

HIGH COURT OF ANDHRA PRADESH
WEDNESDAY ,THE FIRST DAY OF MAY
TWO THOUSAND AND NINETEEN

PRESENT

THE HONOURABLE SRI JUSTICE A V SESA SAI
THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO
WRIT PETITION NO: 1889 OF 2019

Between:

1. P S CHANDANA W/o. P. G. Kishore Kumar,
5
Aged 33 years. Occ Working as Civil Asst. Surgeon,
ESI Dispensary, Chittoor, R/o. H.No.22-1059/4, Munganpally Chittoor
2. K. Renuka w/o. M. Madhu Sudhan Reddy,
Aged, Occ working as Civil Asst. Surgeon, ESI Dispensary, Proddatur,
Kadapa District, R/o.H.No.2/66, Maruthinagar, Kadapa

...PETITIONER(S)

AND:

1. THE STATE OF AP Medical, Health and Family Welfare Department,
Rep. by its Principal Secretary, Secretariat, Velagapudi, Guntur
3. Dr. NTR University of Health Sciences Rep. by its Registrar, Gunadala,
Vijayawada, Andhra Pradesh - 520008
4. The Medical Council of India Rep. by its Secretary, Dwaraka Phase-I,
Pocket 14, Sector - 8,
Dwarka, New Delhi.
5. The Director of Medical Education Hanumanpeta, Amaravathi,
Vijayawada
6. The Director of Insurance Medical Services, Kedareshwara Peta
Vijayawada Andhra Pradesh.

...RESPONDENTS

Counsel for the Petitioner(s): K RAMAMOCHAN

Counsel for the Respondents: GP FOR MEDICAL HEALTH FW(AP)

The Court made the following: ORDER

IN THE HIGH COURT OF ANDHRA PRADESH
(Special Original Jurisdiction)

WEDNESDAY, THE FIRST DAY OF MAY
TWO THOUSAND AND NINETEEN

PRESENT

THE HON'BLE SRI JUSTICE A.V.SESHA SAI
AND
THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO



WRIT PETITION NO: 1889 OF 2019

Between:

1. Dr. P.S.Chandana, W/o. P.G.Kishore Kumar, Aged 33 years. Occ Working as Civil Asst. Surgeon, ESI Dispensary, Chittoor, R/o. H.No.22-1059/4, Munganpally, Chittoor
2. Dr. K.Renuka, W/o. M.Madhu Sudhan Reddy, Aged, Occ: working as Civil Asst. Surgeon, ESI Dispensary, Proddatur, Kadapa District, R/o.H.No.2/66, Maruthinagar, Kadapa

...Petitioners

AND

1. The State of Andhra Pradesh, Medical, Health and Family Welfare Department, Rep. by its Principal Secretary, Secretariat, Velagapudi, Guntur
2. Dr. NTR University of Health Sciences, Rep. by its Registrar, Gunadala, Vijayawada, Andhra Pradesh - 520008
3. The Medical Council of India, Rep. by its Secretary, Dwaraka Phase-I, Pocket 14, Sector - 8, Dwarka, New Delhi.
4. The Director of Medical Education, Hanumanpeta, Amaravathi, Vijayawada
5. The Director of Insurance, Medical Services, Kedareshwara Peta Vijayawada Andhra Pradesh.

...Respondents

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ, order or direction, more particularly a Writ of Mandamus declaring the action of the 1st respondent in not providing incentive weightage of marks for inservice candidates of 6 Years of continuous regular service as provided to any inservice candidates working in tribal/rural areas as illegal, improper, unjust, arbitrary and violative of Articles 14 and 16 of the Constitution of India and further declare that the petitioners are entitled for incentive weightage of marks of 6 years continuous regular service as was provided to inservice candidates working, in tribal/rural arrears.

IA NO: 1 OF 2019

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the respondent to provide incentive weightage marks for 6 years continuous regular service rendered by the petitioners on par with inservice candidates working in tribal rural areas forthwith by considering, their representation dated 22.01.2019 pending disposal of the writ petition.

