
(2020) 07 RAJ CK 0073

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 5435, 5394, 5436 Of 2020

Vidushi Saharan and Ors

APPELLANT

Vs

State Of Rajasthan and Ors

RESPONDENT

Date of Decision : 22-07-2020

Acts Referred:

Constitution Of India, 1950 — Article 14

Citation : (2020) 07 RAJ CK 0073

Hon'ble Judges : Ashok Kumar Gaur, J

Bench : Single Bench

Advocate : Tanveer Ahamad, Sara Parveen, Rakesh Kumar Sharma, Harshal Tholia, V.B. Sharma, Angad Mirdha

Final Decision : Disposed Of

Judgement

Ashok Kumar Gaur, J.

1. The present order will decide three writ petitions, as the issues involved in these writ petitions are common except the prayer clause in S.B. Civil

Writ Petition No. 5394/2020 [Dr. Pooja Gupta Vs. State of Rajasthan & Ors.].

2. The petitioners in all the writ petitions have challenged the order dated 31.03.2017 issued by the respondent-State requiring three years of regular

service from Rajasthan Public Service Commission (RPSC) selected Senior Demonstrators, working in non-clinical and para-clinical Departments of

Government Medical/Dental Colleges of Rajasthan, for allotment of non-clinical and para-clinical Post Graduate (PG) seats.

3. The petitioners in S.B. Civil Writ Petition Nos. 5435/2020 [Dr. Vidushi Saharan Vs. State of Rajasthan & Ors.] & 5436/2020 [Dr. Kavita Meena

Vs. State of Rajasthan & Ors.] have challenged the condition of eligibility said to be inconsistent with the Ordinance 278-E(II)(d) of the University of

Rajasthan (Examination-Faculty of Medicine and Pharmaceutics, Bachelor of Medicines and Bachelor of Surgery) and further prayer is made to

adhere to the conditions provided in the Ordinance 278-E(II)(d) for the purpose of admission of Senior Demonstrators in the Government Medical

Colleges in pursuance of NEET-PG Examination, 2020.

4. The petitioner in S.B. Civil Writ Petition No. 5394/2020 [Dr. Pooja Gupta Vs. State of Rajasthan & Ors.] has claimed her eligibility & to consider

the continuous ad hoc and temporary service rendered by her for the purpose of PG Course and further direction is sought to relax the deficit/short

experience before her regular selection, making her eligible for allotment of PG seat in NEET-PG Counseling, 2020.

5. This Court notes down the facts from S.B. Civil Writ Petition Nos. 5435/2020 [Dr. Vidushi Saharan Vs. State of Rajasthan & Ors.] while treating it

to be a lead case.

6. The petitioner has pleaded that she was appointed on the post of Medical officer vide order dated 03.10.2013 and thereafter she has been working

as Senior Demonstrator since 11.08.2017 in Pathology Department in SMS Medical College, Jaipur and as such she has rendered 6½ years of

service as Medical Officer and 2 years and 8 months as Senior Demonstrator.

7. The petitioner has pleaded that she was eligible and possessed the requisite qualification for National Eligibility-cum-Entrance Test (NEET) Post

Graduate for admission to MD/MS/Post Graduate Diploma Courses, 2020. The petitioner has pleaded that she participated in the examination

conducted by the National Board of Examination and secured 465 marks out of 1200 marks and secured 52445th rank in NEET-PG Examination,

2020. The petitioner has further pleaded that since she belongs to OBC category and cut-off for OBC category was declared as 319 marks and the

petitioner having secured 465 marks, became eligible for participating in the selection process & counseling process.

8. The petitioner has further pleaded that the respondent-State after initially issuing notification dated 17.03.2020 provided the schedule for State

Medical and Dental PG Seats Allotment, 2020 and the petitioner participated in the on-line counseling process, however, fresh notice dated 10.04.2020

was issued by the respondent-State providing a fresh schedule for Rajasthan State NEET PG Counseling, in view of the ongoing Corona outbreak.

The petitioner had filled her choice filling form (option form) as Senior Demonstrator and opted for MD Pathology in SMS Medical College, Jaipur.

