

(2009) 04 GUJ CK 0014

In the Gujarat High Court

Case No : Special Civil Application No's. 98, 711, 3101 and 3272 to 3273 of 2009 and Civil Application No. 3651 of 2009 in Special Civil Application No. 711 of 2009

Medical Officer, Class - II

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 08-04-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Gujarat University Post Graduate Admission Rules — Rule 1.2, 3, 5
Indian Medical Council Act, 1956 — Section 11

Citation : (2009) 2 GLH 495 : (2009) 3 GLR 2104

Hon'ble Judges : K.S. Radhakrishnan, C.J.; Akil Kureshi, J

Bench : Division Bench

Advocate : Nirav K. Majmudar, Sanjay Suthar and Siraj R. Gori, for the Appellant; Sunit Shah, Government Pleader for Respondents 1-2 and S.N. Shelat, M.K. Shelat and V.D. Nanavati for Respondents 3-4 University, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Radhakrishnan, C.J.—Common questions arise for consideration in all these petitions and hence, we are disposing of all these cases by a common judgment.

Special Civil Application No. 98 of 2008 is being considered as the lead case. Petitioner therein is working as a Medical Officer, Class-II in Health and Family Welfare Department. He has approached this Court seeking a writ of certiorari to quash Rule 1.2 provided under the Rules framed by third respondent University for admission to Post Graduate Degree/Diploma in Medical Course. Rule 1.2 of the eligibility criteria reads as follows:

1.2 The candidates must have completed the recognized M.B.B.S or equivalent course from University within Gujarat State and completed compulsory rotating internship before the date of interview. The candidate who has passed MBBS from Deemed University from Gujarat State will not be eligible. All candidates

shall have to submit the documentary proof from the Dean of college regarding the date of completion of internship along with the application, failing which their application shall be summarily rejected. However, candidate should have to produce full internship completion certificate at the time of interview, failing which candidate will not be eligible for admission.

Reference may also be made to Rule 5 of the Rules, which reads as follows:

The affiliated P.G Institutes separately will prepare the category wise seat list in each subject. The 7% of seats available for P.G Degree and Diploma under Rule 3 will be reserved for candidates belonging to Scheduled Caste, 15% of seats will be similarly reserved for ST candidates and 27% of seats will be similarly reserved for candidates belonging to socially and Educationally Backward Class (SEBC) students including widows and orphan children. The students desiring admissions under SEBC category will have to submit a certificate of financial year pertaining for the academic year of the students i.e. Issued on or after 1st April, 2009 that they are not included in the creamy layer from the competent authority as prescribed by the Government of Gujarat from time to time along with the applications.

Three per cent (3%) of available seats in each category (SC/ST/SEBC/OPEN) in Loco-motor disability (PH) shall be reserved for loco-motor disabled candidates of the respective category provided that a candidate having "loco-motor disability of lower limbs between 50% to 70% (upper limbs being normal) "shall be eligible to apply for admission to Non-surgical Medical course subjects only. No other certificate except the certificate which is issued as per the proforma annexed to the application form from Medical Board constituted for the purpose regarding disability and suitability of such candidate for undertaking the course shall be treated as final. The candidate with a disability more than 70% will not be eligible for admission to any Post Graduate Courses on any category. No other disability will be allowed as per MCI guidelines. For allocation of seats to physically handicapped category in said year, Roster point guideline given by Government of Gujarat will be followed.

Ten percent (10%) of available seats in Diploma in Pediatric, T.B & chest, Ob & Gy., Anesthesia and P&SM in B.J Medical College will be reserved for in-service, but however, Gujarat University P.G Admission Rules will be applicable for these candidates.

2. Petitioner submitted an application to the University for admission to the Post Graduate Degree/Diploma in Medical course, but his application was turned down by the University on the ground that he has not satisfied the eligibility criteria that a candidate must have completed recognized MBBS or equivalent Course within the State of Gujarat.

3. Learned Counsel for the petitioner Mr. N.K. Majmujdar and Mr. Siraj Gori submitted that the above stipulation is illegal, arbitrary and violative of Article 14 of the Constitution of India and therefore, has to be struck down. Learned

Counsel submitted that petitioner has been working as a Medical Officer, Class-II in Health and Family Welfare Department of the State of Gujarat and State Government is taking steps to fill-up 694 vacant posts of Specialists having P.G Degree, in various Hospitals, Primary Health Centres, Community Health Centres and Civil Hospitals, and due to non-availability of specialists in the Health Centres proper medical facilities could not be extended to people residing in rural and remote areas of the State, and 50% posts of Specialists now remain vacant in various Government Hospitals, Primary Health Centres, Sub-Centres etc. in the State. It was submitted that services of the specialists are not available to the general public and under these circumstances, with a view to provide health services of specialists to the people residing in rural and remote areas, the State Government decided in the year 2005 to sponsor Government Medical Officers Class-II for Post Graduate Degree and Diploma in the subjects required for providing public health services such as Pediatrics, Gynecology, Anesthesia, T.B etc. on certain conditions so that after completion of such study, they can be appointed as specialists in Government Hospitals and Health Centres and the rural people can get the services of specialists. Counsel submitted that the Government issued Government Resolution dated 18.7.2005 for reservation of 10% seats in PG degree and diploma in Government Medical colleges in Pediatric, TB & Chest Diseases, Obstruct and Gynecology, Anesthesia and Preventive and Social Medicine branches on the terms and conditions specified in the said Government Resolution. This reservation was enhanced to 25% and was extended to the PG degree and diploma in Anatomy, Physiology and Pharmacology vide Government Resolution dated 17.8.2008. However, due to insistence of the University that only those Medical Officers who had taken their MBBS from the State of Gujarat would only be eligible for admission to P.G Course, most of the posts are fallen vacant. Petitioner has taken MBBS degree from State of Bihar and non-consideration of the application of the petitioner for admission to P.G Degree/Diploma Course even though he is in-service candidate, is illegal and violative of Article 14 of the Constitution of India.

