

(2009) 08 GAU CK 0097

In the Gauhati High Court

Case No : Writ Petition (C) No's. 1919 and 2081 of 2009

Sumana Das and Another

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 25-08-2009

Acts Referred:

Citation : (2009) 4 GLT 644

Hon'ble Judges : Hrishikesh Roy, J

Bench : Single Bench

Advocate : N. Choudhury, S.C. Kayal, S.K. Ghosh and S.P. Choudhury, for the Appellant; A. Verma, for the Respondent

Final Decision : Allowed

Judgement

Hrishikesh Roy, J.—Heard Mr. N. Choudhury and Mr. C. Goswami, learned Counsels representing the two writ Petitioners. Also heard Ms. A. Verma, learned standing counsel for the Health Department appearing for the Respondents.

2. These two cases pertain to the 6(six) State Health quota seats in the Post Graduate Course (hereinafter referred to as "the P.G. Course") in the Medical Colleges of Assam for the Session 2009. The two Petitioners, who were appointed as Medical Officer-I in the year 2003 and were subsequently regularized in service with effect from 17.2.2004 on the basis of recommendation made by the APSC, have approached this Court alleging wrongful denial of admission in the P.G. Course in pursuant to the admission notice issued on 16.3.2009 by the Director of Medical Education, Assam. The admissions are to be given under the provisions of the Assam Medical Colleges (Regulation of Admission to Post-Graduate Courses) Rules, 2006 (hereinafter referred to as "the Admission Rules").

3. Six numbers of P.G. Course seats are reserved as per the provisions made by Rule 4(4)(i) for doctors regularly appointed in the State Health Service who have rendered services for 5 years or more in Rural Areas. The selection of candidates

for the 6 State Health quota seats is to be made on the basis of merit of the candidates as evaluated in the entrance examination and merit in the entrance examination, is prescribed to be the sole criteria for selection for the 6(six) P.G. Course seats.

4. The two writ Petitioners applied for admission for the 6 State Health quota seats and having performed well in the entrance examination, Dr. Abdur Rashid Bhuyan secured 4th and Dr. Sumana Das secured the 5th position respectively, in order of merit, in the select list notified on 1.6.2009. The Petitioners on the basis of their 4th and 5th merit positions expected admission to one of the 6 seats earmarked under the State Health quota and were hoping that following the counseling scheduled on 4.4.2009, the Respondents would permit them admission in the P.G. medical course.

5. But since the Petitioners were denied admission, they filed a joint appeal before the Government against the rejection of their candidature and by the order dated 9.4.2009, the Appellate Authority upheld the decision of the Selection Board and rejected the appeal filed by the writ Petitioners. The candidatures of the writ Petitioners were rejected on the ground that they have served 40 days less than the required 5 years of "regular" service in the Rural Areas as required under Rule 4(4)(i) of the Admission Rules.

6. It is argued on behalf of the Petitioners that the Petitioners were considered to be qualified for the State Health quota seats and therefore, they were permitted to sit in the admission test and after having secured the 4th and 5th position respectively, the Petitioners could not have been denied admission to any of the 6 seats earmarked for Doctors serving for 5 years or more in Rural Areas of the State.

7. It is argued by the learned Counsel appearing for the writ Petitioners that the Admission Rules do not prescribe post regularization service of 5 years in the Rural Areas and even ad-hoc service rendered by the Doctor in the Rural Areas should be taken into account, to consider the 5 years eligibility criteria laid down by the Admission Rules.

8. The learned Counsels referred to the Appellate order dated 9.4.2009 and submits that the Appellate Authority in the quoted portion of the provisions of Rule 4(4) of the Admission Rules unwittingly incorporated word "regular", although the word "regular" does not appear in the later part of the Rule 4(4)(i) of the Admission Rules and on this basis, it is argued that the Appellate Authority misdirected himself, in rejecting the Appeal filed by the two writ Petitioners.

9. Ms. A. Verma, learned standing counsel appearing for the Respondents on the other hand submits that the writ Petitioners on the date of the admission notice issued on 16.3.2009 had not rendered service for 5 years in Rural Areas, after they were regularized and under such circumstances, the Authorities rightly rejected their candidatures as they were short by about 40 days, in fulfilling the 5 years criteria of post "regular" service in Rural Areas.

10. The learned Counsel also submits that after rejection of the candidature of the two writ Petitioners, the candidates lower than them in the merit position have been accommodated against the 6 State Health quota P.G. Seats and under such circumstances, it would be difficult to provide admission to the writ Petitioners, as the Respondents have no authority to increase the number of seats available for P.G. Medical Course.

