

(2013) 06 KL CK 0029

In the High Court Of Kerala

Case No : Writ Petition (C) No. 13996 of 2013

Fenny, K.P. (Dr.)

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 12-06-2013

Acts Referred:

Constitution of India, 1950 — Article 226, 254(2)

Citation : (2013) 3 ILR (Ker) 517

Hon'ble Judges : V. Chitambaresh, J

Bench : Single Bench

Advocate : Kurian George Kannanthanam, Sri. Gopikrishnan Nambiar, Sri. P.C. Sasidharan, Sri. Bechu Kurian Thomas, Sri. Tony George Kannamthanam, Sri. Thomas George, Sri. Jiji Thomas, Sri. Enoch David Simon Joel, Sri. P. Gopinath, Sri. P. Benny Thomas and Sri. K. John Mathai, for the Appellant; Roshan D. Alexander Government Pleader for Respondents 1 to 3, Sri. Alexander Thomas S.C., MCI for 4th respondent and Sri. S. Krishnamoorthy (CGC), for the Respondent

Judgement

V. Chitambaresh, J.—All these writ petitions are connected. I shall refer to the parties and the exhibits in W.P. (C) No. 3996 of 2013 for the sake of convenience. The issue pertains to the preparation of seniority list under Health Service Quota for admission to Postgraduate Medical Courses, 2013. The relevant clause in Ext. P-2 Prospectus for admission to Medical Postgraduate Degree/ Diploma Courses, 2013 issued by the Government of Kerala is extracted herein below:

VII. Reservation of seats for service candidates:

All State quota seats other than those mentioned in clause VI are earmarked for Service quota candidates. Seats as shown in Annexures III and IV are set apart for Service quota candidates sponsored by each Department under the following four categories.

? Medical Education Service Quota (MESQ)

? Health Service Quota (HSQ)

? Insurance Medical Service Quota (IMSQ)

? Municipal Services Quota (MSQ)

(a) Eligibility for Service Quota:

1. * * *

2. * * *

3. Preparation of seniority list under Health Service Quota: A single seniority list for candidates under Health Service Quota will be prepared by the DHS. Weightage for Rural and Difficult Rural Service will be given as follows:

Rural Service: One year will be added for every completed 3 years of Rural service subject to a maximum of 5 years as bonus.

Difficult Rural Service: One year will be added for every completed 2 years subject to a maximum of 8 years as bonus.

4. * * *

Thus a single seniority list for candidates under Health Service Quota will be prepared and one year will be added for every completed three years of rural service and one year will be added for every completed two years of difficult rural service. The petitioners contend that separate quota was allotted on the basis of rural service and difficult rural service up to last year and that there is no justification to adopt a different procedure for admission based on artificial seniority this year.

2. A quick reference to the relevant provisions of the Kerala Medical Officers' Admission to Postgraduate Courses Under Service Quota Act, 2008 ("the Act" for short) is apposite. Section 6 of the Act is as follows:

6. Weightage for rural service.--Every Medical Officer who has "rural area service" or "difficult rural area service", as the case may be, in the State shall be given weight in selection in such manner as may be prescribed.

Rural area service" has been defined in Section 2 (i) of the Act as follows:

(i) "rural area service" means the service rendered by a Medical Officer in an area declared by the Government as "rural area".

Similarly "difficult rural area service" has been defined in Section 2(a) of the Act as follows:

(a) "difficult rural area service" means the service rendered by a Medical Officer in a rural area declared by the Government as "difficult rural area".

The term "prescribed" appearing in Section 6 of the Act has been defined in Section 2(g) of the Act as follows:

(g) "Prescribed" means prescribed by rules made under this Act.

The relevant provision in the Kerala Medical Officers' Admission to Postgraduate Courses Under Service Quota Rules, 2010 ("the Rules" for short) is Rule 8 which is as follows:

8. The procedure for weightage in selection for rural service.--(1) The candidates will be eligible for weightage for rural area service or difficult rural area service as per Sec. 6 of the Act. This will be applicable for admission to Health Service Quota only. A minimum of one year continuous service in rural area/difficult rural area service is necessary to get weightage. Those who have more than one year service in such areas will get more weightage. The weightage will be decided by the committee on the basis of the number of years of service in rural/difficult rural areas. The list of hospitals eligible for weightage under rural areas/difficult rural areas will be notified by the Government from time to time. The length of service in the stations done after the date of Government Order notifying the stations only will be considered for giving weightage. The candidates shall attach certificate in this regard in such format as decided by the Government.