9. The petitioner has pleaded that a list of non-eligible Senior Demonstrator candidates was issued on 14.04.2020 and the petitioner's name figured out

at S. No. 7 in the said list and the reason assigned to all the candidates including the petitioner was inadequate experience/documents or NEET score

below cut-off score. The petitioner has pleaded that though she had secured more than the cut-off marks, however, she has been rendered ineligible

on account of experience on the post of Senior Demonstrator.

10. The petitioner has further pleaded that she came across the order dated 31.03.2017 whereby only RPSC selected Senior Demonstrators, working

in non-clinical and para-clinical, Departments of Government Medical/Dental Colleges of Rajasthan, after completing three years of regular service in

the same department and qualified NEET Examination, were to be considered by giving them priority, in the same department in which they are

working, in the Non-Clinical and Para-Clinical PG seat allotment from the academic year 2017-18 onwards.

11. The petitioner has pleaded that Ordinance 278-E(II) provides in clause (d) that all in service Teacher (Senior Demonstrator) selected by the RPSC

be allowed automatic registration in Post Graduate studies in the same subjects in which they are selected and as such the eligibility clause does not

require or provide for any condition of three years of regular service in the same department for the purpose of seeking admission in Post Graduate

Medical Course for the Senior Demonstrators and as such without amending the Ordinance, it was not open for the respondents to impose such a

condition and an administrative order cannot dilute the legislative provision.

12. The petitioner has further pleaded in the petition that under the Rajasthan Service Rules, 1951 in Rule 110 there is a provision for grant of study

leave to a government servant, who is confirmed in service and study leave is for undergoing higher studies in public interest. The petitioner pleaded

that Post Graduate Diploma course, in the same subject, is in the public interest and as such without bringing any amendment in the Rajasthan Service

Rules, 1951, the respondents have committed illegality in imposing additional requirement and having 3 years of experience in same department, for

taking admission in Post Graduate Medical Course, is highly arbitrary and

warrants interference of this Court.

13. The respondents have filed reply to the writ petition and prayed that work experience of petitioner, after regular selection, is not of three years and

as such the name of the petitioner was included in the list of ineligible candidates, due to having inadequate work experience after regular selection.

The respondents have pleaded that as far as the provision of automatic registration in Post Graduate Course of Senior Demonstrator under Ordinance

278-E(II)(d) is concerned, the same is not applicable after promulgation of single entrance examination i.e. NEET for admission in the Post Graduate

Courses. The State has taken a stand that the said Ordinance does not govern the case of Senior Demonstrator anymore and order dated 31.03.2017

of the Government of Rajasthan is now applicable after introduction of NEET. The State has justified its action by saying that the provision for giving

priority to in-service Senior Demonstrators is not based on the service rendered in the notified area, as applicable to the Medical Officers, who are

eligible for grant of bonus marks and minimum three years of work experience after regular selection is not comparable as both the posts of Senior

Demonstrator and Medical Officer stand on a different footing. The State has also taken a stand that the Medical Officers are not given any priority in

admission process except grant of bonus marks, as per the length of service rendered in notified areas, however, Senior Demonstrators are given

preference by applying principle of intelligible differentia whereby a particular class of Senior Demonstrators is given preference over the others.

14. The State has justified issuing of order dated 31.03.2017 as it makes Senior Demonstrators working in non-clinical and para-clinical departments

(not having PG degree) eligible for promotion to the post of Assistant Professor.

15. Learned counsel appearing for the petitioners Mr. Tanveer Ahamad has made following submissions:-

(a) The order dated 31.03.2017 has been issued without taking into account the relevant Ordinance 278-E(II)(d).

(b) The requirement of RPSC selected Senior Demonstrators, after completing three years of regular service, has no nexus with the object of getting

admission in Post Graduate Courses in non-clinical and para-clinical Departments of Government Medical/Dental Colleges of Rajasthan.

(c) The study leave granted to the Government Servant under Rule 110 of the

RSR, 1951 makes a Government Servant eligible, who has rendered one year service, while the condition of putting three years of regular service, deprives the candidate from availing such benefit by prescribing additional requirement of having three years' experience in the same department.

