

MANU/MH/0077/1992

Equivalent Citation: 1992(3)BomCR691, 1994MhLJ59

IN THE HIGH COURT OF BOMBAY

Writ Petn. No. 1486 of 1991

Decided On: 10.06.1992

Appellants: **Dr. Rohidas Marutirao Waghmare**
Vs.

Respondent: **State of Maharashtra and others**

Hon'ble Judges/Coram:

S.V. Manohar and Dr. B.P. Saraf, J.J.

Counsel:

For Appellant/Petitioner/Plaintiff: R.M. Bhagalia, Adv.

For Respondents/Defendant: S.M. Shah, S. Radhakrishnan, Dr. Fariq Patel, R.Z. Marey, S.C. Naidu and C.R. Naidu, Adv.

Case Note:

The petitioner sought admission to a super-speciality course, the admission to which was reserved for in service candidates only - He was not able to provide the certificate of service record as a proof of approval from his employer - It was held that the mere production of the service record was not sufficient to hold the candidate eligible - Hence, the absence of the approval certificate of the employer was not mere technicality and the petitioner could not be treated as in service candidate

ORDER

S.V. Manohar, J.

1. The petitioner in, this writ petition has appeared for the entrance examination for the super speciality course for the year 1990. He sought. admission to the super speciality course in a seat reserved for in service candidates coming, from ESIS/Department of Health Services as the petitioner is employed by the Department of Health Services, tinder a Government Resolution dated 21st August 1990 passed by the Government of Maharashtra, Medical Education and Drugs Department, it is stated that the Government of Maharashtra and the Municipal Corporation of Greater Bombay, are running teaching units and provide medical treatment services in super specialities in the hospitals of the Government of Maharashtra and Municipal Corporation of Greater Bombay. To train doctors already in the services of the State Government Bombay Municipal Corporation and Employees State Insurance Corporation for post graduate education in broad specialities the Government has already provided suitable, reservation for in service candidates vide their Resolution dated 6th January 1990. On the same lines 25% seats in super specialities are to be reserved as under:

"(i) Teachers in Medical Colleges run by Government of Maharashtra. 15%,

(ii) Teachers in Medical Colleges run by Bombay Municipal Corporation. 6%

(iii) Government of Maharashtra Employees in Directorate of Health Services Directorate of Employees' State Insurance Scheme and other services of Government of Maharashtra and Employees of Bombay Municipal Corporation. 6%

The in service candidates will also have to appear in the examination conducted by the Board of Examination for super-specialities. "Seats not filled in category (ii) and (iii) above shall be utilized by filling in with candidates from category (i). Similarly, seats not filled in category (i) shall be utilized by filling in with candidates from category (ii). Even after this, If some seats remain vacant they will be filled in by candidates in category (iii). If the seats are not filled in by candidates from any of the three categories, they will be filled in from candidates from open general competition."

In the light of this Resolution the Super Speciality Examination Board Maharashtra, for the entrance examination of 1990 reserved two seats for in service candidates coming from Employees State Insurance Scheme/department of Health Services for the degree of D.M. in the subjects of Cardiology and Neurology. Similarly for the degree of D.M. three seats were reserved for in service candidates belonging to Directorate of Medical Education & Research. These were Seats in the subjects of Cardiology, Neurology and Gastroenterology.

2. As per the application form which was required to be filled in by the candidates, inservice candidates were required to submit a certificate on or before 22nd December 1990 from either the Directorate of Medical Education & Research or the Director of Health Services or the Director, ESIS Maharashtra or the Deputy Municipal Commissioner, Bombay, as the case may be, to the effect that the candidate is in the service of the concerned institution and fulfils the requirements to be considered as an inservice candidate. The form of the certificate is as follows:

"I certify that Dr. ----- who has applied for the super speciality entrance examination of 1990 conducted by the board is serving in ----- (Name of the Institution) on the post of ----- and fulfils the requirement to be considered as in service candidate."

