
(2020) 05 SHI CK 0044
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 886 Of 2020

Dr. Sooshrut Thakur

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 20-05-2020

Acts Referred:

Citation : (2020) 05 SHI CK 0044

Hon'ble Judges : L. Narayana Swamy, CJ; Jyotsna Rewal Dua, J

Bench : Division Bench

Advocate : Neel Kamal Sood, Ajay Vaidya

Final Decision : Dismissed

Judgement

Jyotsna Rewal Dua, J

1. Petitioner has approached this Court for the third time, in essence praying for 30 percentage incentive in National Eligibility Entrance Test for admission to Post Graduation Courses (NEET-PG course) held on 31.01.2019 on account of service rendered by him as Medical Officer for three years in Model Central Jail, Village Kanda, Tehsil and District Shimla. The petitioner stands already admitted in PG course of Anaesthesia under NEET-2019 on 01.05.2019 in Indira Gandhi Medical College, Shimla. However, his grievance is that had he been awarded 30 percentage incentive for three years of his service rendered in rural area Kanda, he would have secured admission in a stream of his choice. The prayer has been opposed by the respondents-State.

2. Following relevant facts need noticing:-

2(i). The petitioner was appointed as Medical Officer on contract basis in Model Central Jail, Village Kanda, Tehsil and District Shimla on 08.02.2016. He completed three years of service as such on 07.02.2019.

2(ii). Prior to 2017, there were respective quotas for in-service candidates-General Duty Officers (GDOs) for admission to PG (MD/MS) courses. GDOs were

being granted certain relaxations by the State Government.

2(iii). In *State of U.P. & Ors. Versus Dr. Dinesh Singh Chauhan*, (2016) 9 SCC 749, Hon'ble Apex Court held that Medical Council of India Regulations, 2000, including Regulation 9 thereof, is self contained code laying down the procedure to be followed for admission to the postgraduate degree courses. Regulation 9(IV) of these regulations, which was amended vide notification dated 15.02.2012, reads as under:-

"9(4). The reservation of seats in Medical Colleges/ Institutions for respective categories shall be as per applicable laws prevailing in States/Union Territories. An all India merit list as well as State-wise merit list of the eligible candidates shall be prepared on the basis of the marks obtained in National Eligibility-cum-Entrance Test and candidates shall be admitted to Postgraduate Courses from the said merit lists only. Provided that in determining the merit of candidates who are in service of government/public authority, weightage in the marks may be given by the Government/Competent Authority as an incentive upto 10% of the marks obtained for each year of service in remote and/or difficult areas up to maximum of 30% of the marks obtained in National Eligibility-cum-Entrance Test. The remote and/or difficult areas shall be as notified by State Government/Competent Authority from time to time. No candidate who has failed to obtain the minimum eligibility marks as prescribed in sub clause (II) shall be admitted to any Post Graduate Courses in the said academic year."

2(iv). Pursuant to the above judgment of the Hon'ble Apex Court, respondent-State on 20.03.2017, notified a PG policy for pursuing PG (MD/MS) Degree/ Diploma Courses within the State of Himachal Pradesh w.e.f. Academic Session 2017-18. Under this policy, the in-service GDO was entitled for incentive @ 10 percent of the marks obtained in NEET-PG for each year of service subject to maximum of 30% in any of the area declared as difficult/ remote/tribal/backward by the State Government under letters/notifications enclosed alongwith the policy. Village Kanda, where the petitioner served w.e.f. 08.02.2016, did not fall as difficult/remote/tribal/backward area under this policy.

2(v). PG 2017 Policy was assailed before this Court in CWP No.581 of 2017 and various other connected matters, inter-alia, on the ground that no criteria has been laid down in the policy for identifying remote and difficult areas; some of the areas notified in the policy are neither difficult nor remote, whereas many remote and difficult areas have been left out from the policy. Judgment delivered on 12.04.2017 dismissed CWP No.581 of 2017, holding that it is for the State Government to take its decision in identifying the remote and difficult areas irrespective of their nomenclature and such decisions are not open to judicial review or scrutiny unless there is unimpeachable evidence on record in rebuttal to revisit the decision of the State Government. Relying upon *Dinesh Singh Chauhan's* case (supra), it was also observed that there cannot be any literal/dictionary meaning of 'remote' and 'difficult', which can be borrowed and it will always be open to the State Government to take its decision in identifying such

areas where the Doctors are not inclined to go and render their services.

