

(2003) 09 MP CK 0056

In the Madhya Pradesh High Court

Case No : Writ Petition No. 27428 of 2003

M.P. Employees' State Insurance and Others

APPELLANT

Vs

State of M.P. and Another

RESPONDENT

Date of Decision : 24-09-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Madhya Pradesh Medical and Dental Postgraduate Admission (In-Service) Rules, 2003
— Rule 4.5, 5.2

Citation : (2004) 2 MPHT 344

Hon'ble Judges : Rajaratnam, C.J;Dipak Misra, J

Bench : Division Bench

Advocate : Sanjay K. Agrawal, for the Appellant; V.K. Tankha, General for the Respondent No. 1, Shobha Menon and K. Pillai, for the Respondent No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Dipak Misra, J.—Invoking the extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India the petitioners have prayed for to declare Rules 4.5 and 5.2 of Madhya Pradesh Medical and Dental Postgraduate Admission (In-Service) Rules, 2003, as ultra vires the Constitution of India and further they run counter to the decisions rendered by the Apex Court.

2. The facts which are essential to be stated are that the petitioner No. 1, a registered Association of Insurance Medical Officers working under the Government of Madhya Pradesh, represented by its President. The petitioner Nos. 1-A and 2 are the doctors working as Insurance Medical Officers. It is putforth in the petition that the grievance agitated is both collective and individualistic. The petitioner No. 1-A passed MBBS Examination from Mahatma Gandhi Medical College, Indore, in the year 1991 and thereafter joined in service as Insurance Medical Officer/Assistant Surgeon under the Labour Department in Employees' State Insurance Services after being selected through Public Service

Commission in the year 1996. The petitioner No. 2 passed her MBBS Examination in the year 1989 and after her post- graduation she was selected by the Public Service Commission for the post of Insurance Medical Officer/Assistant Surgeon appointed with effect from 11-8-1993. It is the common ground that the petitioners along with many others have completed more than five years of service and have earned eligibility criteria to be considered for admission in postgraduate degree/diploma courses against the seats meant for Assistant Surgeons working under the State Government.

3. According to the writ petitioners the State Government brought in a set of rules called Madhya Pradesh Medical and Dental Postgraduate Entrance Examination Rules, 2003 (hereinafter referred to as "the Rules") notifying the scheme of examination, reservation of seats and eligibility of candidates etc. A reference has been made to Rule 8.5 of the Rules which provides for reservation of 20% in postgraduate degree and diploma courses for Assistant Surgeons sponsored by the State of Madhya Pradesh, commonly known as In-service candidates. Rule 11 of the Rules prescribes eligibility criteria. The process of entrance examination for the year 2003-2004 commenced in the first week of February, 2003 by the Professional Examination Board, respondent No. 2 herein and the last date of submission of the forms was 20- 2-2003. The Assistant Surgeons working in the Health Department as well as Employees" State Insurance Corporation applied for the examination and appeared in the Entrance Examination held on 9-3-2003 for the candidates/category meant for other than in-service candidates. As pleaded, in toto 101 candidates participated in the examination and only 36 candidates were declared successful. In the aforesaid factual backdrop the State Government notified separate scheme for admission of In-service candidates. Under the said scheme the admission was proposed to be made on the basis of performance of the candidates in the MBBS Examination. The State Government prescribed weightage for the period of service spent in rural areas. The aforesaid scheme was incorporated in the Rules which was assailed before this Court in a batch of writ petitions and this Court by order dated 15-2-2003 declared the said Rules as ultra vires and held that there should be a common entrance examination for all categories of candidates. This Court also declared the Rule which had conferred weightage on rural service as ultra vires. Being aggrieved by the decision of this Court the State of Madhya Pradesh and others preferred number of civil appeals and the Apex Court had partially set aside the judgment of this Court. Various other aspects have been set forth in this regard to which we shall advert to at a later stage. After the decision was rendered by the Apex Court the State of M.P. framed the Rules in question and invited applications from in-service candidates for examination which was scheduled to be held on 24-8-2003. As per the Rules a candidate is required to have completed five years of regular services under the Government of Madhya Pradesh on or before 24-8-2003 and he should be below the age of 45 years. For women candidates lesser eligibility criterion was prescribed. It has been specifically mentioned in the Rules that candidates Who had appeared in

the Pre-P.G. Test held on 9-3-2003 as in-service candidates would not be eligible for the examination. The advertisement dated 6-8-2003 has been brought on record as Annexure P-3.