(d) The State has not taken into account the relevant factors before issuing order dated 31.03.2017 as no step was taken to ascertain the availability of

RPSC selected Senior Demonstrators having put in three years of regular service. The alleged requirement of three years experience for the purpose

of promotion from the post of Assistant Professor has also no relevance for the purpose of admission in Post Graduate Courses.

16. Mr. Rakesh Kumar Sharma, counsel appearing for the petitioner in S.B. Civil Writ Petition No. 5394/2020 [Dr. Pooja Gupta Vs. State of

Rajasthan & Ors.] has made additional submission that the petitioner had rendered service as Senior Demonstrator in Microbiology on urgent

temporary basis from April, 2013 to October, 2017 and since RPSC had not conducted the selections, the petitioner came to be appointed on the post

of Senior Demonstrator in October, 2017 and since then she has been working as Senior Demonstrator. Counsel submitted that regular service is

preceded by ad hoc temporary service and the entire length of service should be taken into account. Counsel further submitted that there is no

requirement under the law that service cannot be rendered on regular basis after Post Graduate Course and such persons acquiring experience during

and after Post Graduate Course, can be a relevant consideration for the purpose of promotion to the post of Assistant Professor. Counsel, in support

of his submission, has placed reliance on the judgment of the Apex Court in the case of M. Dakshayani Vs. State of Karnataka & Anr. reported in

(2018) 16 SCC 172.

17. Per contra, Mr. Tholia, learned counsel appearing for the respondent-State, has made following submissions:-

(a) Ordinance 278-E is no more in force after introduction of NEET Examination and entire admission process is governed by Regulation 9 of the Post

Graduate Medical Education Regulations, 2000 (in short 'Regulations, 2000').

(b) The requirement of RPSC selected candidates was even existing at the relevant point of time and even as per old Ordinance, which is no more in

force, the candidates who were working on ad hoc temporary basis were not

entitled for any automatic registration in Post Graduate studies.

(c) The State Government has prescribed the condition of three years of regular service in the same department as Senior Demonstrators are required

to be considered for the purpose of appointing persons by way of promotion on the post of Assistant Professor in different Medical Colleges to teach

non-clinical and para-clinical subjects to the students.

(d) The State Government has kept in mind the valid classification of having three years of regular service by giving priority to Senior Demonstrators

and the rural service which is rendered by the Medical Officer gives them some additional marks, depending upon their length of service and as such

the State Government considering the posting of Senior Demonstrators in different Medical Colleges, decided to give them priority. The Service

conditions of the employees - Medical Officers/Senior Demonstrators are different inasmuch as their duties, place of posting and nature of job is

different and as such the State is within its domain to provide for a valid classification.

(e) The State Government has got power to issue orders which are not inconsistent with the Regulations issued by the Medical Council of India and if

the State has prescribed additional condition/classification, the same cannot be termed as unreasonable.

18. Counsel, in support of his arguments, placed reliance on the judgment rendered by the Apex Court in Dr. Preeti Srivastava & Anr. Vs. State of

MP & Ors. reported in (1997) 7 SCC 120. Counsel has also placed reliance on the judgment of the coordinate Bench passed in the case of Dr. Gyan

Prakash Gaud & Ors. Vs. State of Rajasthan & Anr. [S.B. Civil Writ Petition No. 9774/2013] & other connected writ petitions, decided vide order

dated 29.07.2013.

19. Mr. Aslam Khan, counsel appearing for the Intervener has adopted the arguments of Mr. Tholia and has further submitted that a person who

renders regular service as Senior Demonstrator and has qualified NEET Examination, should alone be allowed to get priority in admission and persons

who are working on ad hoc basis and have not completed three years of regular service, have no right to claim priority. Counsel also submitted that a

perusal of instruction booklet issued by the Chairman of NEET PG Medical & Dental Admission/Counseling Board, 2020, makes it very clear that

only regularly selected Senior Demonstrators working in non-clinical and para-clinical Departments of Medical Colleges will be considered after

completing three years of regular service in the same department and qualified NEET Examination and reference of orders dated 31.03.2017 and

05.04.2017 was also made therein and as such all the petitioners were aware that they were not eligible to participate and yet they have filed the instant writ petitions.