(ii) * * *

(iii) * * *

(iv) The Government will have power to continue or discontinue the sub quotas any or all of for P.G. Admission under Health Service Quota as in sub rule (iii) above as the Government deemed fit, or to resort to admissions on seniority basis above by giving suitable weightage for service in rural areas/difficult rural areas as the case may be as provided in 8(i) above.

3. Thus the Rules prescribe that a minimum of one year continuous service in rural area or difficult rural area is necessary to get weightage and that those who have more than one year service in such area will be given more weightage. True it is that Rule 8 (iii) of the Rules provides for sub-quota such as Rural Service Quota and Difficult Rural Area Quota as was followed by the Government of Kerala till last year. But Rule 8 (iv) clothes the Government with the power to continue or discontinue the sub-quotas and to resort to admissions on seniority basis by giving suitable weightage for service in rural areas and difficult rural areas. This has precisely been done by the Government of Kerala in Ext. P-2 Prospectus as regards Post-graduate admission under Health Service Quota which is a permissible exercise under the Act and the Rules framed thereunder.

4. The petitioners have also a contention that the new procedure adopted though falling in the realm of a policy decision of the Government has no nexus with the object sought to be achieved. The Government has in para 14 of the counter-affidavit filed to the writ petition succinctly enumerated the reasons for adopting a different procedure and the same is profitably extracted hereunder:

14. The following reasons led to the decision in preparing a single seniority list by giving weightage for rural and difficult rural service;

(i) Till last year the counseling was done manually by DME. For current year allotment would be online.

(ii) Change over of the candidates in different sub-quotas under Health Service Quota in their pursuit of unclaimed seats was creating much difficulty and confusion in the tabulation process.

(iii) Weightage for doctors serving rural and difficult rural area were considered to protect their services rendered in these areas, so that those who have served for longer period will be benefited.

(iv) All candidates can compete for all or any of the seats allotted to Health Service Quota rather than getting limited to the number of seats allotted against one quota only.

(v) Implementation of single seniority list for Health Service Quota was done with the intention of attracting doctors to remote rural areas so that the poor people will be benefited from their service.

(vi) The doctors are also benefitted by getting post-graduate course earlier than a doctor with same duration of service in service quota.

(vii) By adopting a single list, online allotment process is made easier and smooth in which the colleges as well as courses are also earmarked for allotment.

5. It is not as if the candidates who have rendered service in rural areas or difficult rural areas have not been given any preference at all or that equal weightage is given for service in both the sectors. More weightage is legitimately given to difficult rural service by adding one year for every completed two years than rural service where only one year is added for every completed three years. There is justification on the part of the Government in contending that the online allotment process will be easier by granting weightage as above rather than providing separate quotas for service in rural areas and difficult rural areas. The wisdom of the State in evolving such a policy decision under such circumstances cannot be said to be wholly unreasonable as to warrant interference under Article 226 of the Constitution of India. The petitioners have a faint plea that the Act and the Rules militate against the Regulations of the Medical Council of India which only envisage weightage in marks as an incentive for service in remote or difficult areas. The answer could be found out in Section 3 of the Act which is extracted hereunder:

3. Selection of Medical Officers for admission to Post-graduate Course under the Service Quota--Notwithstanding anything contained in the Indian Medical Council Act, 1956 (Central Act 102 of 1956) or any rule or regulation issued thereunder or in any judgment, decree or order of any court or authority, the selection of Medical Officers for admission to Post-graduate Course of study in the State under the service quota shall be made only under the provisions of this Act.

(emphasis supplied)

Moreover the Act has received the assent of the President under Article 254 (2) of the Constitution of India which excludes the challenge on the basis of repugnancy between the provisions of law made by the Parliament and the State. [See Mohammed Riaz Vs. State of Kerala,]. Therefore the Act and the Rules framed thereunder have primacy over the Regulations of the Medical Council of India in view of the non obstante clause contained in Section 3 of the Act.

The upshot of the discussion is that all the Writ Petitions deserve to be dismissed. I do so. No costs.

*A reproduction from ILR (Kerala Series)