4. As putforth in the petition the petitioner No. 1 applied for the entrance examination and when he went to the examination hall he found a notice displaying that the examination has been postponed on 31-8-2003 and he came to learn that the scheme had been changed and the in-service candidates those who appeared in the P.G.-Test held on 9-3-2003 but had failed were being permitted to appear in the examination to offer them a second opportunity for selection.

5. It is averred in the petition that Rule 5.1 prescribes that entrance examination would be for total 100 marks and the Rule 5.2 stipulates that the candidates who have rendered rural services would be allowed to have weight-age to the extent of 25 marks. It is contended that the weightage of marks, in fact, constitutes 25% of marks and such conferral of benefit is arbitrary, unreasonable, irrational and there is no justification for grant of such weight-age. It is putforth that likes of the petitioners have no opportunity of rural posting in their entire career and they have been put to a permanent disadvantageous situation as compared to the Assistant Surgeons of the Health Department and this tantamounts to hostile discrimination. It is also putforth that Rule 4.5 which prescribes that the candidates who had already obtained post-graduate degree even if a regular candidates, would not be eligible for admission despite satisfying the eligibility criteria is extremely harsh and the restriction put is totally unreasonable as it mars the idea of growth and proficiency in the field and thereby smacks of caprice and arbitrariness. It is urged in the petition that the petitioners appear in the examination as there was no much time to approach this Court but they have not been selected. It is further putforth that the results have not been declared and it will be so done after adding the rural weightage. It is further stand of the petitioners that Rule 5.2 is in gross violation of the observations made by the Apex Court and, therefore, is liable to be struck down and Rule 4.5 is per se unconstitutional inasmuch as it imposes unreasonable, irrational restrictions on the meritorious candidates to avail the opportunity to grow intellectual and acquire more professional education and specialisation.

6. This Court on 9-9-2003 had directed the learned Counsel for the respondents to obtain instructions. When the matter was taken up on 16-9-2003 we heard Mr. Sanjay K. Agrawal, learned Counsel for the petitioners, Mr. V.K. Tankha, learned Advocate General for the respondent/State and Mrs. Shobha Menon, learned Senior Counsel along with Mr. Neelesh Pillai for the Professional Examination Board, respondent No. 2. Mr. Tankha, learned Advocate General for the State has submitted that as a pure question of law arises and the Rules have been framed in accord with the decision rendered by the Apex Court in the case of State of Madhya Pradesh and Ors. v. Gopal D. Tirthani and Ors. AIR 2003 SC 3636, it can be dealt with. Submission of Mr. Agrawal is that the Rules are not in consonance

with the law laid down by the Apex Court and the State Government has misconstrued the ratio of the Apex Court and has exercised the power in a most arbitrary manner. Criticising the restriction which has been postulated in the Rule 4.5 that a candidate who has already obtained a degree in post-graduate course would not be entitled to appear in another post-graduation course, is unwholesome and can not withstand scrutiny by any stretch of imagination. Mrs. Shobha Menon, learned Counsel appearing for the Professional Board has submitted that results have been published but the counselling is yet to be done.

7. Now in the case at hand, we really are not required to see allegations that have been made except testing the rules on the touchstone of Article 14 of the Constitution. The gravamen of submission of Mr. Agrawal, learned Counsel for the petitioners is that the Rules defy the basic conception of classification and the grant of weightage to push a candidate up in the list which is not only contrary to the decision rendered by the Apex Court but also is unreasonable as it pushes the candidate serving in rural areas to such an extent, candidates who serve in other areas that rural areas are deprived of the opportunity to get admitted into post-graduate course despite their merit.

8. This being the position, we shall scan the anatomy of the Rules. It is worthwhile to state here that Rules are in Hindi but we have been given translation of the same by the learned Government Advocate for the State. Mr. Agrawal, learned Counsel for the petitioner does not dispute the translated version.

9. Rule 2.6 which occurs in the dictionary clause defines "rural areas". It reads as under:--

"2.6. "Rural areas" means areas other than municipal towns, municipal corporations town, tehsil and sub-tehsil headquarters".

Rule 2.7 defines the "tribal areas". It reads as under :--

"2.7. "Tribal areas" means areas which fall under the sub-plan area."