3. The petitioner did not submit the certificate in the required form on or before 22nd December 1990. He, however, submitted a certificate dated 26th November 1990 from the Director of Health Services, Bombay, giving details of his service. The 3rd respondent herein wrote a letter dated 24th November 1990 to the concerned authorities requesting them to issue the necessary certificates to candidates who fulfil the criteria as in service candidates as per rules existing in their departments. No reply was, however, received from respondent No. 4. The date for submitting the certificate expired on 22nd December 1990. However, on 19th January 1991 the 3rd respondent received the service record of the petitioner from the 4th respondent without any certificate or recommendation of respondent No. 4. Finally to help all in service candidates the 3rd respondent called a meeting of all the concerned authorities viz., the Director of Health Services, the Director of Medical Education & Research, the Commissioner of Bombay Municipal Corporation and the Director of the Employees State Insurance Scheme to take a final decision in the matter as to who should be considered as an in service candidate for giving admission to the super speciality course. In this meeting also the 4th respondent did not remain present.

One more effort was made requesting the Director of Health Services for approval of names of in service candidates working under his authority but this approval was not given. In these circumstances the petitioner was not considered as an in service candidate employed by the Department of Health Services entitled to a reserved seat in that category. Therefore, he has not been selected for the super speciality course. According to the petitioner as he was in fact in the employment of the Director of Health Services he was entitled to be treated as an in service candidate and should have been given a seat reserved for that category. He has further submitted that his service record was before the super speciality board which would indicate that he was in the employment of the Director of Health Services. Hence furnishing of a prescribed certificate in this connection was a mere technicality and he should not have been deprived of the reserved seat.

4 . Both these contentions are without merit. For an in service candidate it is necessary that he should obtain the permission and approval of his employer for going in for a super speciality course. Merely producing the service record will not indicate whether the employer has given to the candidate permission to pursue studies in a super speciality. In the present case two affidavits have been filed on behalf of the Director of Health Services. The 1st affidavit was filed by P.W. Dhage, Administrative Officer, Director of Health Services, for opposing admission. This affidavit is dated 11th June 1991. In this affidavit it is stated that the Director of Health Services has framed a scheme as also Rules and Regulations for deputing in service candidates for post graduate studies. As per this scheme and the relevant rules applications were invited from all Medical Officers by issuing a circular and thus all the Medical Officers were offered equal opportunity for applying for the post graduate studies and for selection. However, till late 1990 no seats were reserved for Medical Officers under the Directorate of Health Services for super speciality courses. Hence the Directorate of Health Services had not framed any scheme or rules on the subject. In these circumstances the Directorate of Health Services was not able to elicit applications from Medical Officers working under it for being recommended to any super speciality course. Respondent No. 4, therefore, did not recommend the name of the petitioner as an in service candidate for the super speciality course. The 2nd affidavit which is dated 20th April 1992 has been filed by Dr. Laxmikant Hanuman Mishra, Joint Director of Health Services, Bombay. He has stated that in addition to what has been pointed out in the affidavit of Mr. P.W. Dhage at the time of admission, he would like to offer certain clarifications to explain the stand taken by the 4th respondent in not granting the necessary certificate to the petitioner. He has pointed out that a candidate who wants to avail himself of the benefit of a reservation as an in service candidate must obtain prior permission of the 4th respondent for appearing in the super speciality entrance examination. This was not done by the petitioner. He has also stated that in order to decide whether the 4th respondent should sponsor any candidate for a super speciality course, it is necessary to consider the needs of the Directorate of Health Services with regard to the particular specialisation because sponsoring a candidate as an in service candidate requires spending a substantial amount on the candidate. The department is required to pay the salary of the candidate for two years. Hence any candidate cannot, as a matter of right, appear for the examination and compel the board to give permission. As per this affidavit the Government of Maharashtra did not feel it necessary to have the services of super specialists in particular subjects under the Directorate of Health Services. Bearing in mind this aspect, as also that an opportunity was not given to all other medical officers working under respondent No. 4 to apply for super speciality courses as in service candidates, respondent No. 4 did not grant a certificate to the petitioner.

