
(2020) 07 OHC CK 0004

In the Orissa High Court

Case No : Writ Petition (Civil) No. 11589 Of 2020

Dr. Shams Jahan

APPELLANT

Vs

State Of Odisha & Others

RESPONDENT

Date of Decision : 24-07-2020

Acts Referred:

Citation : (2020) 07 OHC CK 0004

Hon'ble Judges : Mohammad Rafiq, CJ;Debabrata Dash, J

Bench : Division Bench

Advocate : P.R. Singh, L.N. Rayatsingh, A.K. Rout, S.K. Dwivedy, M.S. Sahoo, R.C. Mohanty

Final Decision : Dismissed

Judgement

Mohammad Rafiq, CJ

1. This writ petition has been filed by petitioner-Dr. Shams Jahan with the prayer for issuance of writ of mandamus to the opposite parties to accept

the service certificate of the petitioner and consider her case as an in- service category candidate considering the period of service rendered by her

from 08.12.2014 and extend her the benefit enumerated under Clauses G & H of the guidelines for Counselling and Admission of the candidates for

Post Graduate (Medical) Courses in the Medical Colleges of Odisha for the academic session 2020-21 as per sub-clause 2(d) of Regulation 9 of the

Medical Council of India, Post Graduate Medical Education Regulation, 2000 (Amended upto to July, 2017). She has further prayed for direction to the

opposite parties to allow her to appear the 2nd round of counselling to admission into Post Graduate (Medical) Courses for the academic session 2020-

21 by accepting her documents for verification.

2. The facts of the case, as set out in the Memorandum of the petition is that the petitioner completed MBBS course from Utkal University in the year

2014 and thereafter got her name registered under the Odisha Council of Medical Registration, Bhubaneswar having Registration No.1990 dated

01.12.2014. She also renewed her registration on 27.09.2016 as per provisions of the Odisha Medical Registration Act, 1961. The petitioner after

getting registration got engagement on 08.12.2014 as a Tutor at PHC (N), Adhangagarh, Biridi on contract basis and served there till 30.04.2015.

Thereafter, the petitioner joined as a Tutor in Saheed Laxman Nayak Medical College and Hospital, Koraput (in short, "SLNMCH, Koraput") on

10.04.2017 on contract basis and served there till 14.03.2019. She joined at CHC, Gumma, Gajapati on 15.03.2019 on regular service and again she

transferred to SLNMCH, Koraput on 15.03.2019. The petitioner had availed leave from 12.09.2019 to 20.01.2020 and thereafter she joined her duty

on 21.01.2020.

3. Mr. R.P. Singh, learned counsel for the petitioner submitted that the petitioner applied for NEET-PG 2020 for the academic session 2020- 21 as an

in-service candidate. Admit Card was issued to her by the National Board of Examinations (Annexure-3) to attend the examination on 05.01.2020.

The petitioner appeared the examination and was declared successful. She then registered her candidature through online for PG (Medical) Course in

any one of three Medical Colleges of Odisha. The Convenor , PG (Medical) Counselling Committee 2020-21 notified a tentative schedule on

03.03.2020 (Annexure-4) for PG (Medical) Counselling 2020-21 indicating that online registration would commence from 09.03.2020 till 18.03.2020

and verification of original documents will be conducted on six different dates in the month of March, 2020. It was also notified under Annexure-4 that

after 1st round of counselling, a detailed programme for the 2nd round would be notified in due time. The opposite party No.3- Convenor, PG

(Medical) Counselling 2020-21 issued notice dated 18.03.2020 (Annexure-5) for document verification at MKCG Medical College, Berhampur. The

petitioner could not attend on that date on account of lockdown declared by the State Government due to COVID -19 pandemic. However, as per the

direction of the Hon'ble Supreme Court regarding NEET PG for admission to MD/ MS courses, guidelines have been framed for counselling and

admission of the candidates against 50% State quota seats in different Medical Colleges of the State for the academic session 2020-21.