Rule 4.5 deals with eligibility criteria. Rule 5.0 deals with "examination and merit list". Rule 5.2 of the Rules deals with more weightage for the service rendered in the rural areas. For our purposes Rules 5.2 to 5.2.4. being relevant are reproduced below :--

"5.2. Merit list of the candidates who are successful in examination will be prepared while giving weightage for the services rendered in rural areas. The maximum weightage marks allotted will be 25 marks. The allotment of marks would be as under:

5.2.1. for every six months of service in rural areas : 1.5 marks.

5.2.2. one extra mark will be granted if such rural area falls within the tribal sub-plan area.

5.2.3. candidate who has worked for five years in tribal sub-plan area, will get 25 marks. Similarly, if during five years of service is in rural area and such area is not under tribal sub-plan area will get 15 marks.

5.2.4. Merit list will be prepared on the basis of total marks 100 obtained in entrance examination and the marks obtained for serving in rural areas : 25 marks. Final list will be prepared on the basis of marks obtained out of 125."

10. The question that falls for adjudication is whether grant of such weightage is permissible. Submission of Mr. Agrawal, as has been indicated hereinbefore that the grant of weightage is not in consonance with the observation of the Apex Court in the case of Gopal D. Tirthani and others (supra) and hence, deserve to be lanced and struck down as arbitrary. To appreciate the aforesaid stand of the learned Counsel for the petitioners we may proceed to state what has been stated in the case of Gopal D. Tirthani (supra). Their Lordships referred to the decisions rendered in the cases of Dr. Snehelata Patnaik and Others Vs. State of Orissa and Others, and Dr. Narayan Sharma v. Dr. Pankaj Kr. Lehar AIR 1999 SC 4196, thereafter proceeded to state in Para 33 as under:--

"33. In Pradip Tandon's case reservation in favour of people in "hill areas" and Uttrakhand was held to be constitutionally valid as they were socially and educationally backward classes of citizens. Reservation in favour of "rural areas" was found difficult to accept as it was sought to be justified on the test of poverty as the determining factor of social backwardness. The Court observed that rural element does not make a class by itself because it could not be accepted that the rural people are necessarily poor or socially and educationally backward just as the urban people are not necessarily rich. We may hasten to observe that what was being dealt with in Pradip Tandon's case was a reservation and not a weightage. The case at hand presents an entirely different scenario. Firstly, it is a case of post-graduation within the State and not an All India quota. Secondly, it is not a case of reservation, but one of only assigning weightage for service rendered in rural/tribal areas. Thirdly, on the view of the law we have taken hereinabove, the assigning of weightage for service rendered in rural/tribal area does not at all affect in any manner the candidates in open category. The weightage would have the effect of altering the order of merit only as amongst the candidates entering through the exclusive channel of admission meant for in-service candidates within the overall service quota. The statistics set out in the earlier part of the judgment provide ample justification for such weightage being assigned. We find merit and much substance in the submission of the learned Advocate General for the State of Madhya Pradesh that Assistant Surgeons (i.e., Medical graduates entering the State Services) are not temperamentally inclined to go to and live in villages so as to make available their services to the rural population; they have a temptation for staying in cities on account of better conditions, better facilities and better quality of life available not only to them but also to their family members as also better educational facilities in elite schools which are to be found only in cities. In-service doctors

being told in advance and knowing that by rendering service in rural/tribal areas they can capture better prospects of earning higher professional qualifications, and consequently eligibility for promotion, acts as motivating factor and provides incentive to young in-service doctors to opt for service in rural/tribal areas. In the set up of health services in the State of Madhya Pradesh and the geographical distribution of population no fault can be found with the principle of assigning weightage for the service rendered in rural/tribal areas while finalizing the merit list of successful in-service candidates for admission to PG courses of studies. Had it been a reservation, consideration would have differed. There is no specific challenge to the quantum of weightage and in the absence of any material being available on record we can not find fault with the rule of weightage as framed. We hasten to add that while recasting and reframing the rules, the State Government shall take care to see that the weightage assigned is reasonable and is worked out on a rational basis."

11. It is put forth by Mr. Agrawal that the Apex Court had laid down that weightage assigned should be reasonable and worked out on rational basis. He has also drawn our attention to the observation of the Apex Court there is no specific challenge to the quantum of weightage. Mr. Tankha, learned Advocate General for the State has drawn our attention to sub-para (4) of Para 36 which deals with the conclusion.

