

(2023) 07 BOM CK 0004
In the Bombay High Court
Case No : Writ Petition No. 3822 Of 2023

Dr. Sandeep

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 05-07-2023

Acts Referred:

Constitution Of India, 1950 — Article 226
Administrative Tribunals Act, 1985 — Section 19

Citation : (2023) 07 BOM CK 0004

Hon'ble Judges : Mangesh S. Patil, J; S.G. Chapalgaonkar, J

Bench : Division Bench

Advocate : V.D. Sapkal, S.R. Sapka

Final Decision : Dismissed

Judgement

Mangesh S. Patil, J

1. Heard.
2. Rule. Rule is made returnable forthwith.
3. At the joint request, the matter is heard finally at the stage of admission.
4. In substance, the averments of the petitioner are to the effect that he is a MBBS who was appointed as Medical Officer Class – I on temporary basis at Rural Health Training Center, Paithan, District – Aurangabad on 01.06.2016. He completed 5 years at the same post satisfactorily. He was given a permanent appointment and posting at Primary Health Center, Nandar, Tq. Paithan, District - Aurangabad with effect from 01-07-2021, which he joined on 13-07-2021. Having worked in the rural area for more than 3 years, he is entitled to derive the benefit of weightage of marks as an in-service candidate in NEET-PG-2023. When he approached the respondents with a request to grant him no objection certificate it was refused for wrong reasons ignoring the specific clauses 5.2, 5.5 and 6.3 of the Government resolution dated 19-03-2019. Hence he has

challenged the order refusing to grant no objection certificate dated 23-01-2023 and has sought a declaration to that effect.

5. The petitioner also claims that similarly situated candidate by name Dr. Rupali Govindrao Shastri was found to be eligible. He also claims that having faced with the situation, he appeared for the NEET-PG-2023 examination and has secured 277 marks and is entitled to additional 30% marks pursuant to the Government resolution dated 19-03-2019.

6. Learned senior advocate Mr. Sapkal would take us through the impugned order as also the Government resolution dated 19-03-2019. He would submit that a careful reading of the different clauses of the Government resolution would reveal that independent of clause 4 laying down different stipulation in respect of request for seeking posting on deputation for the PG courses, clause 5 carves out a separate category in respect of the Medical officers posted in rural and difficult areas including tribal and naxalite areas. He would emphasize that by virtue of clause 5.2 the service rendered in such remote and difficult areas is to be counted for grant of grace marks even if it was on temporary basis. When the petitioner has rendered the services initially on temporary basis for a period of 5 years and, thereafter has been made permanent again in a rural area, he is entitled to tag both these services for claiming the benefit under clause

7. Mr. Sapkal would, therefore, submit that the impugned order refusing to grant no objection certificate to the petitioner does not take into consideration these clauses 5.2 and 5.5 and, consequently, is inconsistent with the Government resolution dated 19-03-2019. It is an arbitrary exercise of the power and this Court should cause interference in exercise of the powers under Article 226 of the Constitution of India.

8. Per contra, the learned AGP referring to the affidavit in reply filed by Dr. Mahananda Munde, Deputy Director of Health Service, Aurangabad Region, Aurangabad would submit that petition is misconceived and is not sustainable. He raised a preliminary objection regarding availability of an alternate and efficacious remedy in the form of the petition under section 19 of the Administrative Tribunals Act.

9. He would then submit that by virtue of clause 4.1, 4.2 and 4.4 of the GR dated 19-03-2019 the petitioner was not eligible to derive the benefit under clause 5. He would submit that clause 4 speaks about eligibility of a candidate whereas clause 5 pertains to a situation where a candidate is eligible and is permitted to appear for NEET-PG and it is only for the purpose of grant of grace marks under clause 5 that the resolution stipulates that even temporary service put in the rural areas can be counted to make up 3 years.

10. He would submit that no such temporary tenure can be counted while applying clause 4 which requires a candidate to put in 3 years of service in the permanent cadre. The petitioner has not put in sufficient number of service. Service rendered by him on temporary basis cannot be made up to find his

eligibility under clause 4. The learned AGP would further submit that in defiance to the mandatory requirement of obtaining permission from the superior as contemplated under clause 4.1, the petitioner has, on his own, appeared for the NEET-PG-2023 without being eligible.