4. It was submitted by learned counsel for the petitioner that Clause G of the guidelines for Counselling and Admission of candidates for Post

Graduate (Medical) Courses for the academic session 2020-21 (Annexure-6) speaks of ""category of candidates"" i.e. direct candidate as well as in-

service candidate. According to the petitioner, a direct candidate is one, who at the time of application, is either unemployed or under employment of

Government of Odisha/PSU, but not completed three years of service which include all categories of employment by 31.03.2020; whereas an in-

service candidate is one who at the time of application is under employment in Government of Odisha and has completed three years of service which

includes all categories of employment by 31.03.2020 excluding at a stretch leave of any kind of 30 days or more. Maternity leave is exempted in this

regard. It was further contended that Clause H of the said guidelines speaks of ""Additional Weightage"" i.e. awarding of additional % of marks to in-

service category candidates working prior to 21.03.2016 and qualified in NEET PG 2020 would be awarded 10% of the marks secured in the PG

Entrance Examination per year of completion of service subject to maximum of 30% of the marks secured in the entrance examination. It was also

contended that as per the government notification dated 21.03.2016, the in-service candidates should be awarded additional weightage @ 2.5%, 5%,

7.5% & 10% of marks secured in PG Entrance Examination per year completion of service in V1, V2, V3 and V4 areas respectively.

5. Learned counsel for the petitioner further argued that opposite party No.3- Convenor , PG (Medical) Counselling Committee 2020-21 issued notice

dated 16.04.2020 (Annexure-8) whereby stated that it was decided by the competent authority to continue the Odisha State PG (Medical) Counselling

2020-21 through online process because of the extension of lockdown period for COVID-19 Pandemic and further intimated that all registered

candidates, whose documents could not be verified, to send the scanned copies of the original documents duly signed with application number for

verification from 17.04.2020 to 22.04.2020 through e-mail. The Convenor (opposite party No.3) notified the revised tentative schedule for PG

(Medical) Counselling 2020-21 on 22.04.2020 (Annexure-9) for online document verification from 17.04.2020 till 22.04.2020 and 1st round counselling

from 03.05.2020 to 06.05.2020 with further intimation that detailed programme for 2nd round counselling would be notified in due time. The petitioner pursuant to notice dated 16.04.2020 (Annexure-8) sent the scanned copies of the original documents except the service certificate which the petitioner could obtain only on 28.04.2020 in spite of her best efforts on account of lockdown for COVID-19. The delay occurred in obtaining the service certificate is bona fide and not deliberate. It was, therefore, submitted that the petitioner should be allowed to participate in the 2nd round counselling for PG (Medical) courses in the Medical Colleges of Odisha for the academic session 2020-21 as in-service category candidates but not as a direct candidate or else the petitioner would lose one year of her career.

6. According to learned counsel for the petitioner, a Division Bench of this Court has allowed the writ petition bearing W.P.(C) No.10780 of 2020 on 29.04.2020 filed by the petitioner-Dr. Indrani Priyadarshini, who also worked as Tutor in the same institute i.e. SLNMCH, directing the opposite parties to do the needful by awarding additional weightage in favour of the petitioner for the counselling in NEET PG Medical 2020-21 for taking admission as in-service doctor in PG (Medical) Course, 2020-21. Therefore, the candidature of the present petitioner ought to be also considered as an in-service candidate taking into consideration her regular service in SLNMCH, Koraput as a tutor. The petitioner being a similarly situated candidate to that of the petitioner in W.P.(C) No.10780 of 2020, she could obtain the service certificate on 28.04.2020, her case should also be considered as an in-service candidate.

7. Mr. R.C. Mohanty, learned counsel appearing for the opposite party Nos.2 to 4 contested the case of the petitioner and filed counter affidavit contending that the petitioner has not disclosed the correct facts to this Court. She has wrongly stated that she applied for admission to PG (Medical) Course in Medical Colleges of the State of Odisha as in-service candidate. In fact, there are separate provisions for in-service and direct candidates.

The petitioner applied for NEET PG 2020-21 on 10.03.2020 as a direct candidate but not as in-service candidate. She did not submit her service certificate at any point of time claiming herself as an in-service candidate. It was contended that as per notice dated 18.03.2020 (Annexure-5) regarding document verification, it would be clear that the petitioner was

physically present before the opposite party No.3-Convenor on 20.03.2020

for verification of her documents as required but she got her documents verified as a direct candidate and did not produce her service certificate. The

petitioner has, therefore, wrongly submitted before this Court that she could not appear for document verification at the time of 1st round of

counselling due to lockdown. It was also contended that the petitioner did not avail the opportunity for submission of service certificate as per notice

dated 16.04.2020 (Annexure-8). As per Annexure-8, for the 1st round counselling, the seat matrix and the merit list was published on 25.04.2020

inviting redressal of grievances of the candidates if any, by 26.04.2020. The petitioner also did not make any grievance to that effect and the 1st round

counselling was processed and thereafter the same was completed. Learned counsel for the opposite parties also invited attention of this Court

towards application form (Annexure-B/3) submitted by the petitioner through online.

