
(2020) 07 RAJ CK 0013

In the Rajasthan High Court

Case No : Civil Writ Petition No. 7618, 7784, 7920, 7921, 7922 Of 2020

Harisharan And Ors

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 29-07-2020

Acts Referred:

Citation : (2020) 07 RAJ CK 0013

Hon'ble Judges : Ashok Kumar Gaur, J

Bench : Single Bench

Advocate : Mohit Balwada, Ajay Chaudhary, Dhoop Singh Poonia, Harshal Tholia, Dr.V.B. Sharma, R.P. Meena, Angad Mirdha

Final Decision : Allowed

Judgement

1. This order will dispose of the present batch of writ petitions filed by the petitioners-in service Doctors claiming their eligibility to treat them as ""in service Doctors"" for the purpose of appearing in Post Graduate Medical Admission Counselling, 2020 including mop-up counselling as in service candidates.

2. This Court will take the case of Dr. Avantika Sharma Versus State of Rajasthan & Ors. (S.B. Civil Writ Petition No.7784/2020) as lead case.

3. The petitioner has pleaded in the writ petition that she was appointed as Medical Officer on probation for a period of two years vide order dated

27.07.2013. The National Board of Examinations (in short 'the NBE') issued an Instruction Booklet requiring eligible candidates to apply for

admissions into the Post Graduate Medical Courses for the year 2020. The petitioner has further pleaded that she submitted her on-line application

form after taking No Objection from the Directorate, Medical and Health Services,

Jaipur and she appeared for the NEET PG Examination, 2020

under General Category and obtained 300 marks in the said examination.

4. The NBE declared the result of NEET PG Examinations 2020 on 30.01.2020 wherein minimum eligibility criteria for counselling to Post Graduate

Courses, the cut-off scores for various categories, were declared and under general/open category the minimum eligibility criteria, was 50th percentile

and the cut-off score was 366 marks.

5. The petitioner has pleaded in the petition that the Director, Medical and Health Services, Jaipur had issued an order dated 21.01.2020 whereby all

the Chief Medicals and Health Officers and other Authorities-Controlling Officers were directed to forward the Application Form of all the eligible 'in-

service' candidates who were interested in taking admission in NEET PG under 'in-service' category on or before 06.02.2020. The petitioner has

further pleaded that since she had secured only 300 marks and minimum eligible criteria for general/open category was 50 th percentile and the cut-off

score was 366 marks, she did not submit the application form to the Directorate, Medical and Health Services, Jaipur.

6. The petitioner has pleaded in her petition that the NBE issued an order dated 14.07.2020 whereby in accordance with the Ministry of Health and

Family Welfare, Government of India letter dt.14.07.2020, the minimum qualifying percentile for admission to Post Graduate Medical Courses was

lowered and for open/general category was revised to 30th percentile from 50th percentile and the cut off score was also revised to 275 marks instead

of 366 marks.

7. The petitioner has further pleaded that in view of letter dt.14.07.2020, she became eligible for admission for Post Graduate Courses and as such she

became eligible for participating in the second round of counselling for State Quota seats, which was scheduled from 19.07.2020 to 21.07.2020.

8. The petitioner has further pleaded that she registered on-line for the second round of counselling and in the registration form she had filled her

category as 'in-service' candidate, however, on 19.07.2020 the Chairman, NEET PG Medical and Dental Admission/Counselling Board, 2020 (in short

'the NEET Board') issued a provisional State Merit List (Combined) for second round of counselling and against the name of the petitioner, she has

been put into 'non-service' category and as such bonus marks have not been

awarded to the petitioner.

9. The petitioner has pleaded in her writ petition that when she enquired about her wrong status in the provisional State Merit List (Combined), she

came to know that she was put in 'non-service' category as she failed to forward her 'in-service' application form to the Director in pursuance to the

order dt. 21.01.2020. The petitioner is said to have immediately made an application dt.20.07.2020 addressing to the Director, Medical and Health

Services, Jaipur with the request to consider her as 'in-service' candidate and she also submitted and forwarded the 'in-service' application form

dt.22.07.2020 wherein entire service details of the petitioner were mentioned by the Chief Medical & Health Officer, Tonk.

10. The petitioner has pleaded that she was not allowed to participate in the second round of counselling and the last date for reporting and joining to

the allotted colleges is 27.07.2020 and all the seats which will be left vacant will be filled through mop-up round before 30.07.2020 and if the petitioner

is not treated as 'in- service' category candidate, then she will not be even allowed to participate in the mop-up round as well.

