

(2003) 07 BOM CK 0109
In the Bombay High Court
Case No : Writ Petition No. 958 of 2003

Vivek Pravin Tilwani (Dr.)

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 10-07-2003

Acts Referred:

Citation : (2003) 4 ALLMR 850 : (2003) 5 BomCR 477 : (2003) 4 MhLj 826

Hon'ble Judges : R.M. Lodha, J;A.S. Aguiar, J

Bench : Division Bench

Advocate : Mohan Pungalia, instructed by Adhia and Adhia, for the Appellant; A. Kalyanram, A.G.P. for Respondent Nos. 1 to 3, for the Respondent

Judgement

R. M. Lodha, J.—Heard.

2. At the outset, Mr. Pungalia, learned counsel for the petitioner submitted that petitioner is not pressing the prayer to declare the merit list prepared for the post of Junior Resident-II as null and void and therefore, the respondent Nos. 4 and 5 be deleted from the array of parties. We accept the submission of the learned counsel for the petitioner and delete the names of respondent Nos. 4 and 5.

3. The learned counsel for the petitioner submitted that the petitioner's claim is now restricted to his selection for unregistered post of Junior Resident-III in Surgery at the Grant Medical College, Mumbai.

4. Rule. Returnable forthwith.

5. Ms. Kalyanram, A.G.P. waives service for respondent Nos. 1 to 3.

6. Rule is heard finally at this stage.

7. The Dean, Grant Medical College and Sir J. J. Group of Hospitals invited applications for about 5 unregistered posts of Junior Resident-III in Surgery besides other subjects. As per the relevant clause in the advertisement, the

provisional merit list was to be displayed on 24th January, 2003; objections on the provisional list were to be accepted on 25th January, 2003 and final merit list was to be displayed on 28th January, 2003. Interviews were to be held on 29th January, 2003. The petitioner applied for the post inter alia for Junior Resident-III in Surgery. It is his case that the petitioner being more meritorious, more qualified, more educated and more experienced was not selected while others lacking petitioner's merit were selected. By our order dated 4th July, 2003, we directed the learned A.G.P. to produce before us the following documents for our perusal:--

- i) The provisional merit list displayed on 24th January, 2003.
- ii) The objections received on the provisional list on 25th January, 2003 and
- iii) The final merit list displayed on 28th January, 2003.

8. In response thereto, the learned A.G.P. handed in the affidavit of Dr. Pravin Harishchandra Shingare. From the perusal of the said affidavit it appears that Exhibit-1A annexed with the said affidavit is the provisional merit list prepared and displayed on 24th January, 2003. Thereafter, the revised merit list was displayed on 28th January, 2003. The same is annexed as Exhibit-IB. It is further set out in the said affidavit that interviews were held on 29th January, 2003 and Exhibit-IC is the xerox copy of Junior Resident-III merit list. Perusal of the provisional merit list displayed on 24th January, 2003 shows the following names in Surgery in the order of merit:--

- i) Modgi Rahul
- ii) Phadnis Amit
- iii) Tungerwar Pravin
- iv) Borisa Ashok
- v) Tilwani Vivek (petitioner herein)

9. As per Exhibit-IB which was displayed on 28th January, 2003 after the objections were received on 25th January, 2003 does not alter the merit position and the first five candidates as per the said merit list in surgery indicates thus :--

- i)Modgi Rahul ii) Phadnis Amit
- iii) Tungerwar Pravin
- iv) Borisa Ashok
- v) Tilwani Vivek

10. Thus, it is clear that insofar as petitioner is concerned, for the post of JR-III (Surgery) in the provisional list which was displayed on 24th January, 2003 as well as the revised merit list which was displayed on 28th January, 2003, there is no change in the merit. The list which is displayed on 28th January, 2003

(Exhibit-IB annexed with the affidavit of Dr. Pravin Harishchandra Shingare) has to be treated as final select list as per the relevant clause of the advertisement noted above which provided that final merit list would be displayed on 28th January, 2003. In the affidavit. Dr. Pravin Harishchandra Shingare, has however, sought to explain that Dr. Calcuttawala who was MS at the relevant time had applied only for JR-III post but due to error his name was not included in provisional merit list displayed on 24th January, 2003 and the list displayed on 28th January, 2003, and accordingly, at the time of interview on 29th January, 2003, upon his objection being raised, the name of Dr. Calcuttawala was included in the final merit list on 29-1-2003. We are afraid, the procedure adopted by including the name of Dr. Calcuttawala on 29-1-2003 in the merit list of JR-III without there being any objection by him by 25-1-2003, can hardly be justified. It would be advantageous to refer here the relevant clause of the advertisement which reads thus-

"Interview -- Provisional merit list will be displayed on 24-1-2003. Objections on the provisional merit list will be accepted on 25-1-2003 and Final merit list will be displayed on 28-1-2003. Interviews will be held on 29-1-2003 11-00 a.m. for Senior Resident-I, II and III and 2.30 p.m. for Junior Resident-III/30-1-2003 1.00 a.m. for Junior Resident-II and 2.30 p.m. for Junior Resident-I.

(A proxy can attend the interview. He will be permitted only if the authority letter and undertaking is in the prescribed format) (Annexure)."

