



HIGH COURT OF ANDHRA PRADESH
TUESDAY ,THE TWENTY THIRD DAY OF APRIL
TWO THOUSAND AND NINETEEN

PRESENT

THE HONOURABLE SRI JUSTICE A V SESA SAI
THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO
WRIT PETITION NO: 4509 OF 2019

Between:

1. C SUNIL KUMAR S/o C. Aswartha Naik, aged 38years,
Occupation- Civil Assistant Surgeon, P.P.Unit,
Government General Hospital, Ananthapuramu

...PETITIONER(S)

AND:

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

...RESPONDENTS

Counsel for the Petitioner(s): K V SIMHADRI

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

The Court made the following: ORDER

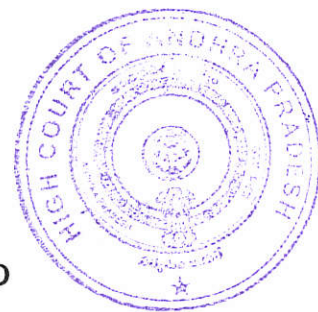


IN THE HIGH COURT OF ANDHRA PRADESH: AT AMARAVATI 2019:APHC:15808
(Special Original Jurisdiction)

TUESDAY, THE TWENTY THIRD DAY OF APRIL
TWO THOUSAND AND NINETEEN

PRESENT

THE HONOURABLE SRI JUSTICE A.V.SESHA SAI
AND
THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO



WRIT PETITION Nos. 4508, 4509 AND 4510 OF 2019

WP No.4508 of 2019

Between:

Gudivada Dani, S/o. Gudivada Apparao, Occ: CAS, R/o.District Hospital, Anakapalli,
Visakhapatnam, A.P

...PETITIONER

AND

1. The State of Andhra Pradesh, Medical, Health and Family Welfare Department, represented by its Principal Secretary, Secretariat, Velagapudi, Guntur.
2. Dr.NTR University of Health Sciences, represented by its Registrar, Gunadala, Vijayawada, A.P.
3. The Medical Council of India, represented by its Secretary, Dwaraka Phase-I, Pocket 14, Sector-8, Dwaraka, New Delhi
4. The Director of Medical Education, Hanumanpeta, Amaravathi, Vijayawada.
5. The Director of Insurance, Medical Services, Kedareswarapeta, 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 considering continuous regular service as defined under G.O.Ms.No.260 Medical, Health and Family Welfare (E2) Department, dated 10-07-1997 issued by the Government of Andhra Pradesh in respect of reservation under Rule 3 (2) of Explanation-1 (c) and Explanation 2 (c) in respect of Andhra Pradesh Insurance Medical Services as illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India as the same was not withdrawn in subsequent G.O.Ms.No.29 Medical, Health and Family Welfare (CI) Department, dated 22-03-2018 and further not issuing Eligibility Service Certificate by the Head of the Department of the respondents to the petitioner for claiming incentive weightage of marks of 6 years continuous regular service as was provided to in-service candidates working in tribal/rural areas.

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 respondents to provide incentive weightage of marks for 6 years continuous



regular service rendered by the petitioners on par with in-service candidate working in tribal/rural areas, pending disposal of the writ petition. 2019:APHC:15808

WP No.4509 of 2019

Between:

C.Sunil Kumar, S/o. Aswartha Naik, Occ: Civil Assistant Surgeon, P.P. Unit, Government General Hospital, Ananthapuramu.

