
(2010) 05 GAU CK 0026
In the Gauhati High Court
Case No : Writ Petition No. 2230 of 2010

Dr. Md. Quaisar Jawed

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 20-05-2010

Acts Referred:

Assam Medical Colleges (Regulation of Admission to Post Graduate Courses) Rules,
2006 — Rule 15

Citation : (2010) 6 GLR 171 : (2011) 3 GLT 827

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Advocate : A.K. Goswami and I. Choudhuri, for the Appellant; D. Saikia, for the Respondent

Final Decision : Allowed

Judgement

B.K. Sharma, J.—This writ petition is directed against the rejection of the proposal for admission of the Petitioner into the Post Graduate course of medical studies vide Annexure-T letter dated 31.3.2010. Such rejection is on the ground of inadmissibility of the Petitioner for admission in view of the existing rules in force.

2. The Petitioner had undergone MBBS course of studies to which he was admitted in the year 1993 Session of 1993-1994. The Rules governing the admission, etc., prevalent at that point of time was the Medical Colleges of Assam/Regional Dental College Regulation for Admission of Under Graduate Students Rules, 1992. The Petitioner completed the MBBS course in December, 2001 and thereafter has undergone compulsory rotatory internship at Guwahati Medical College from 25.1.2002 to 24.1.2003. Thereafter, the Petitioner did his Housemanship at the same college from 27.1.2003 to 16.3.2004.

3. According to the Petitioner, when no response was forthcoming from the State Government to provide him employment opportunity to serve the State, he applied for Short Service Commission under the Defence force and was selected

for the same. Upon such selection, he was allotted to the service under Indian Air Force and was placed under the Headquarter, Eastern Air Command from 29.3.2004 to 7.5.2006. According to the Petitioner during the said period of service he served in the rural areas of Assam like Digaru and Misamari. Be it stated here that in the year 2005 he was awarded with President's medal for his meritorious service.

4. It was in second week of January 2010 admission notice for Post Graduate course in medical colleges in Assam was issued. The Petitioner, with the approval of the authority of Indian Air Force, offered his candidature and on being invited, duly appeared in the written examination, results of which were declared on 1.2.2010. The Petitioner came out successfully and his name figured at serial No. 26 of the merit list. With success in hand and being sure of getting admission to the Post Graduate Course in Medical Colleges of Assam, the Petitioner submitted application to the Air Force authority for his release from service.

5. In the meantime, counselling for admission to the Post Graduate course was notified on 3.3.2010 and the Petitioner duly appeared in the counselling held on 23.3.2010. In the counselling the Petitioner offered his specialisation as Medicine in M.D. at Assam Medical College, Dibrugarh. As per the requirement, the Petitioner had to execute a bond undertaking to serve in the rural areas. When everything was going fine, the Petitioner was surprised to come across the letter dated 31.3.2010 conveying the decision that the recommendation/proposal for his admission into the said Post Graduate course has been rejected.

6. After the aforesaid development, the Petitioner preferred an appeal to the appellate authority, but having not communicated with any decision thereof, he invoked the writ petition in this Court. In the meantime, he was also released from Air Force service.

7. The Respondents have filed two counter affidavits, one by the Director of Medical Education and the other on behalf of the Government of Assam in the Health Department. In both the affidavits the stand taken is one and the same. Since the Petitioner on completion of the MBBS Course did not serve the State of Assam, he is ineligible for admission to M.D. course. Another ground assigned is that as per requirement of the bond, the Petitioner has to serve at least one year in the rural areas of Assam. However, the Petitioner having not served even that period of service in the rural area, is not entitled to get admission into the M.D. course. In this connection, the Respondents have referred to the Assam Medical Colleges (Regulation of Admission to Post Graduate Course) Rules, 2006 and the amendment brought therein by Assam Medical Colleges (Regulation of Admission to Post Graduate Course) (Amendment) Rules, 2010 and also the OM dated 28.8.2009.

8. I have heard Mr. A.K. Goswami, learned senior counsel assisted by Mr. I. Choudhury, learned Counsel for the Petitioner as well as Mr. D. Saikia, learned Standing counsel, Health Department. I have gone through the entire materials

on record including the relevant file produced by Mr. Saikia, learned Standing counsel. Health Department. The aforesaid Rules of 1992 made provision for bond as follows:

On selection, the candidate before the admission shall execute a bond in the form prescribed in Schedule-III to these rules binding himself to serve under the Government in rural areas for a period of three years and in breach thereof to pay a sum of Rs. 30,000 only to the Government as compensation.

