
(2015) 04 KAR CK 0384

In the Karnataka High Court

Case No : Writ Petition Nos. 14068 to 14072 of 2015 (EDN-MED-ADM)

Manjunatha J. and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 27-04-2015

Acts Referred:

Citation : (2015) 4 KarLJ 436

Hon'ble Judges : Subhro Kamal Mukherjee, J;B.V. Nagarathna, J

Bench : Division Bench

Advocate : Ravi R.S., for the Appellant; E.R. Diwakar, Additional Government Advocate and N.K. Ramesh, Advocates for the Respondent

Final Decision : Dismissed

Judgement

B.V. Nagarathna, J—Petitioners are working as Doctors in the fifth respondent-hospital which comes under the jurisdiction of the Employment State Insurance Corporation. They have questioned the Karnataka Conduct of Entrance Test for Selection and Admission to Post-graduate Medical and Dental Degree and Diploma Courses Rules, 2006 ("PGET Rules, 2006" for the sake of brevity) as being invalid and void and contrary to Section 14 of the Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984. The petitioners have also sought relaxation with regard to minimum service as contained in Rule 10(1)(a) of the said Rules. A direction is also sought to select the petitioners under in-service quota reserved for the Doctors working in the ESI Medical Services in terms of the Government order dated 23-3-2015. Briefly stated the facts are that the petitioners on completion of their degree in Medicine have been employed by the fifth respondent-hospital and are working as doctors therein. Under the provisions of the PGET Rules, 2006, they are considered to be in-service doctors. In-service doctors have a separate channel of admission for post graduate medical degree and dental course under the said Rules. A separate channel of admission for in service doctors has been recognised by the Hon'ble Supreme Court in the case of The State of Madhya Pradesh and Others Vs. Gopal D.

Tirthani and Others, AIR 2003 SC 2952 : (2003) 6 JT 204 : (2003) 5 SCALE 492 : (2003) 7 SCC 83 : (2003) 1 SCR 797 Supp : (2004) 1 SLJ 348 : (2003) AIRSCW 3636 : (2003) 5 Supreme 473 . In-service doctors who are eligible under the said Rules can take the entrance examination under the provisions of the said Rules as well as the Postgraduate Medical Education Regulations, 2000 more particularly Regulation 9. In the context of the aforesaid Rules and Regulations, petitioners had applied pursuant to notification issued by the State Government on 8-8-2014. The entrance examinations were held between 1-12-2014 and 6-12-2014. The results were declared on 15-1-2015. The selection process of the candidates is at the stage of preparation of merit list. At this stage, petitioners have sought the aforesaid reliefs by contending that in terms of the Government order dated 23-3-2015 (Annexure-F) to the writ petition, Rule 10(1)(a) of the PGET Rules ought to be relaxed in their case. More specifically the contention is that although the petitioners have less than three years of regular service they would have to be considered for selection for various post graduate courses in Medicine having regard to the Government order dated 23-3-2015 which has been issued on account of their being shortage of specialist doctors.

2. We have heard the learned Counsel for the petitioners and learned Additional Government Advocate for respondents 1, 2 and 4 and learned Counsel for respondents 3 and 6 and perused the material on record.

3. During the course of submissions, learned Counsel for the petitioners candidly admitted that though the petitioners did not possess the requisite qualification of minimum regular service under Rule 10(1)(a) of the PGET Rules, 2006, nevertheless, having regard to Government order dated 23-3-2015 petitioners ought to be given relaxation under the said Rules as there is shortage of specialist doctors. He also vaguely contended that PGET Rules, 2006 are void as the said Rules have not been placed before the Legislature. But having regard to recognition of in service candidates under the Rules, petitioners' Counsel contended that at least insofar as the petitioners are concerned, relaxation may be given in terms of the G.O. dated 23-3-2015.

4. Per contra, learned Counsel for the respondents in unison submitted that PGET Rules, 2006 would prevail insofar as selection and admission to post graduate courses are concerned and also candidly admitted that there cannot be any Government order contrary to the said Rules. It was contended that mere shortage in specialists would not imply that there could be relaxation in the eligibility criteria insofar as in-service doctors are concerned.

5. We have considered the submissions in light of the material on record and have applied our mind to the rival contentions.

6. It is not in dispute that the petitioners are working in the fifth respondent-hospital. They are in-service doctors. They have a separate channel for admissions for post graduate courses under the PGET Rules, 2006. Rule 10 of the

said Rules reads as under:

"10. Procedure for selection of in-service candidates for admission to Post-graduate Medical and Dental Courses.--The Procedure for selection of in-service candidates for admission to Post-graduate Degree and Diploma in Medical and Dental Courses is as follows.--

(1) No in-service candidate shall be eligible for admission under these rules.--

(a) unless he has put in not less than three years of regular service;

(b) unless he has satisfactorily completed the prescribed period of probation.

(2) No in-service candidate shall be eligible for admission to Post-graduate Degree and Diploma Courses in any subject other than the Speciality in which he is working;

(3) An in-service candidate who is already holding a Postgraduate Degree in any speciality shall not be eligible for admission to any other Post-graduate Degree or Diploma;

(4) An in-service candidate who is already holding a Post-graduate Diploma in any speciality, through Government deputation, shall be eligible for admission to Post-graduate Degree Courses in the same speciality and shall not be eligible for any other Post-graduate Degree or Diploma Courses;

(5) An in-service candidate who is studying in any Post-graduate Degree or Diploma Course shall not be eligible for admission under these rules;

(6) No candidate who is above forty-eight years of age as on the last date fixed for receipt of application shall be eligible for admission".