11. The submissions of the learned Counsels indicate that the decision in this case would depend upon the interpretation of provisions of Rule 4(4)(i) of the Admissions Rules, and therefore it would be appropriate to extract the said Rule for ready reference:

4 (4)(i). 16 (sixteen) seats (six in Degree and 10 Diploma) shall be reserved in each session for the doctors appointed in the State Health Services on the regular basis on the recommendation of the Commission and who have completed five years or more service in rural areas. The allotment of seats have been shown in Appendix-I.

12. As can be seen from Rule 4(4)(i) that seats are to be kept reserved in each session for such regularly appointed doctors, who have rendered 5 years or more service in Rural Areas of the State. Obviously the reserving of seats for Doctors serving in Rural Areas is meant to fulfill certain objectives of the State Authorities where it is well known that Doctors after appointment in the State Health Services are reluctant to serve in the Rural Areas. As Doctors serving in Rural Areas are placed at a disadvantage, inter alia, while competing for seats in P.G. Course, they are reluctant to serve in the rural areas and the patients in these areas suffer.

13. To undo the above mischief and also to provide a level playing field to Doctors serving in Rural Areas, certain numbers of P.G. Medical seats have been earmarked for which, the Doctors serving in Rural Areas can compete with each other and admissions are to be granted on the basis of merit in the entrance examination.

14. If the purpose of earmarking some P.G. Course seats for Doctors serving in Rural Areas, is to encourage Doctors to serve in the Rural Areas, it is difficult to accept the stand of the Respondents that a Doctor serving in the Rural Areas would fulfill the criteria, only if such service is post regularization and adhoc service is to be discounted. Regularization is an incident of service and in so far as service in Rural Area is concerned and benefits of patients in Rural Areas, there is no qualitative distinction between the service rendered by Doctors whose services have been regularized and by a Doctors whose services are yet to be regularized.

15. Even the Admission Rules do not specifically provide that 5 years service in Rural Areas has to be post "regular" service in Rural Areas. If the Rule itself does not incorporate the requirement of "regular" service, it would be unreasonable particularly in the context of the purpose of the P.G. Course seats being

earmarked under Rule 4(4)(i), to insert the word "regular", in the relevant part of the Admission Rules. The words in the Rule are unambiguous and is capable of being construed without addition of any foreign words and in my view importing of the word "regular" as has been done by the Appellate Authority in his order dated 9.4.2009 is legally impermissible.

16. It appears from the case records that both the writ Petitioners have been certified to have completed 5 years of service in the Rural Areas by the concerned Joint Directors of Health Services in terms of the requirement of Note 2 of the Admission Notice dated 16.3.2009 and on the basis of such certificates, the two writ Petitioners were considered to be eligible to compete for the State Health quota seats. They have secured 4th and 5th position respectively in order of merit in the entrance examination, which is to be made the basis for granting admission to the State Health quota seats. Therefore, considering particularly the merit, it is difficult to support the reasoning of the Respondents, to deny admission to the Petitioners.

17. The Respondent do not say that the Petitioners had not rendered more than 5 years of service as Doctors in Rural Areas but what is contended is that the Petitioners have rendered less than 5 years of "regular" service in Rural Areas. When the Admission Rules do not specify that service in the Rural Areas has to be only on "regular" basis, the reasoning given for rejecting the candidature of the two writ Petitioners for the State Health quota seats, in my view are clearly unsustainable and the same requires to be corrected.

18. Objection to admission of the writ Petitioners" is resisted by Ms. Verma on the ground that other candidates have been given admission into the State Health quota seats. But I find that this Court in WP (C) No. 1919/09 has already recorded an interim order stating therein that admission to P.G. Course shall be subject to further orders, to be passed in the writ petition. Even otherwise, when this Court finds that admission has been refused to the Petitioners despite their deserving merit position, on untenable grounds, the wrong done to the Petitioners have to be corrected.

19. Accordingly, I consider it appropriate to direct the Respondent Authorities to give P.G. Course admission to the two writ Petitioners, namely Dr. Sumana Das and Dr. Abdur Rashid Bhuyan in the State Health quota P.G. seats earmarked under Rule 4(4)(i) of the Admission Rules for the year 2009. For facilitating admission to the writ Petitioners, if persons lower in merit position, who have been granted admission are needed to be recalled from the P.G. Course, the Respondents would do the same as it has been prescribed under Rule 4(4)(i) of the Admission Rules that merit in the entrance examination shall be the only criteria for selection for the earmarked seats under the State Health quota.

20. The writ petitions are allowed in the above terms.