

(2022) 01 MP CK 0205

In the Madhya Pradesh High Court

Case No : Writ Petition No. 25819 Of 2021

Dr. Vijendra Dhanware & Another

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 14-01-2022

Acts Referred:

Constitution Of India, 1950 — Article 14, 226

Madhya Pradesh Chikitsa Shiksha Pravesh Niyam, 2018 — Rule 2(k), 14

Postgraduate Medical Education Regulations, 2000 — Regulation 9(4), 9(7), 9(8)

Citation : ?????

Hon'ble Judges : Sujoy Paul, J;Arun Kumar Sharma, J

Bench : Division Bench

Advocate : Siddharth Gupta, Piyush Dharmadhikari, Anoop Nair

Final Decision : Partly Allowed

Judgement

Sujoy Paul, J

1. In this petition filed under Article 226 of the Constitution of India, the petitioners have prayed for the following reliefs :-

(i) That this Hon'ble Court be pleased to issue any appropriate writ/order/direction declaring the Chart/List/Table uploaded on the official website of Respondent authorities on 12/13.11.2021 as contrary to its Department Order/Circular dated 19.08.2021 and thus quash the same insofar as it is related to Medical Officers like the petitioners who are rendering services in the District Civil Hospitals of the State.

(ii) That this Hon'ble Court may be pleased to issue any appropriate writ/order/direction directing the respondent authorities, especially the DME and DHS, State of Madhya Pradesh, for suitably revising the impugned Chart/Table/ List for including the name of petitioners and Medical Officers serving in the District Government Hospitals of the State amongst those entitled for benefit of 30% reservation meant for in-service candidates as per the Government Circular

dated 19.8.2021 issued by the State of Madhya Pradesh.

(iii) That this Hon'ble Court may be pleased to issue any appropriate writ/order/direction declaring and holding that the petitioners are entitled for 10% additional marks by treating their place of posting in the last one and a half year (Harda Civil Hospital in the case of petitioner No. 1 and CHC, Mangilal Churiya, District Indore in case of petitioner No. 2) as a 'difficult area' in terms of Regulation 9, (IV, VII) of the MCI PG Regulations 2000 and accordingly the petitioners be held entitled for 10% additional marks for the same.

(iv) That this Hon'ble Court may be pleased to issue any appropriate Writ/Order/Direction directing the respondent State of Madhya Pradesh for suitably modifying the Public Notice dated 28.03.2019 governing the grant of additional 10% marks to in-service doctors, who have served in Covid -19 affected districts, especially districts like Harda and Indore, during the covid-19 pandemic, by incorporating a provision for grant of 10% additional marks for all those Medical Officers (MO) who have served in the COVID -19 affected hospitals or Health Care Centres and accordingly be pleased to direct for revision of the impugned List/Table/Chart, dated 12/13.11.2021.

(v) Any other relief which this Hon'ble Court deems just and proper in the facts and circumstances of the case may also kindly be granted to the petitioners.

2. The interesting conundrum in this case is whether the petitioners MBBS qualified Doctors rendering their services as regular employees in the Department of Health Services, State of M.P. fall in the category of 'in service candidates' and whether they have separate channel of entry in P.G. Course as per order dated 19.8.2021 issued by the State Government.

3. The admitted facts between the parties are that the petitioners are working as regular employees and are qualified MBBS Doctors. The points on which the parties are at loggerheads are :-

(a) Whether 'in-service candidates' includes present petitioners, who are presently posted in District Hospital, Harda and Indore respectively ?

(b) Whether the petitioners are entitled to get incentive of marks as per circular/order dated 28.3.2019 ?

4. Shri Siddharth Gupta, learned counsel for the petitioners by taking this Court to the Government order dated 19.8.2021 submits that the reservation/separate channel of entry to the extent of 30% in P.G. Degree Course is made by this order. The order covers Demonstrator, Tutors and the Medical Officers, the category to which present petitioners belong. The Government has framed rules namely M.P. Chikitsa Shiksha Pravesh Niyam 2018, (in short, 'Admission Rules'). As per these statutory rules, published in the official gazette dated 9th March 2018, the petitioners are covered in the definition of "serving employees", as per Rule 2(k).

5. The said admission rules were further amended by notification dated 5th October 2021. By placing reliance on Rule 14 of these rules, Shri Siddharth Gupta, learned counsel for the petitioners further urged that 30% reservation/separate channel of entry is earmarked for Degree Seats for Demonstrator/Tutors/Medicals Officer. The petitioners being Medical Officers are entitled to be considered against reserved seat of 30%, whereas they were treated to be eligible only for open seats. This action of respondents is bad in law and runs contrary to the admission rules.

