor in a Medical College or Medical Officer with a hospital attached to the Medical College for the Super Specialty and Broad Specialty doctors. It was contended that the doctors with Super Specialty / Broad

Specialty cannot be appointed as Medical Officers in the Rural Hospitals, Primary Health Centres or even at the Civil Hospitals at district headquarters where the facilities / infrastructure is not available even for the doctors with Broad Specialty to discharge their duties as such specialists like surgeon etc. It was, therefore, urged that if the Government is not able to offer the postings commensurate with the professional qualifications, they be relieved from the bonds by following the terms set out in the GR dated 8th February, 2008. It was also submitted that the State Government was required to start the postings from the bottom of the pyramid commencing with the M.B.B.S. degree holders and in the same order, in the second stage the postings for the PG Diploma holders, in the third step the doctors with Broad Specialty and finally the posting of the doctors with Super Specialty so that the doctors with Super Specialty/Broad Specialty are not posted as Medical Officers in the Rural Hospitals or in the Primary Health Centres. On 29th August, 2011 we passed the interim order and directed as under:

(A) 1658 M.B.B.S. candidates who have completed their apprenticeship will be appointed as Medical Officers against the available vacancies of 2999 at the first instance and at the Primary Health Centres and Rural Hospitals by the Director ? Public Health.

(B) 235 Post Graduates Diploma holders (specialty courses) will be appointed as Medical Officers with the Hospitals attached to the Medical Colleges run by the State Government or the Municipal Corporations and those who have already been appointed at such Medical Colleges will not be disturbed. If there are no posts of Medical Officers available under any of such colleges only in that eventuality they will be appointed as Medical Officers under the Public Health Department and at the Civil Hospitals and Rural Hospitals by the Director ? Public Health.

(C) So far as the post of Assistant Professor is concerned, it will be first offered to the 66 super specialty degree holders and thereafter to 420 M.D. and 189 M.S. Degree holders at the medical colleges run by the State Government as well as the Municipal Corporations. While appointing the 66 super specialty degree holders as Assistant Professor, undoubtedly their super specialty qualification will be taken into consideration.

The above postings were to be completed by 8th September, 2011. However, by our further order dated 13th September, 2011, we extended the period to issue the posting orders up to 15th September, 2011.

8. Dr. Pravin H. Shingare, In-charge Director, Medical Education and Research has filed affidavit-in-reply and has pointed out that on 14th September, 2011 a notification was issued for the posting of these bonded doctors and the statement of the total vacancies, number of postings made and the vacancies as on 5/10/2011 with the respective Medical Colleges, Super Specialty Hospitals, Civil Hospitals, Rural Hospitals and Primary Health Centres is as under:-

Sr. No

Name of Post

No.of Vacancy after 5th & 6th Sept. 2011

Revised Vacancy Position as on 23.09.11

Total Post allotted

Vacancy after 5.10.2011

1

Medical Officer at Primary Health Center by DHS

740

751

134

617

2

Medical Officer at Rural Hospital by DHS

396

383

10

373

3

Medical Officer at Civil Hospital by DHS (Sub District Hospital/Women Hospital/
Mental Hospital/ Charity Hospital)

427

424

4

420

4

Medical Officer at Medical Colleges attached to DMER

16

16

13

420

5

Medical Officer at Medical Colleges attached to BMC

0

0

0

0

6

Medical Officer for Super specialty Hospital attached to DHS

21

18

2

16

7

Assistant Professor in Medical Colleges attached to DMER for broad Specialty

22

22

8

14

8

Assistant Professor in Medical Colleges attached to BMC for Broad Specialty

6

0

0

0

9

Assistant Professor in Medical Colleges attached to DMER for Super specialty

8

8

0

8

10

Assistant Professor in Medical Colleges attached to BMC for Super specialty

1

0

0

0

1637

1622

171

1451

9. Thus in the Medical Colleges run by the Mumbai Municipal Corporation, there is no vacancy for the post of Assistant Professor or Medical Officer. Out of the 50 petitioners, in the first two writ petitions, 24 have been appointed as Assistant Professors and out of 59 total Super Specialty degree holders, 51 of them have been given the postings as under:

(a)

Assistant Professors (Super Specialty)

24

(b)

Assistant Professors (Broad Specialty)

17

(c)

Medical Officers under Director, Health Services

10

It is stated that out of these 10 Medical Officers, 8 of them are placed in the Super Specialty Hospitals at Nashik and Amravati and petitioner nos.43 and 44 i.e. Dr. Prashant Puranik and Dr. Sandeep Singla have been posted as Medical Officers at the General Hospital, Nashik.