...PETITIONER

AND

1. The State of Andhra Pradesh, Medical, Health and Family Welfare Department, represented by its Principal Secretary, Secretariat, Velagapudi, Guntur.
2. Dr.NTR University of Health Sciences, represented by its Registrar, Gunadala, Vijayawada, A.P.
3. The Medical Council of India, represented by its Secretary, Dwaraka Phase-I, Pocket 14, Sector-8, Dwaraka, New Delhi
4. The Director of Medical Education, Hanumanpeta, Amaravathi, Vijayawada.
5. The Director of Insurance, Medical Services, Kedareswarapeta, 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 considering "continuous regular service" as defined under G.O.Ms.No.260 Medical, Health and Family Welfare (E2) Department, dated 10-07-1997 issued by the Government of Andhra Pradesh in respect of reservation under Rule 3 (2) of Explanation-1 (c) and Explanation 2 (c) in respect of Andhra Pradesh Insurance Medical Services as illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India as the same was not withdrawn in subsequent G.O.Ms.No.29 Medical, Health and Family Welfare (CI) Department, dated 22-03-2018 and further not issuing Eligibility Service Certificate by the Head of the Department of the respondents to the petitioner for claiming incentive weightage of marks of 6 years continuous regular service as was provided to in-service candidates working in tribal/rural areas.

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 respondents to provide incentive weightage of marks for 6 years continuous regular service rendered by the petitioners on par with in-service candidate working in tribal/rural areas, pending disposal of the writ petition.

**WP No.4510 of 2019****Between:**

Yadiki Shaik Mohammed Elias, S/o. Khaja Mohideen, Occ: CAS, ESI Diagnostic Centre, Adoni, Kurnool, R/o.F.No.G3, Sri Homes Apartments, R.No.5, SKD Colony, Adoni-518301, A.P.

...PETITIONER**AND**

1. The State of Andhra Pradesh, Medical, Health and Family Welfare Department, represented by its Principal Secretary, Secretariat, Velagapudi, Guntur.
2. Dr.NTR University of Health Sciences, represented by its Registrar, Gunadala, Vijayawada, A.P.
3. The Medical Council of India, represented by its Secretary, Dwaraka Phase-I, Pocket 14, Sector-8, Dwaraka, New Delhi
4. The Director of Medical Education, Hanumanpeta, Amaravathi, Vijayawada.
5. The Director of Insurance, Medical Services, Kedareswarapeta, 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 considering continuous regular service as defined under G.O.Ms.No.260 Medical, Health and Family Welfare (E2) Department, dated 10-07-1997 issued by the Government of Andhra Pradesh in respect of reservation under Rule 3 (2) of Explanation-1 (c) and Explanation 2 (c) in respect of Andhra Pradesh Insurance Medical Services as illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India as the same was not withdrawn in subsequent G.O.Ms.No.29 Medical, Health and Family Welfare (CI) Department, dated 22-03-2018 and further not issuing Eligibility Service Certificate by the Head of the Department of the respondents to the petitioner for claiming incentive weightage of marks of 6 years continuous regular service as was provided to in-service candidates working in tribal/rural areas.

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 respondents to provide incentive weightage of marks for 6 years continuous regular service rendered by the petitioners on par with in-service candidate working in tribal/rural areas, pending disposal of the writ petition.

Counsel for the Petitioner(in all WPs): M/s. K.V.SIMHADRI**Counsel for the Respondent Nos.1,4 & 5(in all WPs): GP FOR MEDICAL, HEALTH & FAMILY WELFARE****Counsel for Respondent No.2(in all WPs): SRI TADDI NAGESWARA RAO****Counsel for Respondent No.3(in all WPs): SRI S.VIVEK CHANDRA SEKHAR****The Court made the following:**



**THE HON'BLE SRI JUSTICE A.V. SSHA SAI
AND**

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

WRIT PETITION Nos.4508, 4509 & 4510 OF 2019

COMMON ORDER:

(Per Hon'ble Sri Justice A.V.Sesha Sai)

1. In view of the commonality of the issues involved in all these three Writ Petitions, this Court deems it appropriate to dispose of these Writ Petitions by way of this common order.
2. Heard Sri K.V.Simhadri, learned counsel for the petitioners, in all these Writ Petitions, learned Government Pleader for Medical Health and Family Welfare for respondent Nos.1, 4 and 5, Sri Taddi Nageswara Rao, learned counsel for 2nd respondent - University, and Sri S.Vivek Chandra Sekhar, learned counsel for the 3rd respondent.
3. Challenge in these Writ Petitions is to the action of the 1st respondent in not considering the "continuous regular service", as defined under G.O.Ms. No.260, Health, Medical and Family Welfare (E2) Department, dated 10.07.1997, in respect of reservation under Rule 3(2) and Explanations 1(c) and 2(c) and, consequential non-issuance of the eligibility service certificate by the Heads of Departments for claiming incentive weightage of marks of six years continuous regular service.