6. The next argument of learned counsel for the petitioners is based on the policy dated 28.2.2019. It is argued that this policy was issued in Pre-Covid era. In this policy, it was decided to provide additional marks/incentive to the serving candidates. However, the benefit of incentive was confined to the candidates working in rural, remote and difficult areas. The said areas were defined in the order dated 28.2.2019 (Annexure P/9) and in the Schedule-1 appended to the said order, the areas/places were defined. Although, Harda and Indore, where petitioners were admittedly working do not find place in the areas mentioned in the Schedule-1 of said order, Shri Gupta submits that the word 'difficult' has been considered by this Court in W.P. Nos. 4316, 4512 and 4526 of 2017, (Brijesh Yadav and others Vs. State of M.P. and others). Considering the fact that Indore and Harda District Hospitals were also difficult areas where the petitioners were rendering their service 24x7 during Pandemic era, they must be treated to be performing difficult service, and therefore, the benefit of this order dated 28.2.2019 must be extended in favour of petitioners as well.

7. By placing reliance on 1984 (1) SCC 222 (Motor General Traders Vs. State of Andhra Pradesh & Ors.) and AIR 1998 SC 602 (Malpe Vishwanath Acharya and others Vs. State of Maharashtra and another), it is further urged that a provision of law may be valid at the time of its issuance but may lose its relevance by efflux of time. Thus, change in circumstances and passage of time is a relevant factor to examine the correctness and applicability of a circular. To elaborate, it is submitted that the order dated 28.2.2019 was passed when Pandemic was not there. During Pandemic, since all the Doctors working in District Hospitals became vulnerable and worked at the cost of their and families' lives, they should be included in the category of difficult posting/area.

8. On the strength of aforesaid argument, Shri Gupta submits that whether petitioners are treated as open category candidate or a candidate having separate channel of entry, in both the situations, the petitioners must get the benefit of incentive that will upgrade their merit position. There is no justification in depriving the petitioners from the fruits of order dated 28.02.2019.

9. Regulation 9(4) of the MCI Post Graduate Medical Education Regulations, 2000 (in short 'Regulations') mandates that Government shall notify about difficult areas "from time to time". Placing reliance on this expression from time to time, learned counsel for the petitioners submits that post Covid also the scope of difficult areas should have been changed by including the District Hospitals which

were badly Covid affected. In that case, petitioners will get benefit of incentive marks of 10% per year which will be of great benefit for them. In support of his submissions, he placed reliance on 2021 (6) SCC 568 (Tamil Nadu Medical Officers Association & Ors. Vs. Union of India & Ors.), a judgment of this Court in Dr. Hemendra Chouhan and others Vs. State of M.P. and others W.P.(C) No.7414 of 2020 and another judgment of Brijesh Yadav and others vs. State of M.P. (AIR 2017 M.P. 142).

10. Shri Anoop Nair, learned counsel for respondent No.3 submits that he has limited role to play. The Government has issued the order dated 28.02.2019 whereby certain incentive marks were decided to be given. Per se Covid is not a situation because of which District Hospitals should be treated in difficult area.

11. Shri Piyush Dharmadhikari, learned Government Advocate submits that prescribing standard of education on Pan India basis is within the domain of Medical Council of India (MCI). As per Entry-66, List-1 of the Constitution of India, the MCI is best suited to prescribe such conditions. Regulation 9(4) and 9(8) prescribes such conditions which also governs the reservation/separate source of entry. The State Government cannot legislate contrary to the Regulations framed by MCI. The reliance is placed on 2016 (7) SCC 353 (Motor Dental College & Research Centre & Ors. Vs. State of M.P.), 1999 (7) SCC 120 (Dr. Preeti Shrivastava & Anr. Vs. State of M.P. & Ors.) and 2021 (6) SCC 568 (Tamil Nadu Medical Officers Association & Ors. Vs. Union of India & Ors.). It is submitted that a conjoint reading of para-17 and 23.8 of this 2021 judgment which was passed during Pandemic era by Supreme Court, it is clear that Supreme Court covered only 'hilly' and 'tribal' areas and it does not include Covid affected hospitals.