Out of the 609 MD/MS doctors, 266 have been allowed postings as per the following details:

(a)

Assistant Professor with Broad Specialty

172

(b)

Medical Officers under the Director of Health Services

94

It has been pointed out that out of 609 doctors, only 165 of them responded for postings.

So far as the P. G. Diploma holders are concerned, out of 239, 104 have been given the postings as Medical Officers and in the second round, 43 of them attended the counseling for posting. The break-up of postings is as under:

(a)

Medical Officers under the Director of Health Services

60

(b)

Medical Officers under the Director of Medical Education and Research

32

(c)

Medical Officers with the Colleges run by the Mumbai Municipal Corporation

12

10. From the above statistics, it is more than clear that postings are not available for all the Super Specialty / Broad Specialty as well as PG Diploma holder doctors befitting their qualifications / specializations so as to serve the bond period of one year. Subsequent to our orders passed on 29/8/2011 and 13/9/2011, some ad-hoc doctors who have served under the Government for more than two years and anywhere upto seven years have also filed petitions before us as they received orders of discontinuation and allegedly on the ground that the Super Specialty/ Broad Specialty and PG Diploma holder doctors were required to be given the postings so as to serve the bond.

As per the State Government to serve the bond period, it would not be possible to give posting to every doctor as per his qualifications and some of the doctors are required to be posted as Medical Officers with Civil Hospitals, Rural Hospitals as well as the Primary Health Centres. It is also submitted before us that each one of these petitioners has signed the bond to serve the State Government for one year and, therefore, they are bound to follow the undertaking furnished by them. None of them can be released from the bond, unless they report at the respective postings.

11. By our interlocutory order dated 13/9/2011 we accepted the individual

undertakings furnished by each of the petitioners and directed the authorities concerned to return the certificates/documents, as some of the petitioners were required to apply before the cut-off date, for higher studies.

12. Mr. Anturkar, the learned counsel for the petitioners, in support of his arguments that to serve the bond period the doctors with super specialty / Broad Specialty are required to be given postings commensurate with their specialization, has relied upon the Constitution Bench decision in the case of Dr Preeti Srivastava and Another Vs. State of M.P. and Others, and more particularly the following observations:-

....At the level of higher postgraduate university education, however, apart from the individual self-interest of the candidate, or the national interest in promoting equality, a more important national interest comes into play. The facilities for training or education at this level, by their very nature, are not available in abundance. It is essential in the national interest that these special facilities are made available to persons of high caliber possessing the highest degree of merit so that the nation can shape their exceptional talent that is capable of contributing to the progress of human knowledge, creation and utilization of new medical, technical or other techniques, extending the frontiers of knowledge through research work ? in fact everything that gives to a nation excellence and ability to compete internationally in professional, technical and research fields.

.....At the level of a overspecialize, something more than a mere professional competence as a doctor is required. A Nonspecialist acquires expert knowledge in his specialty and is expected to possess exceptional competence and skill in his chosen field, where he may even make an original contribution in the form of new innovative techniques or new knowledge to fight diseases. It is in the public interest that we promote these skills. Such high degrees of skill and expert knowledge in highly specialized areas, however, cannot be acquired by anyone or everyone.

.....But the element of public interest in having the most meritorious students at this level of education is present even at the stage of postgraduate teaching. Those who have specialized medical knowledge in their chosen branch are able to treat better and more effectively patients who are sent to them for expert diagnosis and treatment in their specialized field.

..... The specialty and superspeciality courses in Medicine also entail on-hand experience of treating or operating on patients in the attached teaching hospitals. Those undergoing these programmes are expected to occupy posts in the teaching hospitals or discharge duties attached to such posts.

..... It is also necessary in the public interest to ensure that the candidates at the postgraduate level have not just passed the examination, but they have profited from their studies in a manner which makes them capable of making their own contribution, that they are capable of diagnosing difficult medical conditions with a certain degree of expertise, and are capable of rendering to the ill, specialised

services of a certain acceptable standard expected of doctors with specialised training.

12. Mr. Anturkar, therefore, urged before us that if the regular posts of Assistant Professors / Medical Officers are not available at the hospitals attached to the Medical Colleges all over the State of Maharashtra either run by the State Government or the Municipal Corporation, it would be necessary for the State Government to create super numerary posts if it is serious in ensuring that the Super Specialty and Broad Specialty doctors comply with the bond they have signed and if it is not possible for the State Government to create such super numerary posts, such doctors be released from the bond within a specified period of about one month from the declaration of their results. It was also pointed out that the postings given in the past to such bonded doctors have not been on merit basis or based on the specialization. It has also been pointed out that some of the super specialty doctors could not be posted because the posts of their super specialization are not available and, therefore, they had no choice but to accept the posting as Medical Officer with super specialty hospitals.