Civil Appeal No.1521-1524 of 2018, preferred against the judgment dated 12.04.2017, was disposed of by the Hon'ble Apex Court on 30.01.2018 with following operative directions:-

"Without disturbing admissions made for last year, it is open to the State Government to identify for the areas such as remote/difficult etc. It is also open to the State Government to notify such areas after undertaking requisite exercise. For this purpose we permit the appellant to submit a representation to the State Government. Let the representation be filed within one month from today by 28th February, 2018. The State government shall examine the same as early as possible before admissions are granted latest by 30th April, 2018 and take a decision as per the observations made by this Court in order dated 15th December, 2017 in Dr. Amit Bagra & Ors. vs. State of Rajasthan & Ors. in SLP(C) 11692 of 2017 and other connected matters and State of Haryana and Anr. Etc. vs. Dr. Narender Soni and Ors. Etc. [AIR 2017 SC 2892]. Further, it would be open to the State Government to identify such areas as may be remote or difficult areas etc. as it may deem appropriate. No further case for interference is made out."

2(vi). On 05.04.2018, Medical Council of India issued a notification, inter-alia, further amending Regulation 9(IV). By way of amendment, in addition to 'remote/difficult area', the word 'rural' was also added. The amendment, relevant for the purpose of present controversy is extracted hereinafter:-

"(4).....Provided that in determining the merit of candidates who are in service of government/public authority, weightage in the marks may be given by the Government/Competent Authority as an incentive upto 10% of the marks obtained for each year of service in remote and/or difficult areas or Rural areas upto maximum of 30% of the marks obtained in National Eligibility-cum Entrance Test. The remote and/or difficult areas or Rural areas shall be as notified by State Government/Competent Authority from time to time."

2(vii). The respondent-State notified fresh PG/Super Speciality Policy for regulating admissions to Post Graduation and Super Speciality Courses in the State of Himachal Pradesh on 27.02.2019. The PG 2019 policy was in supersession of all previous notifications issued in this regard. It came into force w.e.f. 27.02.2019. Clause 5.1.4 of this policy pertains to grant of incentives to the in-service candidates (GDOs) for pursuing post graduation. The relevant portion of this clause reads as under:-

"5.1.4 The GDOs shall be entitled for incentive in terms of percentage of marks obtained in NEET-PG based on their services rendered in various field postings as per Annexure-A. The percentage incentive shall be computed on pro -rata basis for the actual duration of service rendered in a particular field posting as per the following formula:

Incentive

Duration served

Prescribed

incentive for

Percentage for a

(in days)

particular

institution

_____ X

particular

=

(annexure A)

365

field posting

.....

"

Annexure A attached with this policy provides area-wise percentage incentive for each year of service in different areas as under:-

"Incentive percentage for GDOs for doing Post Graduation Course through NEET-PG within the State of Himachal Pradesh

Category

Name of District

Medical Blocks/Health Institutions under the areas

Area wise percentage incentive for one year of service

A

Chamba

Lahaul &

Spiti

Pangi

Whole District

10

Kinnaur Shimla

Pooh

Area within Dodra Kawa sub-division of Chirgaon Medical Block

B

Chamba Kinnaur

Bharmour, Kihar and Tissa

Sangla & Nichar except CHC Bhabanagar & RH Reckong Peo

8

C

Kinnaur Shimla Mandi Sirmour

CHC Bhabanagar of Nichar Block, RH Reckong Peo Chirgaon and Nerwa

Janjehli, Chhohar Valley of Pdhar Medical Block Shillai and Sangrah

6

D

Kullu Mandi

Chamba Sirmour Kangra

Shimla

Anni and Nirmund (Except CH Nirmund)

Bagsaid (Except CH Gohar) and Sandhole (except CH Dharampur)

Phukhari, Choori and Samote Rajgarh (Transgiri Area) Mahakal

Nankhari and Tikker

4

E

All Districts

Other Medical Institutions of the State (excluding the above and below) (A, B, C, D & F)

2

F

All

All urban areas

0

Incentives were subject to maximum of 30 percent in terms of Dinesh Singh Chauhan's case (*supra*).