5. These affidavits make it quite clear that respondent No. 4 had not granted permission to the petitioner to apply for a super speciality course as an in service candidate. The absence of a certificate in the present case, therefore, is not a mere technicality. The petitioner, there-fore, cannot be treated as an in service candidate. It was of course open to him to compete in the general category. But it is an accepted position that the petitioner did not score high marks for being selected in the general category.

6. We are not examining at this stage the merits or demerits of the reasons put forth by respondent No. 4 for not granting the necessary approval to the petitioner. This is because the petitioner, although he has extensively amended the petition, has at no stage challenged the decision taken by respondent No. 4 not to grant approval to the petitioner. It is, however, surprising that when respondent No. 4 has categorically stated that his department does not require any super specialities, the Government resolution should have reserved 6% of the seats for employees of the 4th respondent along with employees in the Directorate of the Employees' State Insurance Scheme and other services of the Government of Maharashtra and Employees of the Bombay Municipal Corporation. Be that as it may, we do not find any merit in the contention of the petitioner that even without his producing a certificate as required he should have been considered as an in service candidate.

7. Our attention has been drawn by Mr. Bhagalia, learned advocate for the petitioner to a decision of the Supreme Court in the case of Charles K. Skaria v. Dr. C. Mathew AIR 1980 SC 1230. In that case the candidates who had, inter alia, obtained a diploma were entitled to certain additional marks. In the case before the Supreme Court the candidates furnished the diploma certificates after the relevant date but before selection. The Supreme Court said that the material fact which secured 10 additional marks was the holding of a diploma. The diploma should have been obtained before the prescribed date. Proof of having obtained a diploma is different from the factum of having got it. Even if the proof is furnished later additional marks should have been granted to the candidates. This case has no relevance to the present case since the essential requisite for being treated as an in service candidate is the factum of approval from the employer who has to sponsor the in service candidates. This sponsorship is lacking in the present case. Similarly the decision in the case of Manjit Kaur v. State of Punjab, MANU/SC/0661/1987 : (1987)ILLJ354SC also has no relevance for the same reasons. The learned advocate for the petitioner also cited a Full Bench decision of the Madhya Pradesh High Court in Dr. (Mrs.) Kirti Deshmankar v. Union, of India, MANU/MP/0073/1990 : AIR1990MP357 . In that case all foreign students were required to obtain a No Objection Certificate as set out there. The court said that producing a 'No Objection' or 'Clearance' Certificate with an application form could not be considered as a condition precedent to being eligible for selection because such a certificate was neither a qualification nor a pre-condition. It was a requirement which had to be complied with before admission. In the present case a certificate of sponsorship or approval of the employer is a necessary requirement for being considered as an in service candidate. Hence the ratio of this decision has no application.

8. The petitioner has also urged that he was in fact selected as an in service candidate belonging to the Department of Health Services at an interview held on 23-3-1991. But on account of certain events which took place on that date as set out in the petition he was deprived of his seat. We need not examine this contention. Respondents Nos. 1 to 4 are denying that the petitioner was selected on 23-3-1991. There is no material before us to show that the petitioner was in fact selected on 23-

3-1991. In any event in the absence of any approval of respondent No. 4, the petitioner could not have been selected as an in service candidate. The allegations of the petitioner against respondents Nos. 6, 7 and 8 do not merit any consideration because the petitioner himself was not eligible for being considered as an in service candidate. The question, therefore, of has being deprived of any seat by respondents Nos. 6, 7 and 8 does not arise. We note, however, that respondent No. 6 who is present in person before us, has pointed out that he has been selected as an in service candidate to a seat reserved for employees of the Directorate of Medical Education and Research and that he has not occupied any seat which was originally reserved for the Department of Health Services.

9. In the premises the present writ petition is dismissed. There will be no order as to costs.

10. Certified copy to be issued expeditiously.

Petition dismissed.

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