11. This Court finds from all the writ petitions that the petitioners in these writ petitions are 'in-service' candidates who had sought No Objection from

the competent authority for appearing in the NEET PG Examinations, 2020. All the petitioners did not have 50th percentile and cut-off score of 366

marks in the result declared on 30.01.2020. This Court further finds that all the petitioners had not submitted their applications forms in pursuance of

letter dt. 21.01.2020 in the Directorate, Medical and Health Services, Jaipur, as was directed.

12. The common grievance raised by all the writ petitioners is with regard to making them eligible for participating in the counselling process after

revision of cut-off marks by way of declaration by the NBE vide their letter dt.14.07.2020. All the petitioners had become eligible as per the revised

minimum qualifying percentile i.e. 30th percentile and minimum revised cut- off of 275 marks.

13. The real controversy before this Court is with respect to deciding the eligibility of the petitioners for participating in the counselling process after

revision of qualifying criteria/cut-off score.

14. Counsel for the petitioners have submitted that the Instruction Booklet which

was issued from the office of the Chairman, NEET PG Medical and Dental Admission/Counselling Board, 2020 had clearly provided in the eligibility criteria for 'in- service' category that candidates were to ensure that they scored minimum percentile in NEET PG Examination, 2020 before addition of bonus marks to be eligible for registration for State Counselling.

The said clause, for ready reference, is reproduced hereunder:-

Eligibility (Academic) Applicable to all categories In-service category Weightage of Bonus Marks in the obtained NEET PG 2020 score shall be

given to all eligible in-service candidates after verification by Directorate of Medical and Health Department, Rajasthan.

Other criteria / conditions shall be as per the Government of Rajasthan norms i.e. service conditions, age etc. Note: Candidates must ensure they they

have scored minimum percentile in NEET PG 2020 before addition of bonus marks to be eligible for registration for State Counselling.

15. Counsel for the petitioners have submitted that the Chairman of the NEET Board had also issued notification dt.16.07.2020 whereby on-line

registration and information form was to be submitted by the candidates from 16.07.2020 to 18.07.2020 by 11:45 PM and those candidates who were

already registered, were not required to register again. Counsels have submitted that once the revised cut-off score was made applicable, it was

incumbent on the Authorities to give opportunity to the petitioners to apply for their registration for participating in the counselling and before

convening the second round of State Counselling, the petitioners ought to have been considered eligible as they scored more than the cut-off marks

and further as 'in-service' candidates, they were entitled for additional bonus marks.

16. Counsel for the petitioners have further submitted that the list dt.19.07.2020 declaring the petitioners as 'non-service' candidates and denying their

consideration as 'in-service' candidates is due to lapses/inaction on the part of the respondents by denying the right of participation to the present

petitioners.

17. Counsel for the petitioners have further submitted that the initial date of getting the proper certificate with respect to service rendered and further

the deposition of the same in the Directorate, Medical & Health Services, Jaipur was upto 06.02.2020 and since result was declared on 30.01.2020, no

occasion arose for the petitioners to submit the requisite form for their entitlement as 'in-service' candidates, in view of the note appended to the Instruction Booklet.

18. Counsel for the petitioners have further submitted that the formalities of collecting necessary datas from the Directorate could have been undertaken without any delay and the Chairman of the NEET Board should have been instructed by the Directorate, Medical & Health Services, Jaipur about the entitlement of the petitioners.

19. Counsel for the petitioners further submitted that the second round State Counselling on-line choices were to be filled from 20.07.2020 to 22.07.2020 and allotment of the colleges, as per merit, was to take place from 23.07.2020 to 25.07.2020. Counsel submitted that the respondents by not opening any window/giving chance to the petitioners have violated their right to participate as 'in-service' candidates for their admissions in Post Graduate Courses and as such this Court needs to declare the present petitioners eligible as 'in-service' candidates by permitting them in the Mop-up round.

20. Counsel for the petitioners have also submitted that the petitioners are vigilant and immediately on publication of list of ineligible candidates on 19.07.2020, the petitioners approached the respondents and also submitted their application before the concerned Authority-Chief Medical & Health Officer and in certain cases before the Directorate, Medical & Health Services and when the respondents did not pay any heed, they immediately filed writ petitions before this Court on 20.07.2020, 24.07.2020 and 27.07.2020.

21. Counsel for the petitioners have also submitted that now the respondents have completed the second round of State Counselling and conducting Mop-up round on 30.07.2020 and at least at this juncture, the petitioners may be directed to be treated as 'in-service' candidates and they may be permitted to participate for the remaining vacant seats available for 'in-service' candidates.