4. Petitioners herein are Civil Assistant Surgeons working at various places in Andhra Pradesh. Petitioner in Writ Petition No.4508 of 2019 got selected as Civil Assistant Surgeon and joined in service on 11.07.2011, whereas, the petitioner in Writ Petition No.4509 of 2019 got selected on 01.02.2008 and joined in service pursuant to the posting orders, dated 04.02.2008, and the petitioner in Writ Petition No.4510 of 2019 got selected against the said category and joined in service on 31.03.2013. According to the petitioners, all of them have completed six years of continuous regular service and appeared in the NEET-P.G. Entrance Examination 2019-20 conducted on 06.01.2019 and also secured ranks.

5. 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, Health, Medical and Family Welfare (E2) Department, dated 10.07.1997, 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) 'Tribal 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. In the present set of Writ Petitions, the entire controversy revolves round Rule 3 of the said Rules. 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 provisions, which are germane and relevant for the cases on hand, read 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 up to 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 counsel for the petitioners, Sri K.V.Simhadri, is that the petitioners herein are entitled for the benefit of six years 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.



8. A perusal of the above said amendments, in vivid and clear terms, reveals that by way of amendments notified *vide* G.O.Ms. No.29, dated 22.03.2018, six years of “continuous regular service” as provided under clause (c) of Rule 3(2) was deleted by the State Government.
9. 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 the 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).

10. The Division Bench also recorded a categorical finding while answering Point No.4, which reads as follows:



“As similar Rules, providing reservation of seats for doctors in Government service in Post-graduate medical degree courses, have been declared *ultra vires* and void by the Supreme Court in **Sudhir.N⁴** and **Dinesh Singh Chauhan⁵**, it would be wholly inappropriate for us to exercise our discretionary jurisdiction, under Article 226 of the Constitution of India, to direct the respondents to implement the rules notified in G.O.Ms. No.260 dated 10.07.1997 and G.O.Ms. No.27 dated 10.04.2017, or to grant relief to the petitioners contrary to the proviso to Regulation 9(iv) of the 2000 MCI Regulations, and the law declared by the Supreme Court in **Sudhir.N⁴** and **Dinesh Singh Chauhan⁵**, for it is well-settled that a mandamus cannot be issued to violate the law or to act in violation of the law (**University of Allahabad v. Anand Prakash Mishra (Dr.)³²**; **Santosh Kumar Verma v. State of Bihar³³**), and no mandamus would be issued directing the Government to disobey the law (**J&K Public Service Commission v. Dr.Narinder Mohan³⁴**; **State of Bihar v. Ramdeo Yada³⁵**).”

“As the State Governments have amended the Rules to bring them in conformity with the 2000 MCI Regulations, at least in so far as Post-graduate medical degree courses are concerned, we see no reason to direct the State Governments to apply the pre-amended rules, and provide in-service reservation for admission in Post-graduate medical degree courses under the 50% State quota.”

11. Eventually, in the concluding paragraph, the Division Bench held thus:

“We summarise our conclusions as under:

(1) The petitioners are not entitled for reservation, in terms of G.O.Ms.No.260 dated 10.07.1997 and G.O.Ms. No.27 dated 10.04.2017, in



the 50% State quota seats in Post-graduate medical degree courses.

(2) They are only entitled for weightage of marks, in accordance with the proviso to Regulation 9(IV) of the 2000 MCI Regulations, while seeking admission into Post-graduate medical degree courses.

(3) The petitioners are entitled for reservation, in the 50% State quota seats in Post-graduate medical diploma courses, in terms of Regulation 9(VII) of the 2000 MCI Regulations.