12. The stand of State is that Regulation 9(8) is very clear and a conjoint reading of Regulation 9(8) and order dated 28.02.2019 makes it clear that emphasis is on 'difficult area' and not on 'difficult services'. The area in which petitioners were working were not difficult areas at all. The State in its legislative power and under relevant entries of list cannot issue any direction which is repugnant to the Regulations framed by MCI. No doubt, the admission rules and the order dated 19.08.2021 talks about in-service candidate only, the further categorization / reservation is to be traced from MCI Regulation. Heavy emphasis is laid on Regulation 9(8) to contend that this Regulation makes it clear that it is to be confined to rural, difficult and remote areas.

13. Shri Siddharth Gupta, learned counsel for the petitioners in his rejoinder submissions urged that Regulation 9(8) is applicable to 'Diploma Course'. There is no Regulation of MCI which deprives the present petitioners for consideration as in-service candidates. The governing rule (Admission Rules) brings petitioners within the zone of consideration. Thus, petitioners are entitled to get the benefit of consideration in separate channel of entry.

14. Parties confined their arguments to the extent indicated above.

15. We have heard the parties at length and perused the record.

16. Before dealing with rival contentions, it is apposite to quote relevant orders and rules/provisions. Order dated 19.8.2021 Annexure P-5 read as under :-

The definition of in-service candidate mentioned in Admission Rules (Annexure P-7) reads as under :-

The relevant portion of amended Admission Rules reads as under :-

(emphasis supplied)

A conjoint reading of aforesaid order and the rules leaves no room for any doubt that definition of 'in-service candidate' is wide enough to include the medical officers. Admittedly, petitioners were working as Medical Officers in District Hospitals. A combined reading of aforesaid order and rules further makes it clear that there is no impediment in the aforesaid which deprives the petitioner from right of consideration in Post Graduate Degree Course as a separate channel of entry.

17. Regulation 9(8) on which the whole argument of Shri Piyush Dharmadhikari, Government Advocate is founded upon reads as under :-

"50% of the seats in Postgraduate Diploma Courses shall be reserved for Medical Officer in the Government service, who have served for at least three years in remote and / or difficult areas and/or Rural areas. After acquiring the Postgraduate Diploma, the Medical Officers shall serve for two more years in remote and /or difficult areas and / or Rural areas as defined by State Government/ Competent authority from time to time."

(emphasis supplied)

A plain reading of this regulation shows that argument of Shri Siddharth Gupta Advocate has substantial force. The regulation 9(8) is applicable to Post Graduate Diploma Course and not to the course in question i.e. Postgraduate Degree Course. This is trite that when language of a statute is clear and unambiguous, it has to be given effect to irrespective of its consequences (See Nelson Motis Vs. Union of India 1992 (4) SCC 711). It will not be out of place to mention here that whole argument of Shri Dharmadhikari, Government Advocate about repugnancy of provisions and relevant List and Entries of the Constitution is founded on the Regulation 9(8) aforesaid. At the cost of repetition, it is noteworthy that the genesis of argument of learned Government Advocate was that the State Government by no stretch of imagination can legislate anything or issue executive instructions which runs contrary to MCI Regulations. Since Regulation 9(8) holds the field, only such in-service candidates are entitled for reservation who have served for at least 3 years in remote/difficult or rural areas. This argument pales insignificance because present matter does not relate to Diploma Course. Thus, Regulation 9(8) has no application and no other regulation for this purpose is brought to the notice of this Court. Thus, judgments cited by Shri

Dharmadhikari based on this proposition cannot be pressed into service. As a consequence, we are constrained to hold that the petitioners have a separate channel of entry being Medical Officers in earmarked 30% total seats of Postgraduate Medical Courses. Regulation 9(8) deals with incentive marks.

18. The matter may be viewed from another angle. The Demonstrators and Tutors working in cities/urban areas are treated as 'in-service candidates'. Neither the relevant order nor the rule precludes the Medical Officers working in urban areas or hospitals from benefit of being 'in-service candidate'. If we hold that the Demonstrators and Tutors are eligible despite being posted in towns (not covered under difficult, rural or remote areas) as in-service candidates and petitioners are not, it will divide a homogeneous class of 'in-service candidates' and will create a class within the class without there being any rationale and justification for the same. This will run contrary to the principles laid down by the Constitution Bench of Apex Court in AIR 1955 SC 191 (Budhan Choudhary & Ors. Vs. State of Bihar). The ratio decidendi of Budhan Choudhary has been consistently followed by Supreme Court in Hiralal P. Harsora vs. Kusum Narottamdas Harsora (2016) 10 SCC 165, Karnataka Live Band Restaurants Assn. vs. State of Karnataka (2018) 4 SCC 372, Lok Prahari vs. State of U.P. (2018) 6 SCC 1, CRPF vs. Janardan Singh (2018) 7 SCC 656, Navtej Singh Johar vs. Union of India (2018) 10 SCC 1 and Rana Nahid vs. Sahidul Haq Chisti (2020) 7 SCC 657.