**Counsel for the Petitioners: SRI K.RAMAMOHAN, REPRESENTED BY
SRI K.G.KRISHNA MURTHY, SENIOR COUNSEL**

Counsel for the Respondent Nos.1, 4 AND 5: G.P. FOR MEDICAL AND HEALTH

**Counsel for the Respondent No.2: SRI TADDI NAGESWARA RAO,
SC FOR NTR UNIVERSITY**

**Counsel for the Respondent No.3: SRI S.VIVEK CHANDRA SEKHAR,
STANDING COUNSEL**

The Court made the following: ORDER

**THE HON'BLE SRI JUSTICE A.V.SESHA SAI
AND
THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO**

WRIT PETITION No.1889 OF 2019

ORDER:

(per AVSS,J.)

Heard Sri K.G.Krishna Murthy, learned senior counsel, representing Sri K.Ramamohan, learned counsel on record for petitioners, learned Government Pleader for Medical and Health for respondent Nos.1, 4 and 5, Sri Taddi Nageswara Rao, learned standing counsel for respondent No.2 and Sri S.Vivek Chandra Sekhar, learned standing counsel for respondent No.3-Medical Council of India.

2. This Writ Petition calls in question the action of respondent No.1-State Government in not providing incentive weightage of marks for inservice candidates with continuous regular service of 6 years, as provided to any inservice candidates working in tribal/rural areas, and the petitioners herein also pray for a further declaration to the effect that they are entitled for incentive weightage of marks for 6 years of continuous regular service as provided to inservice candidates working in tribal/rural areas.

3. It is contended by the learned senior counsel appearing for petitioners that as per clause 9 (iv) of the Medical Council of India Regulations, 2000, it is incumbent on the part of the State Government/competent authority to define 'remote and difficult areas', and in the instant case,

there is no such exercise undertaken by the respondents, and instead, by way of amendments notified vide G.O.Ms. No.29, Health, Medical and Family Welfare (C1) Department, dated 22.03.2018, the State Government defined 'tribal areas and rural areas' only. It is further contended that the petitioners herein, who are governed by the Andhra Pradesh Insurance Medical Services, are working in E.S.I. Medical Dispensaries located in industrial areas of Chittoor and Proddatur, and having regard to the place of their work, pollution which they suffer and industrial unrest which they experience, some times, the said places are required to be treated as 'difficult areas' though not 'remote areas'. It is further contended that had the Government defined 'difficult areas', as stipulated in clause 9 (iv) of the Medical Council of India Regulations, the petitioners herein would have got an opportunity to secure seats in post graduation courses. It is further contended that once the incentive is given to inservice candidates, it is a 'class' by itself, as such, there cannot be any sub-classification in the said class and the said action offends Article 14 of the Constitution of India. It is also the submission of the learned senior counsel that when sub-rule (2) (c) of Rule 3 is not deleted, the benefit of inservice quota should have been extended to the petitioners herein also. In support of his submissions and contentions, the learned

senior counsel placed reliance on a decision in *State of Uttar Pradesh & others v. Dinesh Singh Chauhan*¹.

4. On the other hand, it is contended by the learned Government Pleader, so also the learned standing counsel for respondent No.2-N.T.R. University of Health Sciences, that in the absence of any right, the petitioners herein are not entitled for indulgence of this Court under Article 226 of the Constitution of India. It is further contended by the learned advocates that the respondent-authorities are acting strictly in accordance with law.