8. Learned counsel for the petitioner has set up her case mainly with the following pleadings in the writ petition that:

(i) That the petitioner appeared for NEET PG 2020-21 and was declared successful. Upon the petitioner having been declared successful, she got

registered herself online for PG (Medical) Course for admission in any one of three medical colleges of the State of Odisha. The opposite party No.3-

Convenor notified the tentative schedule on 03.03.2020 (Annexure-4) for PG (Medical) Counselling indicating that online registration would commence

from 09.03.2020 to 18.03.2020 and verification of original documents would be conducted on different dates in the month of March 2020. The

Convenor- opposite party No.3 vide letter dated 18.03.2020 (Annexure-5) issued notice to the candidates for document verification from 20.03.2020

till 25.03.2020 fixing the venue at MKCG Medical College, Berhampur.

(ii) The petitioner could not attend for the document verification pursuant to the aforesaid notice under Annexure-5 due to lockdown declared by the

Government. The opposite party No.3-Convenor, however, issued notice/letter dated 16.04.2020 (Annexure-8) informing that it was decided by the

competent authority to continue the Odisha State PG (Medical) Counselling 2020-21 through online process because of the extension of lockdown

period for COVID-19 Pandemic. Further, all registered candidates, whose

documents were not verified, were requested to scan their original certificates duly signed by them (Full Signature) and arrange serially as mentioned. The duly signed and scanned documents along with the application form was to be converted and combined in to one single PDF and sent by the email ID to convenorpgselection2020@gmail.com from 17.04.2020 to 22.04.2020.

(iii) The opposite party No.3-Convenor issued a revised tentative schedule, vide letter/notice dated 22.04.2020 (Annexure-9), for PG (Medical)

Counselling 2020-21 indicating online document verification from 17.04.2020 to 22.04.2020 and 1st round counselling was to take place from

03.05.2020 to 06.05.2020 with further intimation that 2nd round counselling would be notified. Pursuant to notice dated 16.04.2020 (Annexure-8), the

petitioner sent the scanned copies of the original documents except service certificate which the petitioner obtained on 28.04.2020 in spite of lockdown

for COVID-19.

9. The above facts would clearly go to show that the petitioner has not approached this Court with clean hands. She has concealed the material facts

that she had applied as direct candidate and not as an in- service candidate, which the petitioner is claiming in the case at hand. The petitioner had

actually appeared for document verification on 20.03.2020. Her documents were verified as a direct candidate. On that date, she could not produce

her service certificate, obviously because it was issued to her on 28.04.2020. She has tried to take advantage of another notice issued by the opposite

party No.3-Convenor for document verification in second phase, which was meant for those who could not produce such documents earlier in March

because the process of documents verification had to be discontinued due to lockdown. She had failed to submit the service certificate in which

document verification in first phase was made from 17.04.2020 to 22.04.2020. The copy of the application form submitted by the petitioner online for

registration, has been produced on record by the opposite parties 1 to 3 with their counter affidavit as Annexure B/3. This would clearly indicate that

in the last column pertaining to declaration by the candidates under column relating to ""service particulars"" meant for both in-service and direct

candidates, who are in Government of Odisha employment at the time of application, the petitioner has not only stated that she was a fresher and

direct candidate but also additionally stated that the said column was not applicable to her. In this regard, she has, while submitting the online

application on 20.03.2020, given declaration, that "all the information furnished in this application are true to the best of my knowledge and belief".

10. In view of the above facts and circumstances, the petitioner, now in the mid stream of the process of admission, cannot claim that she is an in-

service candidate, especially when in the 1st round counselling she appeared before the authority on 20.03.2020 and got her documents verified as a

direct candidate. The petitioner has not stated correct facts in the writ petition and has also not approached this Court with clean hands. We do not

find any merit in the writ petition. Accordingly, the writ petition stands dismissed.

As Lock-down period is continuing for COVID-19, learned counsel for the petitioner may utilize the soft copy of this judgment available in the High

Court's official website or print out thereof at par with certified copies in the manner prescribed, vide Court's Notice No.4587 dated

25.03.2020.