12. It is beyond any scintilla of doubt that the matter is relating to grant of rural/tribal areas to the in-service candidates has been held as permissible by Their Lordships. The question is with regard to quantum. Their Lordships have taken note of the geographical situation of Madhya Pradesh, On a perusal of the Rules, it transpires that if one has rendered six months service in rural areas he would be entitled to 1.5 marks and 1 extra mark would be granted if the rural areas falls within tribal sub-plan areas. It has been postulated that the candidates who have worked five years in tribal sub-plan area would get 25 marks. If it is not within the tribal or sub-plan area he would get 15 marks. It is a postulate that merit list would be prepared on the basis of total 100 marks obtained in the entrance examination and thereafter final list would be prepared on the basis of marks out of 125. If this rule is studied and scrutinised it is clear as noon day that merit has not been given a go by. The law laid down in the case of *Dr. Preeti Shrivastava v. State of M.P.* AIR 1999 SCW 2795, has been followed in stricto sensu and there has been no relaxation with regard to the basic marks. The sphere pertains or relates to grant of weightage. It is perceptible that grant of weightage is not a flat one. It has connection with rural and tribal areas and the period of service rendered. It is noticeable that rural area is taken as genus and species constitutes sub-plan and tribal sub-plan area. It is common knowledge that more than 65% geographical area in the State of Madhya Pradesh are rural and tribal areas. It has been said by the Father of the Nation that "India lives in its villages". Connotatively it means something else but denotatively it conveys that number of villages in India is much more than small towns. In the Rule rural area has been carved out and it excludes Municipal Corporations, Municipalities,

Tehsils and Sub-Tehsils headquarters. One can well imagine the difficulty faced by the doctors who serve in these rural areas and tribal areas. They are not well equipped as the doctors who work in cities or towns. They do not have the modern facilities. The medical science is marching ahead. The doctors who work in rural areas not only serve the rural people who constitute the rural collective and the mass of population but they are also deprived of any kind of research work. If they compete with the other in-service candidates who are posted in the cities and town and obtain a minimum qualifying marks as provided under the Rules and given weightage for their rendering of services in rural and tribal areas it can be irrefragably stated that they have been given benefit for their services. In these circumstances it is not appropriate to say that these postings are incident of service. It is common knowledge that doctors are not inclined to serve in rural and tribal areas.

13. Quite apart from the above, we have been apprised that Govt. of M.P., has hospitals for E.S.I. in rural areas and so the petitioners as a class are not debarred to get the weightage as far as quantum is concerned, and we have noticed that there is appropriate apportionment having nexus with the areas and the period of service rendered, we are not inclined to hold the same as unreasonable or irrational. We may hasten to add that on a first flush the weightage of 25 marks may look quite high but on a proper scrutiny and deeper probe and keeping the factual backdrop in view, we are disposed to think the same has logicity and the criticism advanced against it is a Sisyphean endeavour. Thus, we express our approval for the aforesaid Rule and unequivocally state that the said Rule does not suffer from the frown of Article 14 of the Constitution of India.

14. The next rule which is under assail is Rule 4.5. The said rule reads as under:--

"4.5. Candidates who have done post-graduation in one subject will not be eligible to appear as in-service candidates for a post-graduate course in any other subjects."

15. Challenging the said Rule it is propounded by Mr. Agrawal that the said Rule creates a remora in the growth and progress of in-service candidates. It is canvassed by him that if an in-service candidate is not permitted to two post-graduate courses for the purpose of satisfying his intellectual appetite which ultimately would be helpful for the society, the Rule has to be struck down. The learned Advocate General for the State, per contra, has contended that the State grants in-service candidates study leave and if an in-service candidate chooses to appear as often as he likes to do post-graduate the purpose of fixing the quota would be defeated. That apart, submitted Mr. Tankha, that very purpose of permitting the in-service candidates to appear in the pre-P.G. Examination so that they would get educated and serve the rural people.

16. To appreciate the aforesaid submission, we have perused the relevant Rules and the terms and conditions which are required of an in-service candidate. It is

pertinent to state that in the case of Gopal D. Tirthani (supra) the Apex Court has held that 20% quota for in-service candidates is permissible in law. If a particular in-service candidate conceives the idea of doing more than two P.G. Courses not only the interest of the collective would be affected but also the other in-service candidates will be deprived of the opportunity to compete. Quite apart from the above, on an X-ray of the Rule in question it is quite manifest that the restriction is only in respect of a candidate who is an in-service candidate. The rule does not prohibit or restrict an in-service candidate to compete in the open category. In view this, we are of the considered opinion that the Rule does not invite the wrath of second limb of Article 14 of the Constitution of India.

17. In view of our premised reasons, we do not perceive any merit in the writ petition and resultantly, the same is dismissed without any order as to costs.