During hearing, learned Senior Additional Advocate General submitted that the areas included in Annexure A provide different percentage incentive for services rendered in identified difficult/remote/rural areas. Village Kanda falls in 'E' category and therefore, service rendered there post 26.02.2019 will entail 2 percentage incentive for each year of service.

2(viii). On 31.01.2019, the respondents conducted National Eligibility Entrance Test (hereinafter to be referred as 'NEET') for admission to PG (MD/MS) and PG Diploma Courses seats. The petitioner appeared and scored 536/1200 marks in the examination. The merit list, declared on 02.04.2019 reflected that no percentage incentive was awarded to the petitioner for three years of service rendered by him in Village Kanda.

2(ix). Petitioner preferred CWP No.633 of 2019, which was connected with CWP Nos.627 and 635 of 2019. In CWP No.633 of 2019, the petitioner had, inter-alia, prayed for quashing of PG Policies of 2017 and 2019. The petitioner had also prayed for grant of 10 percentage incentive per year, i.e. maximum of 30 percentage incentive, for serving three years allegedly in a rural area. It will be apt to reproduce the prayers made by the petitioner in CWP No.633 of 2019:-

"(i) Issue a writ in the nature of certiorari or any other appropriate writ of similar nature to quash the prospectus of NEET-PG (MD/MS) 2019-22 Counselling as annexure P-7/A and PG Policy 2017 at appendix 7 of annexure P-7/A and PG Policy 2019 dated 27.02.2019 as annexure P-7 and to quash and set aside and reschedule NEET-PG (MD/MS) Counselling-2019-22 to be conducted on dated 04.04.2019, 26.04.2019, 07.05.2019 & 08.05.2019 pursuant to Prospectus as annexure P-7/A being violative of clause 9(IV) of Postgraduate Medical education (amendment) Regulation 2018, dated 05.04.2018 annexure P-11 for not granting 10% incentive marks to the petitioner serving in rural area in Himachal Pradesh or in alternative respondent State may be directed to allow 10% incentive marks per year subject to maximum of 30% to the petitioner for the services rendered in the rural area as per regulation 9(IV) of MCI regulation dated 05.04.2018 as annexure P-11 in the ends of law and justice.

(ii) Issue a writ or order in the nature of mandamus or any other appropriate writ of similar nature thereby directing the respondents to quash the incentive marks issued on the basis of NEET-PG Policies 2017 and 2019 based on extraneous considerations and prepare fresh merit list after granting incentive marks of service to the petitioner posted in rural area in terms of Clause 9(IV) of Postgraduate Medical education (amendment) Regulation, 2018, dated 05.04.2018 and law laid down by the Apex Court of the country.

(iii) Issue a writ or order in the nature of mandamus or any appropriate writ of similar nature to prepare fresh NEET-PG Policy based on the data collected by the respondent State vide annexure P -9 dated 12.10.2019 and to grant the incentive marks as per data with respondent No.4 for service rendered in rural area to the petitioner in terms of Clause 9(IV) of Postgraduate Medical education (amendment) Regulation 2018, dated 05.04.2018."

These writ petitions were dismissed vide judgment dated 04.05.2019.

2(x). Petitioner filed another writ petition bearing CWP No.1636 of 2019 on the subject matter with almost similar prayers, which on the request of the petitioner, was disposed of on 24.10.2019 with direction to the respondents-competent authority to decide the representation of the petitioner within a period of three weeks. The representation preferred by the petitioner was rejected by the respondent vide order dated 18.01.2020.

It is against this backdrop that the petitioner has approached the Court for the third time.