11. No doubt is left on the face of the aforesaid clause that provisional merit list was to be displayed on 24th January, 2003; objections to the provisional merit list were to be accepted by 25th January, 2003 and final merit list was to be displayed on 28th January, 2003. Once the provisional merit list was displayed on 24th January, 2003, if any discrepancy or omission was found then Dr. Calcuttawala ought to have raised objection by 25th January, 2003 so that his objection could have been considered and necessary correction made in the merit list published on 28th January, 2003. It was not open to the respondent No. 3 to change the merit list displayed on 28th January, 2003 on the basis of any objection made by Dr. Calcuttawala on 29th January, 2003. If what the respondent No. 3 has done is allowed to stand, no sanctity would be left to the procedure and the calendar set out in the relevant clause of the advertisement. The relevant clause as noted above leaves nothing to be deviated insofar as display of provisional list on 24th January, 2003, receipt of objections by 25th January, 2003 and display of final merit list on 28th January, 2003 are concerned. Thus, we have no doubt in observing that the respondent No. 3 and the concerned selection committee erred in deviating from the procedure laid down in the advertisement by entertaining objection of Dr. Calcuttawala on 29th January, 2003 when such objection could have only been made latest by 25th January, 2003. Once the merit list was displayed on 28th January, 2003 (the said list has to be treated as final list, though titled as "Revised Provisional Merit List"), there was no scope for the respondent No. 3 and selection committee to

change, alter or modify the said merit list.

12. Besides that the petitioner has in his rejoinder categorically stated that Dr. Tungerwar Pravin, candidate belonging to the open category did not join/report for duties till date and as a result thereof, one post of Junior Resident-III in Surgery has remained vacant ever since and the said vacancy in the open category has not been filled in by any other candidate so far. The relevant averment reads thus -

"The respondent No. 4 has admitted that 4 posts of Junior Resident-III in Surgery were advertised by the respondent No. 3 of which 3 belonged to the Open Category and 2 to the Reserved Category. The revised merit list of the post of Junior Resident-III in Surgery reads the first 6 names as under:

Sr. No. Name

1. Dr. Modgi Rahul
2. Dr. Phadnis Amit
3. Dr. Tungerwar Pravin
4. Dr. Borisa Ashok
5. Dr. Tilwani Vivek
6. Dr. Kulkarni Vaibhav

Of these, Dr. Modgi Rahul and Dr. Borisa Ashok remained absent for interviews and hence the name of Dr. Tilwani Vivek, i.e. myself, came to be placed immediately below that of Dr. Pravin Tungerwar. The said revised merit list is at Exhibit-B of the present petition. It is submitted that 4 candidates were appointed to the post of Junior Resident-III in Surgery by the respondent No. 3 vide his office order No. 18/PG/1702 dated 31-1-2003; the names and categories of the said 4 candidates so appointed are as under:

Sr. No. Name Category

1. Dr. Phadnis Amit Open
2. Dr. Tungerwar Pravin Open
3. Dr. Jaiswal Rajkumar Reserved
4. Dr. Borse Hemantkumar Reserved

I state that out of the said 4 candidates appointed vide the said office order dated 31-1-2003, Dr. Tungerwar Pravin, a candidate belonging to the Open Category, has not joined/reported for duties till date and that as a result one post of Junior Resident-III in Surgery in the Open Category has remained vacant ever since. The said vacancy in the Open Category has not been filled in by any other candidate so far. As per the relevant rules in force mentioned in the said

Affidavit dated 8-4-2003, if a candidate does not join within 3 days of the appointment order, the post is required to be allotted to the next candidate on merit. As mentioned above, my name was placed immediately below that of Dr. Tungerwar Pravin and I was placed at serial No. 1 on the waiting list for Junior Resident-III in surgery and hence the respondent No, 3 ought to have appointed me to the post of Junior Resident-III in Surgery in place of Dr. Tungerwar Pravin in view of his not having joined and reported for duties. However, for the reasons best known to respondent No. 3, the same has not been done."

13. Clause 3.2.0 of the relevant rules for residency scheme effective from June, 1996 at Government Medical Colleges provides thus -

"If any mid-term vacancies arise due to long leave or absence or resignations by resident doctor, resulting vacancy shall be filled up by Incidental appointments from wait-listed candidates on first come first serve basis."

14. Clause 6.2.0. provides thus -

"The Waiting list prepared under clause 6.1.1. shall be valid for a period of six months."

15. In the affidavit of Dr. Pravin Harishchandra Shingare dated 10th July, 2003, the following statement has been made :--

"11. The petitioner is concerned with only unregistered service posts. During this term, due to court cases (other) related to registrations (PG), 2nd round of admission process was conducted late and all these candidates joined in February 2003, after the interview for unregistered posts. As many registered candidates joined on the basis of Mumbai University Circular as registered PG Residents, all vacancies in the JR posts were filled in by them. Now in this month, approximately on 10-7- . 2003, second round for registered post will be conducted and many candidates are likely to join as PG residents. So as it stands today, there is no vacancy even for Dr. Calcuttawala who is Wait List 1 as per merit."

16. However, the aforesaid statement is apparently inconsistent and contrary to para 3 of the same affidavit. In para 3 of this affidavit the following statement has been made :--

"In view of the fact that the appointment was to be for a period of six months from 1st February, 2003 to 31st July, 2003, and only twenty one days are left, it is decided not to fill in the post."

17. Thus, there is clear inconsistency in the aforesaid statement made in para 3 and para 11 of the affidavit of Dr. Pravin Harishchandra Shingare and it seems to us that the post which remained vacant due to non-joining of Dr. Tungerwar Pravin has not been filled in now because 21days are left. We find no justification to deprive the petitioner of the benefit of the remaining days upto 31st July, 2003 to the post of JR-III (Surgery) in accord with clause 3.2.0 and 6.2.0 of the

Rules.

18. We, accordingly, dispose of the writ petition by following order:--

- i) The respondent No. 3 is directed to pass an appropriate order by considering petitioner's claim for appointment to the post of JR-III (Surgery) in the light of the observations made above without any further delay for the remaining period upto 31st July, 2003.
- ii) The respondent No. 3 is directed to comply the aforesaid direction within three days of receipt of the copy of the order of this court. Certified copy expedited.