22. Mr. Harshal Tholia, Adv. counsel for the respondent-State has made following submissions:-

(a) The circular dt.21.01.2020 was issued and petitioners ought to have applied in pursuance of the same by depositing the necessary certificates, etc.

in the office of the Additional Director (Gazetted), Swasthya Bhawan, Jaipur by

06.02.2020 till 6:00 PM. Counsel submitted that non- compliance of the order/circular dt.21.01.2020, will not result into any right created in favour of the petitioners as the said order/circular, did not have anything to do with the declaration of the results.

(b) The last date i.e. 06.02.2020 was fixed with the purpose as their could be uniformity for all the candidates of 'in-service' category and as such the candidates who were desirous of bonus marks or to treat them as 'in-service' candidate, ought to have applied before the cut-off date.

(c) The petitioners are guilty of filing these writ petitions with delay and laches and they did not take any action after 14.07.2020 till 19.07.2020 when the list of ineligible 'in- service' candidates was published.

(d) The time schedule has been fixed by the Apex Court for the year 2020 PG Admissions and last date is 31.07.2020 and if the petitioners are allowed to participate in the counselling now, the schedule fixed by the Authorities as well as the Apex Court, will not be followed/completed.

(e) The physical verification of experience of the petitioners will take time and the same is not possible now as the Mop- up counselling is scheduled on 30.07.2020.

(f) There has been no arbitrariness on the part of the Authorities and no discrimination has been meted out to the petitioners which may require interference by this Court.

(g) Though time schedule has been fixed by the Apex Court and all the counsellings including Mop-up counselling is to be done by 31.07.2020,

however, the State has felt difficult in maintaining the time schedule due to certain reasons and as such an application has been filed before the Apex

Court for extension of time and the same is likely to be taken up by the Apex Court in near future.

23. Mr.Angad Mirdha, counsel appearing for the Medical Council of India has submitted that Ministry of Health and Family Welfare, Government of

India vide its letter dated 14.07.2020 had revised the qualifying percentile and it was lowered down and cut-off score was also lowered down. Counsel

further submitted that the State authorities were required to consider the revised criteria for admission and it should have been applied across the

Board for all categories of candidates. Counsel submitted that merit of the candidate or his participation in the counselling has to be on the basis of

marks obtained in the examination. Counsel further submitted that 'in-service' candidates if secured the minimum qualifying marks and also entitled for additional bonus marks for entering their service rendered for rural/difficult areas, the State authorities have to act accordingly by keeping in mind the merit of the candidates.

24. Counsel for the petitioners Mr. Ajay Chaudhary, has placed reliance on the judgments rendered by the Apex Court in Shiba Shankar Mohapatra &

Ors. Versus State of Orissa & Ors. (Civil Appeal Nos.7537-7541 of 2009) dt.12.11.2009 and in the case of Rup Diamonds & Ors. Versus Union of

India & Ors. reported in AIR 1989 SC 674. Counsel on the strength of the judgment in the case of Shiba Shankar Mohapatra (supra), has submitted

that the petitioners are not fence sitters and are not guilty for delay and laches in approaching the Court and as such relief should not be denied to the

petitioners. Counsel on the strength of the another judgment passed in Rup Diamonds' case has submitted that the petitioners are vigilant and agitating

their claims and since they are not dormant and waiting some other case to be decided and as such they cannot be deprived from their rightful claims.

25. I have heard learned counsel for the parties and with their assistance perused the material available on record.

26. This Court is primarily concerned in these writ petitions to decide the eligibility of the petitioners as 'in-service' candidates in view of the revised

result which was declared by the competent authority.

27. This Court finds that indisputably the result of Pre-PG Examination, 2020 was declared on 30.01.2020 and the cut-off scores for various categories

were declared and for general/open category, the minimum eligibility criteria was 50 th percentile and the cut-off score was 366 marks. This Court

further finds that the letter which was issued by the Director, Medical and Health Services for sending the application forms of 'in-service' candidates

had prescribed the last date of submission of form as 06.02.2020. This Court further finds that as per the said letter, the candidates could have

submitted their application forms through proper channel as well as by delivering the same in the office of Additional Director (Gazetted), Swasthya

Bhawan upto 06.02.2020 till 6:00 PM.