20. Mr. Angad Mirdha, counsel appearing for the Medical Council of India has submitted that the entire admission process in Post Graduate Courses

is now regulated by the Post Graduate Medical Education Regulations, 2000. Counsel submitted that as far as prescription of three years of regular

service is concerned, there is no provision in the Post Graduate Medical Education Regulations, 2000 and merit should be the only criterion to give

admissions and any action violating the merit, will result into violation of Article 14 of the Constitution of India.

21. Mr. Mirdha has submitted that the State of Rajasthan has evolved a criterion of giving priority to the Senior Demonstrators on the basis of regular

service rendered by them and as such, the conditions imposed will not meet the test of reasonableness, as per the law laid down by the Apex Court in

the case of Dr. Preeti Srivastava (supra).

22. I have heard learned counsel for the parties and considered the rival submissions made at Bar.

23. This Court had directed the counsel for the respondent-State to apprise with respect to the facts leading to issuance of order dated 31.03.2017.

Counsel for the respondent-State Mr. Tholia has produced a xerox copy of certain note sheets and it transpires from the said note sheets that the

preference to Senior Demonstrators in Post Graduate seats was to be given as per the budget announcement made by the concerned Health Minister

and it was to cope-up with the deficiency of Assistant Professors in non-clinical and para-clinical Branches of Government Medical/Dental Colleges

and preference in seat allotment was to be given to the RPSC selected Senior Demonstrators and the said proposal was approved at different levels.

24. This Court further finds that in continuation of the order dated 31.03.2017, another order dated 05.04.2017 was issued and the Senior

Demonstrators selected by the Permanent Selection Committee, Jhalawar

Medical College, Jhalawar and working in non-clinical and para-clinical department of Jhalawar Medical College, Jhalawar were also to be included on priority in non-clinical and para-clinical PG seats allotment from the academic year 2017-18 onwards. However, a condition was imposed that such candidates should complete three years of regular service in the same department and qualified NEET Examination.

25. The first and foremost issue to be decided by this Court is with respect to applicability of the relevant provisions regarding admissions to be made in Post Graduate Medical Courses. This Court deems it appropriate to quote the relevant clauses of Regulation 9 of the Regulations, 2000, which read as follows:-

9. Procedure for selection of candidate for postgraduate courses shall be as follows:-

(1) There shall be a uniform entrance examination to all medical educational institutions at the Postgraduate level namely 'National Eligibility-cum-Entrance Test' for admission to postgraduate courses in each academic year and shall be conducted under the overall supervision of the Ministry of Health & Family Welfare, Government of India.

(2) XX XX XX

(3) In order to be eligible for admission to Postgraduate Course for an academic year, it shall be necessary for a candidate to obtain minimum of marks at 50th percentile in the 'National Eligibility- Cum-Entrance Test for Postgraduate courses' held for the said academic year. However, in respect of candidates belonging to Scheduled Castes, Scheduled Tribes, and Other Backward Classes, the minimum marks shall be at 40th percentile.

In respect of candidates with benchmark disabilities specified under the Rights of Persons with Disabilities Act, 2016, the minimum marks shall be at

45th percentile for General Category and 40th percentile for SC/ST/OBC. The percentile shall be determined on the basis of highest marks secured in

the All India Common merit list in National Eligibility-cum-Entrance Test for Postgraduate courses.

Provided when sufficient number of candidates in the respective categories fail to secure minimum marks as prescribed in National Eligibility-cum-

Entrance Test held for any academic year for admission to Postgraduate Courses, the Central Government in consultation with Medical council of

India may at its discretion lower the minimum marks required for admission to Post Graduate Course for candidates belonging to respective categories

and marks so lowered by the Central Government shall be applicable for the academic year only.

(4) The reservation of seats in Medical Colleges/institutions for respective categories shall be as per applicable laws prevailing in States/Union

Territories. An all India merit list as well as State-wise merit list of the eligible candidates shall be prepared on the basis of the marks obtained in

National Eligibility-cum-Entrance Test and candidates shall be admitted to Postgraduate Courses from the said merit lists only.

Provided that in determining the merit of candidates who are in service of government/public authority, weightage in the marks may be given by the

Government/Competent Authority as an incentive upto 10% of the marks obtained for each year of service in remote and/or difficult areas or Rural

areas upto maximum of 30% of the marks obtained in National Eligibility-cum Entrance Test. The remote and/or difficult areas or Rural areas shall be

as notified by State Government/Competent authority from time to time.