11. We have carefully considered the rival submissions and perused the papers.

12. At the outset, it is necessary to mention that there is no dispute about the fact that the petitioner has put in 5 years of temporary posting at Rural Health Center, Paithan and, thereafter, was given a permanent appointment and posting at Primary Health Center, Nandar, Tq. Paithan where he joined on 13-07-2021. Therefore, admittedly, he has not completed 3 years of service on a permanent post. This is the precise reason quoted in the impugned order / communication refusing him permission to appear for the NEET-PG-2023 as an in-service candidate. Even his communication dated 10-01-2023 (Exhibit - E) mentions that as on the date of that application he had barely put in just more than 1 year of service in the permanent cadre.

13. With this let us understand the provisions of the GR dated 19-03-2019.

14. The GR dated 19-03-2019 is titled as 'Regulation For Selection of In-Service Medical Officers from the cadre of Maharashtra Medical and Health Services Group - A for Post Graduate Degree and Diploma Courses'. After referring to the history in the preface it has been mentioned that by superseding all earlier circulars pertaining to the subject new resolutions are being made. Clause 4 lays down the conditions / criterion for getting admitted for such PG diploma or degree course. Clause 4.1 reads that prior permission of Deputy Director of Health Services of the Division is necessary to appear for such examination. Candidates who appear for examination without permission will not be relieved for completing the course. Clause 4.2 then states that the Medical Officer should have been selected in a regular selection process and must have completed minimum 3 years of service in the regular appointment excluding the service rendered under the bond period or as a temporary or contractual service. The rest of the sub clauses are not relevant for the purpose.

15. Then clause 5 of this GR begins with the heading as to the regulations for grant of grace marks / additional marks for serving in the rural and difficult areas. Clause 5.2 lays down that a candidate would be entitled to such grace marks / additional marks for having put in service in the rural and difficult areas proportionate to the number of years of such service. It specifically lays down that while counting such years of service even the service rendered on temporary basis would be admissible for grant of grace marks. The rest of the clauses further lay down the modalities and entitlement of different candidates.

16. A careful reading of these clauses would clearly indicate, as has been the stand in the affidavit in reply, clause 4 provides for the modalities to be followed while considering the eligibility of a candidate and the permissions to be obtained by him for appearing for the examination. One can easily appreciate that a prior

permission is contemplated making it expressly clear that if a candidate appears for the examination without prior permission he will not be relieved from the posting. Meaning thereby that it is imperative for a candidate to have a prior permission from the concerned Deputy Director of Health Services. This clause does not deal with the allotment of any grace marks for which a specific clause 5 has been inserted. It lays down the manner in which and the marks to which a candidate would be eligible. Unlike clause 5.2 which admits of even a temporary tenure to be counted for allotment of grace marks, clause 4.2 expressly lays down that for counting the minimum service of 3 years as the eligibility criterion, the service rendered on temporary basis will not be counted.

17. Submission of Mr. Sapkal that Clause 5 also refers to the eligibility of a candidate to appear as an in service candidate is not tenable. Clause 4 refers to the eligibility of a candidate who appear as an in-service candidate for the NEET-PG courses whereas clause 5 operates in respect of allotment of grace marks to such candidates. For being eligible to appear for the examination a candidate must have put in 3 years of service in regular cadre as has been laid down in clause 4.2 whereas once having appeared for the examination having been found eligible and after obtaining the permission as contemplated under clause 4.1, by virtue of clause 5.2 such candidate would be entitled to grace marks and the years of service is to be counted including that is rendered in rural and difficult areas in addition to the regular employment.

18. When admittedly, the petitioner has not put in 3 years of service in the regular cadre and had even not obtained previous permission under clauses 4.2 and 4.1, respectively, the question of grant of grace marks to him under clause 5.2 will not arise, even though he has gone ahead and appeared for the NEET-PG-2023.

19. In the matter of Dr. Rupali Govindrao Shastri Vs. State of Maharashtra (writ petition no. 3394 of 2018 decided on 18-04-2018) the facts were totally different and even the GR dated 04-12-2017 was in the field. Pertinently, while counting the service, there was a provision for condonation of break and the past services rendered on temporary basis were eligible to be counted. When, as is observed herein-above, the Government resolution dated 19-03-2019 expressly mentions in clause 4.2 that for ascertaining eligibility of a candidate, the period of service rendered on temporary post cannot be counted, the petitioner is not entitled to derive any benefit from the decision in the matter of Dr. Rupali Govindrao Shastri (supra).

20. There is no merit in the writ petition. It is dismissed.

21. Rule is discharged.