The learned Government Pleader seeks to justify the case of the State Government by contending that, but for variation in nomenclature of the terms viz. remote and difficult areas, the respondents are proceeding strictly as per clause 9 (iv) of the Medical Council of India Regulations, 2000 by bringing amendments to the Andhra Pradesh Medical Colleges (Admission into Post Graduate Medical Courses) Rules, 1997. In elaboration, it is further maintained that the terms viz. tribal and rural areas, as defined and notified vide G.O.Ms. No.29, Health, Medical and Family Welfare (C1) Department, dated 22.03.2018, are analogous, equivalent and akin to the 'difficult and remote areas', as stipulated in the Medical Council of India Regulations, 2000, and therefore, the contention contra advanced by the learned senior counsel, appearing for the petitioners cannot stand for judicial

¹ (2016) 9 Supreme Court Cases 749

scrutiny. It is the further submission of the learned Government Pleader, so also the learned standing counsel for respondent No.2-N.T.R. University of Health Sciences that in the absence of any challenge as to the validity of the amendments notified vide G.O.Ms. No.29, Health, Medical and Family Welfare (C1) Department, dated 22.03.2018, the contentions of the learned senior counsel cannot be sustained.

5. Petitioners herein are Civil Assistant Surgeons, governed by the Andhra Pradesh Insurance Medical Services and they are working in E.S.I. Dispensaries of Chittoor and Proddatur respectively. The Government of Andhra Pradesh, in exercise of the powers conferred under Section 3 Read with Section 15(1) of the Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983, framed the Andhra Pradesh Medical Colleges (Admission into Post Graduate Medical Courses) Rules, 1997 and notified the same *vide* G.O.Ms. No.260, dated 10.07.1997. Rule 3 of the said Rules deals with the reservations, which reads as follows:

“RESERVATIONS: 1) 15%, 6%, 25% of the total number of seats notified in each group for Degree and Diploma Courses separately shall be reserved for Scheduled Caste, Scheduled Tribes and Backward Classes respectively.

2) 15% of seats in Clinical subjects *i.e.*, in Medicine Surgery, Obstetrics & Gynaecology

Groups and 30% of the seats in non-clinical subjects in each group for Degree and Diploma Courses separately are reserved for in-service candidates in each category under service quota. Candidates selected on merit in respective categories shall be however counted against service quota. Service rendered shall be calculated as per date specified by University of Health Sciences.

Explanation - 1

It is hereby clarified that in-service Candidates means a Candidate who has put in -

- (a) two years of continuous regular tribal service;
- (b) three years of continuous regular rural service;
- or
- (c) six years of continuous regular service.

Explanation - 2

(a) 'Tribunal Service' means service in tribal institutions recognized by Government of Andhra Pradesh.

(b) 'Rural Service' means service in Primary Health Centres, Subsidiary Health Centres, Dispensaries, Taluk Hospitals, Mobile Medical Units, Leprosy Control Units or the Sample Survey-cum-Assessment Units, under Leprosy Temporary hospitalization wards situated in Taluks and Leprosy Training Centre at Pogiri. (Ref.G.O.Ms.No.31, HM&FW (B2) Department, Dt.11-02-1997).

(c) 'Continuous regular service' means regular services in Andhra Pradesh in the following services, namely:-

- (a) Andhra Pradesh Medical & Health Services;
- (b) Andhra Pradesh Insurance Medical Services;
- (c) Andhra Pradesh Vaidya Vidhana Parishad; or
- (d) University of Health Sciences.”

6. The State Government brought certain amendments to Rule 3 of the said Rules and notified the same *vide* G.O.Ms. No.29, Health, Medical & Family Welfare (C1) Department, dated 22.03.2018, and the said amended provision reads as under:

“1. (i) Sub-rule (2) up to (b) of rule (3) shall be deleted and substituted with the following:

(a) Tribal Area means:

(i) Candidate should have completed a minimum 3 years of regular and continuous service in PHCs/Upgraded PHCs/CHCs/Area Hospitals/Sample Survey cum assessment units/Leprosy temporary hospitalization wards etc in Tribal areas;

(ii) Incentive weightage of marks would be calculated @ 10 percent marks per year on the marks secured by the qualified candidate in the National Eligibility cum Entrance Test (NEET) PG examination up to a maximum of 30%.