7. Under sub-rule (1) of Rule 10, it is stated that no in-service candidate shall be eligible for admission under the Rules unless he has put in not less than three years of regular service.

8. The point to be considered here is as to the date when the educational or other service qualification has to be considered under the said Rules.

9. It is noticed that under the Rules, every year the State Government issues a notification calling for applications from eligible candidates and insofar as the academic year 2015-2016 is concerned, the date of the notification calling for applicants to apply was 8-8-2015. That notification has prescribed the last date for submission of the application as 10-10-2014. It is only such of those candidates who have the eligibility as on that date could apply to the notification calling for applications from eligible candidates. In fact, the Hon'ble Supreme Court in a catena of cases has held that eligibility criteria must be determined with certainty prior to the commencement of the selection process. The selection process for the post graduate course in the instant case commences with the publication of the advertisement or the notification calling for applicants to apply for the purpose of admission to Post-graduate Course. That notification has itself

prescribed the last date for submission of the application as 10-10-2014. That date must be reckoned as the date on which the eligible candidates must have the requisite qualifications, whether educational or other service qualifications.

10. The decision in this regard are as follows:

(a) In *A.P. Public Service Commission, Hyderabad and Another Vs. B. Sarat Chandra and Others*, (1991) 61 FLR 17 : (1990) 2 JT 143 : (1990) 2 LLJ 135 : (1990) 2 SCC 669 : (1990) 2 SCR 463 : (1990) 1 UJ 690 , it was held that the word "selection" must be understood not only the final act of selecting candidates with preparation of the list for appointment, but the selection process consists of various steps such as inviting applications, scrutiny of applications, rejection of defective applications or elimination of ineligible candidates, conduct of examination, calling for interview, or viva voce and preparation of list of selected candidates for appointment. Therefore, there are different steps in the process of selection. The Hon"ble Supreme Court on the point of controversy therein, held that the minimum or maximum age for suitability of a candidate for appointment could not be allowed to depend upon any fluctuating or uncertain date. If the final stage of selection was delayed and more often it happens for various reasons, the candidates who were eligible on the date of application may find themselves eliminated at the final stage for no fault of theirs. The date to attain the minimum or maximum age must, therefore, be specific and determinate as on a particular date for candidates to apply and for recruiting agency to scrutinise applications. It would be, therefore, unreasonable to construe the word "selection" only as the factum of preparation of the select list.

(b) In *Dolly Chhanda Vs. Chairman, JEE and Others*, AIR 2004 SC 5043 : (2004) 98 CLT 756 : (2004) 4 CTC 796 : (2004) 8 JT 267 : (2004) 8 SCALE 422 : (2005) 9 SCC 779 : (2005) SCC(L&S) 734 : (2004) AIRSCW 5699 : (2004) 7 Supreme 297 , the Hon"ble Supreme Court observed that the general Rule is that while applying for any course of study or a post, a person must possess the eligible qualification on the last date fixed for such purpose either in the admission brochure or in the application form as the case may be. Unless there is an express provision to the contrary, there can be no relaxation in this regard i.e. in the matter of holding the requisite eligible qualification by the date fixed. This has to be established by producing necessary certificates, degrees and marks sheets. Similarly in order to avail benefit of reservation of weightage, necessary certificates have to be produced. Therefore, all those principles applicable with regard to certainty in educational qualifications and other conditions of selection of eligible candidates in a case of recruitment to a post are squarely applicable to a case of admission to a course of study.

The aforesaid judgments though have laid down the law in the context of recruitment to posts could be relied upon, even in the instant case, where selection is being made for the purpose of admissions to Post-graduate Medical Courses, which is also on the basis of merit.

11. In view of the aforesaid decisions, there can be no relaxation of the eligibility criteria for the petitioners or anybody else who have applied pursuant to the notification calling for applications after the last date for submission of application prescribed in notification dated 8-8-2014.

12. The Government order dated 23-3-2015 (Annexure-F) has stated that although the petitioner-Doctors would be completing three years of service between May to July 2015, permission must be given to them to appear for the Counselling and also be selected for admission to Post-graduate Courses. Thus, the Government order has relaxed the condition of having requisite three years of service as prescribed under Rule 10(1)(a) of the PGET Rules in the midst of the selection process, which is impermissible. In fact, the said Government order is contrary to the PGET Rules, 2006 and the eligibility criteria prescribed in the notification dated 8-8-2014. The State Government could not have relaxed the condition with regard to possession of three years of service in order to suit the petitioners herein and only in respect of these petitioners. The said order also being discriminatory in nature is thus, illegal.

13. That apart, the respondent-State could not have issued the G.O. dated 23-3-2015, seeking relaxation in the qualifications as far as the petitioners are concerned vis-a-vis Rule 10(1)(a) on account of there being shortage of specialists in the fifth respondent-hospital. No doubt a specified quota is prescribed for in-service candidates who applied from the fifth respondent-hospital. But, those candidates must have had the requisite qualification as on the last date prescribed in the notifications calling for applications before they are considered for selection and admission under PGET Rules, 2006. Therefore, we do not find that any reliance could be placed on the G.O. dated 23-3-2015 (Annexure-F) by the petitioners as that G.O. is contrary to Rule 10(1)(a) of the PGET Rules, 2006.

14. In that view of the matter, the prayer sought for by the petitioners seeking relaxation with regard to Rule 10(1)(a) cannot be granted. There is no merit in the writ petitions. Writ petitions are dismissed.