13. We have perused the affidavit-in-reply filed on behalf of the State Government. We may also keep in mind the apprehensions expressed by Mr. Apte, the learned Senior Counsel appearing for the Medical Colleges run by the Mumbai Municipal Corporation. He submitted that if the posts of Assistant Professors in these Medical Colleges are filled in by the Super Specialty / Broad Specialty bonded doctors, there will be serious problems in the years to come in as much as for promotion to the post of Associate Professor, there may not be sufficient Assistant Professor available in the absence of regular appointments having been made to the said post. In short, it was pointed out that unless the super numerary posts are created by the State Government, the postings for all the Super Specialty/Broad Specialty bonded doctors may not be possible so as to ensure that these posts are made as per their specializations. However, the affidavit-in-reply filed on behalf of the State Government states that all these doctors, including the M.B.B.S. degree holders could be given postings to serve the bond period of one year and the State Government would, as far as possible, give postings commensurate with the specialization. However, there would be some doctors who will have to be posted as Medical Officers with Civil Hospitals, Rural Hospitals and Primary Health Centres. Mr. Naik, the learned AGP, submitted before us that the State Government invests huge amount on every doctor from the exchequer and, therefore, it is their duty to serve the bond period of one year in return for what has been invested on them by the State Government.

To serve the bond period is no more in dispute before us. The only grievance raised before us by the petitioners is that the postings offered to them by the State Government must be commensurate with their qualifications / specializations and if they are posted as Medical Officers in Civil Hospitals, Rural Hospitals or Primary Health Centres, their skills as Super Specialty / Broad Specialty doctors would not be put to use and it would be a set back to their

professional career as they would be virtually kept away from their respective specialties. It was urged that such an action would infringe the guarantee under Article 19 of the Constitution.

14. We have given our anxious consideration to the arguments advanced by all the parties before us. None of the petitioners are averse to serve the bond period of one year. The posts of Assistant Professor / Medical Officer with the Medical Colleges or the Hospitals attached to these Medical Colleges run by the State Government as well as Municipal Corporation are limited. The number of Super Specialty and Broad Specialty doctors is likely to increase year after year. It is not in dispute that to acquire a Broad Specialty degree a M.B.B.S. doctor has to spend three more years, minimum and to acquire a Super Specialty degree, he has to spend another three years. Thus a Super Specialty doctor invests six years of his life after completing his internship. These Super Specialty / Broad Specialty skills are required to be used to serve the patients or to teach the students of undergraduate courses. Despite the best efforts made by the State Government in the present postings, it has not been able to appoint all the Super Specialty / Broad Specialty doctor in the post of Assistant Professor or Medical Officers with the Medical Colleges or the Hospitals attached thereto as per the specializations. At the same time, to post such doctors at the Rural Hospitals or Primary Health Centres would not only be against their future interest but indeed a loss to the society in as much as they would not be able to use their Super Specialty / Broad Specialty skills at such postings. Just because they have signed the bond, does not mean that they should be at the receiving end and put their future at stake. Having regard to all these realities and to strike a balance between the obligations of the doctors, the requirements of the State Government and the needs of the hospitals across the State, it would be appropriate that the doctors with Super Specialty / Broad Specialty are not appointed / posted as Medical Officers with Rural Hospitals and Primary Health Centres. So far as the P. G. Diploma holders are concerned, despite the number of M.B.B.S. doctors being available, the Rural Hospitals and Primary Health Centres postings cannot be ruled out for them and it is not going to be feasible to absorb all such diploma holders as Medical Officers either in the Medical Colleges or Super Specialty Hospitals. Mr. Deshmukh, the learned counsel appearing for the petitioners also pointed out that some of them, who have been posted with the Medical Colleges run by the Municipal Corporation, have been denied the basic amenities of housing etc. It was more particularly submitted that they are not being treated on par with the regularly appointed Assistant Professor or Medical Officer and are being treated as a floating population. Grievance was raised about the working conditions as well, including the overstretched duty hours almost on every day in a week. However, Mr. Apte, the learned Senior Counsel, on taking instructions from the authorities concerned, has assured us that the bonded doctors posted with the Medical Colleges run by the Municipal Corporation would be allotted residential quarters on par with the Assistant Professors but subject to availability and the policy, as may change

from time to time. We have also been assured that the duty hours will be properly regulated and the bonded doctors will be treated as if they are regularly appointed on the respective posts.