(b) Rural Area means:

(i) Candidate should have completed a minimum 3 years of regular and continuous service in PHCs/ Upgraded PHCs/ CHCs/ Area Hospitals/Sample Survey cum assessment units/Leprosy temporary hospitalization wards etc, in rural areas;

(ii) Incentive weightage of marks would be calculated @ 8 percent marks per year on the marks secured by the qualified candidate in the National Eligibility cum entrance Test (NEET) PG examination upto a maximum of 24%.

*The candidates who avail incentive weightage marks should serve in the same area (Tribal/Rural) for a period of 3 years after completion of course.

*All the candidates who are in-service and seeking admission to the Post Graduate courses shall submit the online application with details of service rendered by them in a prescribed proforma along with applications.

*Candidates shall submit "Eligibility Service Certificate" issued by the concerned Head of the Department in the prescribed form (as hosted/displayed online) at the time of verification of certificates.

*Applications which are not accompanied by the "Eligibility Service Certificate" will not be considered for awarding incentive of weightage marks."

7. It is very much clear from a reading of the above amendments that Sub-rule 2 (up to (b) of Rule 3) was deleted and was substituted by the amended provisions. The sum and substance of the case of the petitioners, as advocated by the learned senior counsel for the petitioners, is that the petitioners herein are entitled for the benefit of continuous regular service to claim the seat in in-service quota, in view of retention of clause (c) of Rule 3(2) of the Rules notified *vide* G.O.Ms. No.260, dated 10.07.1997 and that the petitioners fall under the phrase 'difficult areas' as per the Medical Council of India Regulations, 2000.

8. It is very much clear from a reading of the above amendments made to 1997 Rules that sub-rule (2) of Rule 3 up to (b) was deleted and was substituted by the amended provisions. It is one of the contentions of the learned senior counsel appearing on behalf of the petitioners that the petitioners herein are entitled for the benefit of continuous regular service to claim the seats in inservice quota in view of the retention of clause (c) of Rule 3 (2) of the Rules notified *vide* G.O.Ms. No.260, dated 10.07.1997. But, a perusal of the abovesaid amendment, in vivid and clear terms, demonstrates that by way of the amendments notified *vide* G.O.Ms. No.29, Health, Medical and Family Welfare (C1) Department, dated 22.03.2018, continuous regular service as provided under clause (c) of Rule 3 (2) of the Rules was

deleted by the State Government. Therefore, the contention that in view of the retention of clause (c) of Rule 3 (2) of the Rules, the petitioners herein are entitled to have their continuous service counted for the purpose of securing a seat in post graduation, cannot be sustained, and the said contention advanced by the learned senior counsel is hereby rejected.

9. The contention that once the incentive is given to the inservice candidates, it is a class by itself, as such, there cannot be any sub-classification in the said class and the said action offends the Article 14 of the Constitution of India, in the considered opinion of this Court, also cannot be sustained having regard to be benefit extended to the persons working in rural and tribal areas.

10. In this context, it may be appropriate to refer to the common order of the Division Bench of the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in Writ Petition Nos.9829 of 2018 and batch, dated 09.04.2018; wherein, the Division Bench of this Court considered extensively the impact of the amended provisions, as narrated *supra*, and the effect of the same in the light of Post Graduate Medical Regulations, 2000 (for short, 'the MCI Regulations') in general and Regulation 9 thereof in particular. While dealing with Point No.1 framed therein, the Division Bench of this Court held as follows:

“The proviso to Regulation 9 (iv) of the 2000 MCI Regulations recognises the principle of giving weightage to in-service candidates while determining their merit. In that sense, incentive marks, given to in-service candidates, is in recognition of their service rendered in remote and difficult areas of the State, which marks are to be added to the marks obtained by them in NEET. Weightage or incentive marks, specified in the proviso to Regulation 9(iv), are thus linked to the marks obtained by the in-service candidate in NEET, and to reckon the commensurate experience and services rendered by them in notified remote/difficult areas of the State. That is a legitimate and rational basis to encourage medical graduates/doctors to offer their services and expertise in remote or difficult areas of the State for some time. Indisputably, there is a wide gap between the demand for basic health care and commensurate medical facilities, because of the inertia amongst young doctors to go to such areas. Thus, giving specified incentive marks (to eligible in-service candidates) is a permissible differentiation whilst determining their merit. It is an objective method of determining their merit.
(Dinesh Singh Chauhan).