4. Detailed counter affidavit has been filed on behalf of the State Government. State Government has taken up the stand that every person possessing an MBBS degree from an institution/University recognized by the Medical Council of India serving as an in-service doctor, shall be eligible for admission to such reserved seats. Reference was also made to Section 11 of the Medical Council Act, which provides that Medical qualification granted by any University or institution in India is included in First Schedule and shall be recognized as Medical qualification for the purpose of the Act. The qualification recognized by the Medical Council of India would be sufficient qualification for enrolment on any State Medical Register or employment to any post in any State. Further it is also stated that Recruitment Rules to the Post of Medical Officer, Class-II do not restrict the recruitment to the Post of Medical Officer, Class-II wholly to the medical graduates having obtained their degree from the University situated within State of Gujarat. Consequently, State has taken up the stand that medical graduates

graduated from Universities situated out-side Gujarat are also being appointed as Medical Officer, Class-II in Government Hospitals in Gujarat, and they shall also be eligible for applying to such Government quota in P.G/Diploma, if they fulfil the prescribed criteria. State has therefore, taken up the stand that respondent Nos. 3 and 4 cannot refuse the application from the petitioner on the ground that he has obtained MBBS Decree from a university outside State of Gujarat.

5. Third respondent University has filed a counter affidavit and stated that petitioner is not eligible for admission to P.G Degree/Diploma course since Rules framed by the University provided for institutional preference for the students who have passed their MBBS Examination from the Gujarat University and/or Statutory Universities within the State of Gujarat. Further it is stated that 50% seats are made available to the students of Gujarat University and out of those 50 seats, 10 seats are made available to in-service doctors who have passed their MBBS Examination from Universities within the State of Gujarat.

6. We are of the view that University is within their rights to lay down the eligibility criteria for admission to P.G Degree/Diploma Course. The insistence that for admission to P.G Degree/Diploma Course a candidate must have completed recognized MBBS or equivalent qualification from the University within the State of Gujarat is perfectly justifiable, in view of the law laid down by the Supreme Court in various decisions. Reference may be made to the decisions of the Apex Court in *Saurabh Chaudri and Others Vs. Union of India (UOI) and Others*, . and *Magan Mehrotra and Others Vs. Union of India (UOI) and Others*, . Reference may also be made to the Division Bench judgment of this Court in *Karamsad Medical Association v. State of Gujarat* 2000 (2) GLR 1648. Rules providing for institutional preference has been upheld by the Apex Court and this Court in various decisions, and the stipulations contained under Rule 1.2 framed by the University is in line with the principle laid down by the Apex Court and this Court in various decisions. Under the circumstances, we find no infirmity in the eligibility criteria laid down by the University.

7. Petitioners in some of the cases have raised a contention that University was not justified in not ear-marking 25% seats for admission to P.G Degree/Diploma Courses and State Government was also not justified in scaling down the percentage to 10%. Learned Counsel has also referred the decision of the Apex Court in *The State of Madhya Pradesh and Others Vs. Gopal D. Tirthani and Others*, and submitted that allocation of 25% seats in P.G in the Universities for in-service candidates is not a reservation and it is a separate channel of entry source for admission. There cannot be any quarrel on the proposition highlighted by the petitioner, upheld by the Apex Court in the above mentioned case, but fixing the percentage of reservation for in-service candidates for P.G Medical Course/Diploma Course vests entirely on the University. The State Government reserved 10% seats vide Government Resolution dated 18.7.2005 for P.G and Diploma in Government Medical Colleges in certain branches of medicine, namely - Pediatric, TB & Chest Diseases, Obstruct and Gynecology, Anesthesia and

Preventive and Social Medicine. Later reservation was enhanced to 25% and was extended to the PG degree and diploma in Anatomy, Physiology and Pharmacology vide Government Resolution dated 17.8.2008. What is the percentage of reservation to be set apart for in-service candidates is for the University to decide in consultation with the State Government, and this Court sitting in writ jurisdiction is not justified in giving any direction to respondents to fill up 25% seats of Postgraduate Degree/Diploma Course for academic year 2009-10 from amongst in-service candidates. We therefore, decline that relief.

8. Petitioners in Special Civil Application No. 3101 of 2009 has also prayed to quash action of respondents Nos. 3 and 4 of not adhering to the passing marks of 35% out of 400 marks for entrance examination for admission to Postgraduate Medical Courses for the academic year 2009-10. Petitioners have also sought a declaration that petitioners are deemed to have been passed/secured entrance examination since they have secured more than 35% marks out of 400 marks in the entrance examination. What should be the percentage of marks to be considered for admission to Postgraduate Medical Course/Diploma for a particular academic year, is purely an academic matter, which this Court sitting in writ jurisdiction under Article 226 of the Constitution cannot determine. We therefore, decline to that prayer as well. Under these circumstances, all these petitions lack merit and are accordingly dismissed.