15. For the reasons elaborately stated herein-above, we direct as under:

(A) The bonded doctors with Super Specialty degrees (DM / M.ch) shall be appointed as Assistant Professors with the Medical Colleges run by the State Government or the Municipal Corporations or as Medical Officers with the hospitals attached to such colleges. They shall not be appointed as Medical Officers with the Civil Hospitals, Rural Hospitals or Primary Health Centres. However, they may be posted as Medical Officers with Super Specialty hospitals either run by the State Government or the Municipal Corporations, so long as these hospitals have the concerned Super Specialty facilities/services. They shall not be assigned administrative duties.

(B) The doctors with Broad Specialty (MD/MS) shall be appointed, as far as possible, as Assistant Professors / Medical Officers with the Medical Colleges or the Hospitals attached thereto and run by the State Government or the Municipal Corporations. Such doctors shall not be appointed / posted at Rural Hospitals and Primary Health Centres. We also make it clear that when a Broad Specialty doctor is posted or sought to be posted at a Civil Hospital or a General Hospital at the district level, it must be ensured that the infrastructure for his Broad Specialty is available. For example, if a doctor with M.S. degree is posted with the Civil Hospital, the other infrastructure must be available so that he is able to perform his duties as a general surgeon. We clarify that Medical Officers would also include Registrars, Senior Residents and Tutors.

(C) The PG Diploma holders may be posted at the Rural Hospitals or even in compelling circumstances with the Primary Health Centres, in addition to the postings that may be available to them with the Medical Colleges or the Super Specialty Hospitals or the Civil Hospitals.

(D) In case, adequate posts are not available for the posts of Super Specialty and Broad Specialty bonded doctors, the State Government will consider creating super numerary posts with Medical Colleges or the Hospitals attached to the Medical Colleges or the Super Specialty Hospitals. If it is not possible for the State Government to create such super numerary posts, the bonded doctors will be released from the bond. The creation of such super numerary posts will be decided within one month from the date of declaration of the results of the respective final examinations i.e. Super Specialty / Broad Specialty.

(E) The State Government shall create a Central Agency where the bonded doctors with Super Specialty / Broad Specialty as well as the P. G. Diploma holders will register their choices (on line) as soon as their final year examination gets over. The choices be limited to three postings. In addition, these doctors will also submit an application indicating such choices to the concerned Dean who, in turn, will forward these applications to the Central Agency appointed by the State

Government.

(F) The postings of Super Specialty / Broad Specialty bonded doctors be assigned to a committee of five members every year. The Committee for the postings of Super Specialty and Broad Specialty doctors will be separate from the Committee for the postings of PG Diploma holders and M.B.B.S. doctors. The Committee for the posting of Super Specialty / Broad Specialty doctors may consist of two Deans from the Government Medical Colleges, one Dean from the Medical Colleges run by the Municipal Corporations, the Director ? Health Services and the Director for Medical Education and Research. The Committee so constituted shall complete the posting exercise within four weeks from the date of publication of the final examination results, as far as possible. The Committee for the postings of PG Diploma holders and M.B.B.S. bonded doctors may be constituted on similar lines.

(G) We also direct that the documents/certificates of the doctors from Super Specialty/Broad Specialty as well as PG Diploma holders and who have reported pursuant to the postings, be returned to them forthwith, unless the documents have already been returned. We also make it clear that if any such doctor, reporting to the posting made till now, abandons the posting, the State Government is at liberty to proceed against him/her so as to invoke the bond conditions for recovery of the cash amount.

(H) So far as the postings of 10 doctors at the Super Specialty Hospital at Nashik are concerned, we are informed that they have accepted these postings under protest and it is alleged that they are without any work of their Super Specialty. On instructions, the learned AGP disputes this allegation and he has placed before us a written report submitted by the Medical Superintendent, Regional Referral Hospital, Nashik. We are satisfied that it would be appropriate to call for a report from the Principal District Judge at Nashik on his visit to the said hospital.

The Principal District Judge, Nashik is, therefore, directed to visit the Regional Referral Hospital (Shalimar), Nashik, within a period of two weeks and submit a factual report regarding the infrastructural availability, operation theaters and functioning of all the major Super Specialty departments like Cardiac, Urology, Nephrology and Cancer etc. The Principal District Judge will inform in advance the Medical Superintendent of the said hospital the date of his visit and the Super Specialty doctors who have been posted at the said hospital may also assist the Principal District Judge during his visit.

(I) The postings as directed by us in the earlier orders be continued and completed before the next date. The Broad Specialty bonded doctors who have been already posted at the Rural Hospitals or Primary Health Centres be reposted in terms of the above directions, before the next date.

Stand over to 11/11/2011 for compliance and final disposal. Parties to act on an authenticated copy of this order. A copy of this order be forwarded to the Principal District Judge, Nasik on e-mail/fax.