(4) The words "a minimum three years of service" in Rule 4(4)(a) of the 2017 Rules, as amended by G.O.Ms.No.21 dated 20.03.2018, are set aside as ultra-vires the proviso to Regulation 9(IV) of the 2000 MCI Regulations. Consequently, the petitioners shall be entitled for the benefit of weightage of marks for the services rendered by them in tribal areas, even if the service rendered by them thereat is for a period less than three years. The incentive weightage marks shall, however, be calculated in terms of Rule 4(4)(a)(ii) of the 2017 Rules, as amended by G.O.Ms. No.21 dated 20.03.2008, at 10% per year of completed regular and continuous service in tribal areas.

(5) In terms of Regulation 9(VII) of the 2000 Regulations, the petitioners shall be entitled for reservation in the 50% State quota seats in Post-graduate diploma courses provided they have rendered a minimum period of at least three years service in tribal areas.

(6) As stipulated in Regulation 9(VII) of the 2000 MCI Regulations, Government doctors, who are admitted to the seats reserved in their favour in Post-graduate medical diploma courses, shall serve for two



more years in tribal areas on completion of their P.G. medical diploma course.

(7) The second limb of Rule 5(v) of the 2017 Rules, as amended by G.O.Ms. No.21 dated 20.03.2018, to the extent it relates to candidates, who did their Post-graduate diploma course before joining Government service, is struck down as irrational and ultra-vires Article 14 of the Constitution of India. Consequently, Government doctors, who have completed their Post-graduate diploma courses before they joined Government service, shall be entitled for deputation for a period of three years in terms of Rule 5(1) and 92) while undergoing Post-graduate medical degree courses.

(8) Such of those petitioners, who do not satisfy the conditions stipulated in Para 4 of the 1974 Order to be treated as a “local candidate”, shall nonetheless be entitled to be considered for admission into Post-graduate medical degree courses, under the 15% unreserved seats, if they fall under any one of the categories stipulated in Para 11 of the G.O.P. No.646 dated 10.07.1979.”

12. The further submission of learned counsel for the petitioners is that G.O.Ms. No.29, dated 22.03.2018, needs to be applied prospectively as the petitioners herein have already completed six years of continuous service and the petitioners herein cannot be non-suited on the said ground. The said contention, in the considered opinion of this Court, cannot sustain having regard to the relevant provisions of law holding the field and in the absence of any challenge as to the validity of the same.



13. Having regard to the reasons assigned supra and the law laid down by the Division Bench of this Court in the above referred common order and the reasons assigned therein, this Court does not find any merit in these Writ Petitions. Accordingly, all the Writ Petitions are dismissed. No order as to costs.

As a sequel, miscellaneous petitions pending, if any, in the Writ Petitions shall stand closed.

Sd/- M.A.SUBHAN
ASSISTANT REGISTRAR

//TRUE COPY//


SECTION OFFICER

One Fair Copy to the Hon'ble SRI JUSTICE A.V.SESHA SAI
(For His Lordship's Kind Perusal)

One Fair Copy to the Hon'ble SRI JUSTICE U.DURGA PRASAD RAO
(For His Lordship's Kind Perusal)

To,

1. 9 L.R. Copies.
2. The Under Secretary, Union of India, Ministry of Law, Justice & Company Affairs, New Delhi.
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6. One CC to SRI S.VIVEK CHANDRA SEKHAR, Advocate [OPUC]
7. Two CCs to the GP for Medical, Health & Family Welfare, High Court of Andhra Pradesh. [OUT]
8. Two C.D. Copies

MRC





2019:APHC:15808

HIGH COURT

DATED:23/04/2019



2019:APHC:15808

18/7/2019

OC

Rs. 21:00

COMMON ORDER

WP.Nos.4508, 4509 & 4510 of 2019

14

DISMISSING ALL WRIT PETITIONS
WITHOUT COSTS

$\frac{22}{F-2}$ 25/6/2019