(5) XX XX XX

(6) No candidate who has failed to obtain the minimum eligibility marks as prescribed in Sub-Clause (3) above shall be admitted to any Postgraduate

courses in the said academic year.

(7) In non-Governmental medical colleges/institutions, 50% (Fifty Percent) of the total seats shall be filled by State Government or the Authority

appointed by them, and the remaining 50% (Fifty Percent) of the seats shall be filled by the concerned medical colleges/institutions on the basis of the

merit list prepared as per the marks obtained in National Eligibility-cum-Entrance Test.

(8) 50% of the seats in Postgraduate Diploma Courses shall be reserved for Medical Officers in the Government service, who have served for at least

three years in remote and/or difficult areas and/or Rural areas. After acquiring the Postgraduate Diploma, the Medical Officers shall serve for two

more years in remote and/or difficult areas and/or Rural areas as defined by State Government/Competent authority from time to time.

(9) to (11) XX XX XX

26. The bare perusal of the aforesaid Regulation 9 makes it clear that for

determining the merit of candidates who are in service of Government/public authority, weightage is given for the service rendered in remote/difficult areas and remote/difficult areas are defined by the State

Government/competent authority from time to time.

27. The provision contained in clause (8) of Regulation 9 of the Regulations, 2000 also makes it clear that 50% of the seats in Post Graduate Diploma

Courses are reserved for the Medical Officers in the Government service, who have served for at least three years in remote/difficult areas and

further there is a condition that these Medical Officers, after acquiring the Post Graduate Diploma, will serve for two more years in remote/difficult areas.

28. The bare perusal of Regulation 9 of the Regulations, 2000 shows that Senior Demonstrators have not been provided any reservation in the matter

of admission in Post Graduate Courses, either in PG Degree Courses or in PG Diploma Courses.

29. This Court finds that field relating to admission in Post Graduate Medical Courses, is now exclusively governed by the Post Graduate Medical

Education Regulations, 2000 and Ordinance of University of Rajasthan has no say or applicability in respect of the procedure for selection of

candidates for Post Graduate Courses.

30. This Court further finds that issue with regard to automatic registration of Senior Demonstrators in Post Graduate Medical Courses, as per

Ordinance 278-E(II)(d) of the University of Rajasthan (Examination-Faculty of Medicine and Pharmaceutics, Bachelor of Medicines and Bachelor of

Surgery), was examined by the coordinate Bench of this Court while deciding the writ petition filed by Dr. Gyan Prakash Gaud (supra) vide order

dated 29.07.2013. The coordinate Bench considered the Post Graduate Medical Education Regulations, 2000, which were amended in 2010 & 2012,

and categorically held that automatic registration of Senior Demonstrators, as per the Ordinance of University of Rajasthan, would be in violation of

the MCI Regulations and as such, the issue of applicability of Ordinance 278-E(II) (d), being already decided by the coordinate Bench of this Court,

need not to be further adjudicated by this Court.

31. This Court finds that the State Government has evolved a criterion in order to give preference/priority to the RPSC selected Senior Demonstrators

working in non-clinical and para-clinical Departments of Government Medical/ Dental Colleges of Rajasthan in non-clinical and para-clinical PG seats

allotment from academic year 2017-18 onwards. The State Government has further prescribed that only after completing three years of regular

service in the same department and qualifying NEET Examination, candidates will be given the said priority.

32. The object of the State Government has also been canvassed before this Court by conferring eligibility on those persons who have put in three

years of regular service, making them eligible for the post of Assistant Professor in the Medical Colleges.

33. This Court finds that the Rajasthan Medical Service (Collegiate Branch) Rules, 1962 provides that the post of Senior Demonstrator is to be filled

100% by direct recruitment and the post of Assistant Professor in speciality of Forensic Medicine or Dental Surgery is to be filled 75% by promotion

and 25% by direct recruitment and the persons working as Senior Demonstrators in the speciality of Forensic Medicine or Dental Surgery have been

made eligible for promotion.