9. Schedule-III of the bond prescribes as follows:

... that every student so admitted shall complete the said course from the college to which he/she is admitted or from any other Medical College/ Regional Dental College in any part of the country and that on such completion he/she shall if so required by the Government serve in any part of the country in the rural areas for a minimum period of 5(five) years on such remuneration as may be prescribed the reforce (sic) and shall furnish a suitable bond of the due performance of the said condition.

10. Clause 3 of the Schedule III further prescribes that when called upon by the Government at any time within a period of six months from the receipt of the notice from the student as aforesaid join the Central Health Service/State Medical Service and serve in rural areas anywhere" in the State for minimum period of two years at such remuneration as may be prescribed, therefor. In the same provision it was provided that in the event of student committing a breach of any of the terms and conditions of the bond, the whole amount of Rs. 30,000 or such lesser sum as the Government may in its absolute discretion decide shall become payable jointly or severally by the student.

11. In the instant case, it is the specific case of the Petitioner that the aforesaid bond was never insisted upon at the time of admission. According to the Petitioner, it is not only the Petitioner who was not insisted upon, but all other students were also not insisted upon and in fact, no students had ever executed the said bond.

12. It is the further case of the Petitioner that on completion of MBBS course although he had offered to serve the State, but in absence of any employment opportunity or any definite scheme to serve the rural areas, he could not get the opportunity. According to the Petitioner, in such a situation he had joined the Air Force under Short Service Commission as Commissioned Officer and while serving in the Air Force he also served rural areas of Assam and, thus, fulfilled the requirement of the provision of the aforesaid Rules of 2002/2006. In the reply affidavit filed by the Petitioner, all the above aspects of the matter have been highlighted.

13. Mr. Goswami, learned senior counsel for the Petitioner has argued that the Respondents are estopped from taking the particular plea and that too in reference to 2006 Rules. He submits that apart from 2006 Rules, the amendment

thereof are also not applicable to the case of the Petitioner and that the particular bond finds mention in 2002 Rules having not been insisted upon for execution, the authorities cannot now bind the Petitioner under the said format of the bond so as to deny the admission to MD course.

14. Mr. Saikia, learned Standing counsel for the Health Department submits that although the authorities examined the case of the Petitioner taking into account all the relevant factors including the service rendered by him in the defence force, but in absence of any empowerment under the Rules, cannot clear the case of the Petitioner.

15. I have gone through the records produced by Mr. Saikia, learned Standing counsel, Health Department. On perusal of the said records what has transpired is that initially there was a proposal for accommodating the Petitioner in the M.D. course as he has fulfilled all the requisite criteria. The only point to be decided was, as per the provision of 2006 Rules, is whether the Petitioner has served the State for five years and/or two years in the rural areas. There was difference of opinion regarding rendering of service by the Petitioner in the rural areas while he was in the Air Force. Upon reference to Rule 15 of the aforesaid Rules of 2006 which deals with "removal of difficulties", an endeavour was made to accommodate the Petitioner. However, on the basis of the particular interpretation given to the Rules, the Petitioner was deprived of his admission.

16. Rule 15 of the Rules provides that notwithstanding anything contained in the Rules, the Government shall have the power to take any action, not inconsistent with the provisions of the rules, as may be necessary to remove any difficulty for which no express provision exists in the rules.

17. Apart from the fact that in view of the aforesaid background of the case, there is no requirement to invoke the provisions regarding removal of difficulties and that the Petitioner is entitled to get admission to M.D. course on his own right, even if the said clause is invoked, the authority has ample power to do away with the particular hardship. In this connection, I may gainfully refer to the decision of the Apex Court reported in Sandeep Kumar Sharma Vs. State of Punjab and others, in which invoking the relaxation clause, the Apex Court observed that such relaxation can be applied even in the individual case having regard to the hardship caused to him.

18. In the instant case, the Respondents have taken the plea that the Petitioner did not execute the bond as per 1992 Rules, but they have forgotten their own duty cast inasmuch as, they never insisted execution of the bond. Further they also did not explore any possibility to offer employment to the Petitioner to serve the State. It is on record that the Petitioner had volunteered to serve the State, but he could not be offered with any appointment. It was in these circumstances, he had opted for Short Service Commission and eventually was appointed by the Air Force as a Commission Officer. While he was serving in the Air Force he also served the rural areas of Assam about which there is no denial on the part of the

Respondents.

19. For all the aforesaid reasons, I have no hesitation to allow the writ petition setting aside the impugned Annexure-T order dated 31.3.2010. Direction is issued to the Respondent authority to accommodate the Petitioner in the M.D. course (Medicine) for which he has been selected in the Assam Medical College, Dibrugarh. Necessary follow up action shall be taken by the authority without any delay.