3. We have heard learned counsel for the parties and gone through the record.

3(i). Learned counsel for the petitioner argued that Village Kanda, where the petitioner served w.e.f. 08.02.2016, was a rural area, therefore, it was bound to be treated as such for grant of percentage incentive to in-service category (GDOs). Learned counsel also contended that judgment passed by the Hon'ble Supreme Court on 30.01.2018 in Civil Appeals No.1521-1524 of 2018 has not been implemented by the respondents-State as requisite exercise in terms of the judgment has not been carried out by the State in identifying different areas under PG 2019 Policy. Another contention of discrimination vis-a-vis similarly situated doctors has also been raised.

3(ii). Per contra, learned Senior Additional Advocate General submitted that the issues raised by the petitioner and prayers made in this writ petition have already been adjudicated against the petitioner in CWP No.581 of 2017 as well as in CWP Nos.627 and 633 of 2019. The findings thereof would operate as res-judicata. The settled issues cannot be re-opened. Petitioner himself applied and appeared in NEET-PG test held on 31.01.2019 under PG Policy notified on 20.03.2017. Rural areas were not included in PG 2017 Policy for grant of percentage incentive. It is otherwise the prerogative of the State to identify difficult/remote/rural areas for the purposes of eligibility of GDOs for award of percentage incentive. The government in its wisdom has identified difficult/remote/ rural areas after considering all relevant factors. The judgment passed by the Hon'ble Apex Court was complied with. PG 2019 Policy has been issued in accordance with law. No GDO including the ones named by the petitioner has been discriminated vis-a-vis petitioner. Percentage incentive has been granted to the in-service category (GDOs) only on the basis of applicable policies.

4. The prayers made in the writ petition are liable to be rejected for the following

reasons:-

4(i). It is not in dispute that the petitioner has rendered three years of service as Medical Officer in Model Central Jail, Village Kanda, Tehsil and District Shimla w.e.f. 08.02.2016. He appeared in NEET-PG 2019 test held on 31.01.2019 under PG 2017 Policy.

4(ii). PG 2017 Policy provided percentage incentive to those GDOs, who had served in certain areas identified therein as 'difficult/remote/tribal/backwards'. Village Kanda, where the petitioner served for three years, did not fall under the areas identified for grant of percentage incentive under PG 2017 Policy. Thus, percentage incentive could not be awarded to the petitioner under PG 2017 Policy.

4(iii). PG 2019 Policy was framed on the lines of MCI Regulations dated 05.04.2018, whereunder besides 'difficult/remote areas', 'rural' areas were also included for the purpose of eligibility for award of percentage incentive to the GDOs. A perusal of Annexure 'A' (extracted earlier) attached with this policy reveals that difficult/remote/tribal and rural areas of the State have been allocated different percentage incentive for each year of service rendered there by a General Duty Officer. Maximum percentage incentive of 10 has been kept for service rendered in hard/tribal/ difficult areas of the State and so on. Village Kanda, where the petitioner served, falls in 'E' category, entitled to 2 percentage incentive for each year of service. Therefore, even under PG 2019 Policy, service rendered in Village Kanda would not entail prescribed maximum 30 percentage incentive to the petitioner for his three years of service. It is not the case of the petitioner that Village Kanda was tribal/remote area.

We may also note here that PG 2019 Policy in terms of its clause 2, came into effect from 27.02.2019. Position prior to this was governed by PG 2017 Policy. This is further clarified by Clause 12.1 of PG Policy 2019 in following manner:-

"12.1 For the purpose of incentive, this Policy shall be applicable henceforth; meaning thereby the GDOs who have served in the field postings in the past will be awarded incentive as per previous Notification dated 20-03-2017 (and amended from time to time) and any GDO who is serving/will serve in any field posting will be entitled for incentive as prescribed in this Policy from now onwards."