34. This Court finds that if the State Government has kept in mind that the post of Assistant Professor to be manned by Senior Demonstrators, who

have passed their Post Graduate Course, the same does not come in conflict with any of the statutory provisions.

35. This Court further finds that prescription of three years of regular service after selection by the competent selecting body is a relevant

consideration and a candidate has to qualify NEET Examination. The priority to such Senior Demonstrators necessarily requires that a person must

have put in three years of regular service and his Post Graduate Degree/Diploma Course, will make him eligible to the post of Assistant Professor in

different Medical Colleges to teach the students non-clinical and para-clinical subjects.

36. This Court finds that decision of the State Government preceded by budget announcement, ought to have been processed more carefully and

meticulously. The various note sheets which were produced for perusal of this Court did not take into account that Senior Demonstrators, who are

working in non-clinical and para-clinical Departments of Government Medical/ Dental Colleges of Rajasthan in the capacity of substantively appointed

through RPSC or any other competent body, are available or not and seats are not filled by giving priority to only regularly selected candidates, who have completed three years of regular service. The other candidates who have been working on ad hoc urgency temporary basis or if selected by RPSC but did not complete three years of regular service, their eligibility should also have been considered for allotment of seats. This Court is constrained to make such observation because at one point of time, a letter dated 23.03.2019 was written by the Coordinator, NEET PG Counseling, 2019 wherein request was made that several Senior Demonstrators have filed their representation for reducing the period of three years to one year and it was also highlighted that there was deficiency of Teachers/Doctors in non-clinical subjects and this Court finds that the grievance raised by the Coordinator, NEET PG Counseling, 2019 was not redressed for NEET Examinations, 2019 and 2020.

37. This Court also finds that the Apex Court in the case of Dr. Preeti Srivastava (supra) has also laid down that if minimum standards are laid down in Post Graduate Medical Education by the Central legislation, the State Governments are competent to prescribe any further qualifications for selecting better students as the same would not adversely affect the standards so laid down. This Court finds that the State Government if has decided that Senior Demonstrators can be given priority in non-clinical and para-clinical subjects in Post Graduate Admission courses, no fault can be found with such action of the State Government.

38. This Court also finds that the State Government should have been also alive to the prevailing conditions of non-availability of Senior Demonstrators, who had not put in, three years of regular service after their selection in non-clinical and para-clinical subjects. The said exercise should have been carried out by the State Government while considering the previous trend of filling the seats and should have considered the claim of Senior Demonstrators who though have been selected by RPSC or any other selecting agency but yet not completed three years of regular service.

39. This Court finds that the judgment relied upon by counsel for the petitioner Mr. Rakesh Kumar Sharma rendered by the Apex Court in the case of M. Dakshayani Vs. State of Karnataka & Anr. (supra) was with regard to eligibility/criteria provided in the matter of promotion and service rendered,

prior to acquiring Post Graduate Degree, and the same was considered as qualifying service for promotion. This Court finds that the said judgment is of little assistance to the learned counsel for the petitioners as there was no requirement under the Rules of having three years' experience after a person has acquired Post Graduate Degree. The Apex Court also considered that for promotion to the post of Associate Professor, there was a requirement of acquisition of qualification but the same was not required for the post of Assistant Professor.

40. This Court finds that the order issued by the State Government dated 31.03.2017 cannot be termed as an arbitrary order passed without having any competence to do so. This Court also finds that the State Government can proceed to consider the cases, as per the eligibility laid down in Government Orders dated 31.03.2017/05.04.2017.

41. This Court before parting with the judgment deems it appropriate to observe that the State Government should look into and consider the fact of availability of Senior Demonstrators with three years of regular service after due selection and if adequate number of candidates are not available having three years experience, on account of various reasons, the candidates who are regularly appointed but have not put in three years of regular service, should be considered for allotment of seats. The State authorities are also required to keep in mind the recommendation made by the Coordinator, NEET PG Counseling, 2019 vide letter dated 23.03.2019 highlighting non-availability of Senior Demonstrators with three years of regular service.

42. The State authorities are expected to carry out the aforesaid exercise and take timely decision for future/next Post Graduate admission process, before issuance of eligibility of the candidates-Senior Demonstrators.

43. Accordingly, these writ petitions stand disposed of in terms of above directions. No costs.