19. The second limb of argument of Shri Siddharth Gupta, Advocate was for getting incentive marks. This argument is based on order dated 28.2.2019.

A careful reading of this order makes it clear that incentive marks were decided to be given to in-service candidates who have worked in rural, remote and difficult areas. Scheduled-1 is appended to this order dated 28.2.2019 whereby "difficult areas" are earmarked. The place of posting of petitioners namely Harda and Indore do not find place in the Schedule. Pertinently, order dated 28.2.2019 is not called in question. The order dated 28.2.2019 is a policy decision taken by the Government which cannot be lightly disturbed. The policy decision can be interfered with on limited grounds. When policy decision is not even challenged, it has to be read as such and this Court cannot re-write and insert something which is not there in their policy decision. The State Government is best suited to take a policy decision and this Court has no expertise to re-write or insert something in it. The legal journey on this aspect may be seen. Lord Mac Naughten in Vacher & Sons Ltd. v. London Society of Compositors [Vacher & Sons Ltd. v. London Society of Compositors, 1913 AC 107: (1911-13) All ER Rep 241 (HL)] has stated: (AC p.118) :

".... Some people may think the policy of the Act unwise and even dangerous to the community. ... But a judicial tribunal has nothing to do with the policy of any Act which it may be called upon to interpret. That may be a matter for private judgment. The duty of the court, and its only duty, is to expound the language of the Act in accordance with the settled rules of construction.'

(emphasis supplied)

The litmus test laid down by Lord Mac Naughten was quoted with profit by Supreme Court in the matter of Centre for Public Interest Litigation Vs. Union of India (2016) 6 SCC 408. In the matter of State of M.P. Vs. Nandlal Jaiswal (1986) 4 SCC 566, the Apex Court has held as under :-

“34..... The Government, as was said in Permian Basis Area Rate Cases [20L Ed (2d) 312] is entitled to make pragmatic adjustments which may be called for by particular circumstances. The Court cannot strike down a policy decision taken by the State Government merely because it feels that another policy decision would have been fairer or wiser or more scientific or logical. The Court can interfere only if the policy decision is patently arbitrary, discriminatory or mala fide. It is against the background of these observations and keeping them in mind that we must now proceed to deal with the contention of the petitioners based on Article 14 of the Constitution.”

(emphasis supplied)

20. The ratio decidendi of these judgments were consistently followed by Supreme Court in the case of State of Punjab Vs. Ram Lubhaya Bagga, Ugar Sugar Works Ltd. Vs. Delhi Admn; (2001) 3 SCC 635, State of Orissa Vs. Gopinath Dash (2005) 13 SCC 495, State of U.P. Vs. Chaudhari Ran Beer Singh (2008) 5 SCC 550, Parisons Agrotech (P) Ltd. Vs. Union of India (2015) 9 SCC 657 and Centre for Public Interest Litigation Vs. Union of India (2016) 6 SCC 408.

21. So far judgment of Malpe Vishwanath Acharya and others vs State of Maharashtra and another (1998) 2 SCC 1 is concerned, suffice it to say that in the said case, the constitutionality of impugned provision was called in question but said provisions elapsed on 31.3.1998. In the instant case, the relevant provision/circular is not called in question. Similarly, in the case of Motor General Traders and another Vs. State of Andhara Pradesh and others (1984) 1 SCC 222, the constitutional validity of Clause (b) of Section 32 of Relevant Control Act was subject matter of challenge. In that backdrop, the findings were given by Supreme Court. In absence of any such challenge to the circular/order dated 28.2.2019, the said judgments cannot be pressed into service.

22. In view of foregoing analysis, we are unable to hold that ‘difficult area’ includes “difficult services” rendered in District Hospital Indore and Harda. Thus, question of grant of incentive marks to the petitioners does not arise. To this extent, the petition must fail.

23. As discussed above, petitioners fall in the category of ‘in-service candidates’ for the purpose of Postgraduate Medical Courses. The respondents have erred in not treating them in the said category in the impugned chart/table uploaded on the official website on 12/13.11.2021. Since, this deprivation of petitioners runs contrary to the order dated 19.8.2021 and provisions of admission rules, the impugned entries of the chart/table are set aside. The respondents are directed

to treat the petitioners as in-service candidates for Postgraduate Degree Course and consider their claim for the same in accordance with law.

24. The petition is partly allowed to the extent indicated above.