While deciding CWP No.633 of 2019, preferred by the petitioner, it has been held that the petitioners had qualified NEET on 31.01.2019 and at that relevant time, they were entitled for percentage incentive as per notification dated 20.03.2017, as the PG 2019 Policy has been notified much later, i.e. on 27.02.2019. The judgment has attained finality. During hearing of this case, it was also brought to our notice that Clause 3.9(ii) of the prospectus for admission to PG Courses (Medical) for the session 2020-21, issued by the respondents subsequent to framing of PG 2019 Policy, has clarified the applicability of PG 2017 Policy till the coming into force of PG 2019 Policy and that for grant of percentage incentive, PG 2017 Policy will hold the field for service rendered upto 26.02.2019,

whereafter the same will be governed by 27.02.2019 PG Policy. Thus, looking from any angle, petitioner is not entitled to 30 percentage incentive for his three years of service rendered in Village Kanda w.e.f. 08.02.2016 till 26.02.2019. Therefore, petitioner has rightly not been awarded any percentage incentive for service rendered in Village Kanda, Tehsil and District Shimla.

4(iv). While deciding CWP No.581 of 2017, titled Dr. Aarti Dhatwalia and others Versus State of H.P. and others, it has already been held that remote/difficult areas cannot be literally construed. It is for the State to take decision in identifying these areas irrespective of nomenclature. And that such decision is not open to judicial review or scrutiny unless evidence in rebuttal is brought on record for revisiting such decision. In the instant case, the only argument raised by the petitioner is that Village Kanda was the first area, where he served after joining the respondent Health Department, therefore, it has to be construed as rural area and being a rural area, this entails for award of maximum 30 percentage incentive. As already observed, it is for the State to decide as to which of its areas would fall as difficult, remote or rural area under the applicable policy for the purposes of eligibility to percentage incentive. Petitioner has not demonstrated as to how the judgment dated 30.01.2018 passed by the Hon'ble Apex Court in Civil Appeals No.1521-1524 of 2018 has not been complied with by the respondent-State. The stand taken by the State is that in its PG Policies, the Department in its wisdom has differentiated difficult/remote areas through a reasonable classification on the basis of difficulty, topography and geographical location of a particular institute. And that distinction has been made between institutions located even in a particular block, which are relatively less difficult as compared to more difficult institutions in that particular medical block. Respondents-State had not included Village Kanda as a difficult/tribal/remote area eligible for grant of percentage incentive under PG 2017 Policy. Under PG 2019 Policy, which came into force w.e.f. 27.02.2019 (i.e. after the holding of NEET-PG Test 2019 on 31.01.2019), Village Kanda has been included in 'E' category for award of 2 percentage incentive for each year of service, subject to maximum of 30 percent. Petitioner has not demonstrated that the decision of the State was erroneous, illogical, mala fide or arbitrary. The allegations of discrimination made in the petition have also not been substantiated. Even otherwise, petitioner cannot claim negative parity.

4(v). Besides findings in CWP No.581 of 2017, an earlier writ petition filed by the petitioner, bearing CWP No.633 of 2019, with almost identical prayers has been dismissed vide judgment dated 04.05.2019. The findings thereof would operate as res-judicata.

5. Therefore, we hold that petitioner had appeared under NEET-PG Test 2019 on 31.01.2019 under 20. 03.2017 PG Policy, whereunder service rendered by the petitioner in Village Kanda did not entail any percentage incentive to him. Petitioner has failed to substantiate his grievance against PG 2019 Policy, which came into force w.e.f. 27.02.2019. Under PG 2019 Policy, Village Kanda has been

included as rural area under Category 'E'. Each year of service rendered there would entail a General Duty Officer 2 percentage incentive subject to maximum of 30 percent. Additionally, petitioner has already joined PG Course of Anaesthesia on 01.05.2019 under NEET-PG 2019 test held on 31.01.2019 for admission to session 2019-2022. Events thereafter have overtaken themselves. One year has gone by. Counselling was completed on

31. 05.2019. Two earlier writ petitions filed by the petitioner, i.e. CWP Nos.633 and 1636 of 2019 have not borne him success. This writ petition essentially praying for same reliefs as prayed in earlier writ petition (CWP No.633 of 2019) is not maintainable.

In view of the above, there is no merit in the writ petition, which is dismissed accordingly alongwith pending miscellaneous application(s), if any.