28. This Court finds that since result was declared on 30.01.2020 and all those candidates who did not score the cut off marks, were admittedly not

eligible and the instruction booklet which was issued by the Chairman, NEET Board, had also provided a note that the candidates were to ensure that

they score minimum percentile in NEET PG Examination, 2020 before addition of bonus marks to be eligible for registration for State Counselling.

29. This Court finds that since the result was declared before the last date of submission of forms of 'in-service' candidates, the petitioners in usual

course could not have asked for registration for State Counselling. This Court further finds that the revised result was declared on 14.07.2020 and

minimum qualifying criteria was revised to 30th percentile for General Category and revised cut-off score was 275 marks. The revised criteria issued

by the NBE prescribing minimum qualifying criteria was also notified by the office of Chairman, NEET Board vide notification dt.16.07.2020 and the

petitioners accordingly were eligible to get their registration and they were also required to be considered in view of changed minimum qualifying

criteria. The respondents at this point of time, were required to consider that the application forms which were to be submitted initially by 06.02.2020,

required to be re-visited by giving chances to 'in-service' candidates, if they had fulfilled minimum qualifying criteria and also had the benefit of adding

bonus marks, as per the entitlement.

30. This Court finds that the publication of list of ineligible candidates on 19.07.2020 excluded the petitioners from 'in- service' category only on

account of having not received inputs or service particulars of their working, duly certified by the Directorate of Medical and Health Services. The

Directorate of Medical and Health Services was required to work in coordination and was also required to inform the Chairman, NEET Board that

certain candidates-'in-service' candidates have become eligible in view of changed/revised minimum qualifying criteria. This Court finds that stand of

the State Government that candidate was required to apply and deposit his application form before 06.02.2020 without waiting for the result, does not

seem to be a reasonable approach to the situation, which had emerged before the last date of submitting the form, as result was declared prior to the

said date.

31. This Court further does not find any substance in the submission of counsel for the respondents that petitioners have approached belatedly and

they did not do anything from 14.07.2020 till 19.07.2020. This Court finds that

in some of the cases, the on-line registration application was filed by the candidates before 19.07.2020 as 'in-service' candidates, however, they were not permitted to participate in the State Second Round Counselling by treating them General/Non-Service Candidates.

32. This Court further does not find any substance in the submission of counsel for the respondents that experience gained by the petitioners has to be verified from different Chief Medical and Health Officers and this procedure cannot be completed before the next round of Mop-up counselling. The entitlement of the petitioners cannot be merely defeated on the ground that the State machinery has to gather certain information about working of the petitioners in rural areas. Had the petitioners been offered an opportunity or instructions could have been issued to submit the form or getting the physical verification of rendering service immediately after the revised result published on 14.07.2020, the necessary steps would have been taken by them. It is only on 19.07.2020 that the respondents published the list of ineligible candidates and as such the petitioners cannot be blamed for the same.

33. This Court finds that admission in Post Graduate Medical Course is itself a difficult task as the candidates have not only to score the minimum qualifying marks but they have also to compete with other candidates who equally devote time for preparation of the examination. This Court also finds that 'in- service' candidates also render their services in remote/difficult areas with a purpose to achieve experience and to further get incentive of additional marks in preparation of their merit list.

34. This Court finds that the State has already conducted second round of counselling and the Mop-up counselling is still to be undertaken by the authorities and the same is scheduled for 30.07.2020. This Court further finds that the petitioners have wrongly been excluded for considering their cases as 'in-service' candidates and they have wrongly been denied to participate in the second round of State Counselling. However, this Court is conscious of the fact that time schedule is prescribed by the Apex Court and by the statutory body and the same is required to be followed by all the authorities and setting aside of second round of State Counselling, at this juncture, will not be in fitness of the things.

35. Accordingly, this Court finds that the petitioners have wrongly been deprived from consideration of their cases as 'in- service' candidates and as

such they need to be permitted to participate in the Mop-up counselling, which is going to be conducted by the State on 30.07.2020. The formalities/

requirement of getting the actual working of the petitioners in Government Service, for the purpose of award of bonus marks, can be carried out by

the Directorate, Medical and Health Services by calling the information from the Chief Medical and Health Officer/Controlling Officer concerned and

if the petitioners are found entitled for bonus marks, the same may be added to their marks scored in Examination and the petitioners can be

considered eligible for participating in Mop-up counselling, as per their order of merit and preference.

36. Consequently, all these writ petitions are allowed. The respondents are directed to treat the petitioners eligible for participating in Mop-up

counselling as 'in-service' candidates and if the petitioners are found meritorious and seats are available in the 'in-service' category, the petitioners may

accordingly be considered for their admission.