The real effect of the proviso to Regulation 9(iv) is to assign specified marks, commensurate with the length of service rendered by the candidate in notified remote and difficult areas in the State, linked to the marks obtained in NEET. That is a procedure prescribed for determining the merit of the candidates for admission to Post-graduate “degree” courses for a single State. This

serves a dual purpose. Firstly, the fresh qualified doctors will be attracted to opt for rural service, as later they would stand a good chance to get admission to Post-graduate "degree" courses of their choice. Secondly, the rural healthcare units run by the public authority would be benefited by doctors willing to work in notified rural or difficult areas in the State. A Regulation, such as this, subserves larger public interest (*Snehelata Patnaik v. State of Orissa*⁹; *Dinesh Singh Chauhan*⁵). The procedure evolved in Regulation 9 in general, and the proviso to clause (IV) of Regulation 9 in particular, is just, proper and reasonable and also fulfils the test of Article 14 of the Constitution, being in larger public interest. (*Dinesh Singh Chauhan*⁵)."

In view of the above finding, the above mentioned contention of the learned senior counsel also cannot be sustained.

11. Coming to the contention advanced by the learned senior counsel that there is a failure on the part of the State Government in defining 'remote and difficult areas' as per clause 9 (iv) of the Medical Council of India Regulations, 2000, the learned Government Pleader contends vehemently that the State Government did such an exercise and in the result brought in amendments to the Andhra Pradesh Medical Colleges (Admission into Post Graduate Medical Courses) Rules, 1997 and notified the same vide G.O.Ms. No.29, Health, Medical and Family Welfare (C1) Department, dated 22.03.2018. It is also the submission of the learned

Government Pleader that the tribal area and rural area, as defined in the said amended provisions, are analogous, equivalent and akin to difficult and remote areas as stipulated in clause 9 (iv) of the Medical Council of India Regulations, 2000. This Court finds sufficient force and rationale in the said submission of the learned Government Pleader that the terms tribal and rural areas are analogous to difficult and remote areas, as mentioned in clause 9 (iv) of the Medical Council of India Regulations, 2000. Whether E.S.I. Hospitals, catering to the medical needs of the persons in the industrial areas adjacent to urban areas, fall under the difficult areas or not, cannot be enquired into by this Court under Article 226 of the Constitution of India. It is ultimately for the legislature to undertake such an exercise. It is also required to be noted that there is no challenge in the present Writ Petition as to the amendments notified vide G.O.Ms. No.29, Health, Medical and Family Welfare (C1) Department, dated 22.03.2018. Having regard to the reasons mentioned supra, this Court does not find any merit in the present Writ Petition, and accordingly, the same is dismissed. No orders as to costs.

Miscellaneous petitions, if any pending, in the Writ
Petition shall stand closed in consequence.

Sd/- K.VENKAI AH
ASSISTANT REGISTRAR

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SECTION OFFICER

One Fair Copy to the Hon'ble Sri Justice A.V.Sesha Sai
(For His Lordships Kind Perusal)

One Fair Copy to the Hon'ble Sri Justice U.Durga Prasad Rao
(For His Lordships Kind Perusal)

To,

1. 9 L.R. Copies.
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4. One CC to Sri K.Ramamohan, Advocate (OPUC)
5. Two CCs to G.P. for Medical and Health, High Court of Andhra Pradesh (OUT)
6. One CC to Sri Taddi Nageswara Rao, SC for NTR University (OPUC)
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PSB

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18/7/2019

DC

RS. 21:00

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HIGH COURT

DATED:01/05/2019

ORDER

WP.No.1889 of 2019

DISMISSING THE W.P.
WITHOUT COSTS

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T.S. 14/6/2019