

SUPREME COURT OF INDIA

Rahi Dutta

Vs.

The Commissioner

C.A.No.6028 of 2014

(Fakkir Mohamed Ibrahim Kalifulla and Shiva Kirti Singh JJ.)

07.07.2014

ORDER

1. Leave granted. We have heard Learned Counsel for the Appellants and Respondents.

2. To briefly narrate the facts, the Appellants served in a project 'National Rural Health Mission' with the State of Assam as contractual doctors. Indisputably, they had gained experience of five years of service. In the National Rural Health Mission for the academic year 2013-2014, when they staked their claim for admission to Post Graduate Courses of Surgery and Gynaecology, they were not considered under the in-service quota under the Government of Assam Medical Colleges (Regulation of Admission to Post Graduate Courses) (Amendment) Rules, 2012 which necessitated the Appellants to approach the High Court of Gauhati in Writ Petition No. 4105 of 2013. A categoric stand was taken by the learned Additional Advocate General before the High Court that service under the National Rural Health Mission can also be counted as rural service and thereby the Appellants satisfied the required qualifications for the Post Graduate seats under the State Health Quota. He further stated that the State was prepared to re-examine the matter at the Government level if the Appellants make their representations immediately.

3. The High Court while recording the stand of the State in its order dated 30th July, 2013 directed the Appellants to make their representations by 31st July, 2013. Their representations were considered and an order was also passed by the

Department of Health and Family Welfare and direction was issued to the Director of Medical Education in the communications dated 7th August, 2013 and 13th August, 2013 making it abundantly clear that the Appellants are to be accommodated either in the State Health Quota as per the procedure duly intimating to the Department as their service in National Rural Health Mission is to be treated as rural service.

4. However, when the above direction did not fructify into the admissions to the concerned branches though the names of the Appellants were shown at S. Nos. 1 and 2 in the Merit List along with the communication of the Health Department dated 28th August, 2013, the Appellants moved the High Court by way of a contempt petition. A review was also moved at the instance of the State once again taking the stand that the Appellants were not in regular service and were only in contractual employment and therefore, the National Rural Health Mission service of five years cannot be equated to that of a rural service put in by the eligible candidates. The High Court by the impugned order having countenanced the said stance of the State and held that contractual doctors under the National Rural Health Mission cannot be equated with that of the State Health Service candidates, the earlier direction issued for accommodating the Appellants under the State service quota cannot be upheld. The claim was also rejected on the ground that the cut off date for Post Graduate admissions had also expired by 31st August, 2013.

5. In the course of the submissions, the relevant Rule under Assam Medical Colleges (Regulation of Admission to Post Graduate Courses) (Amendment) Rules, 2012 was brought to our notice. For the purpose of this case, the said Rule is extracted herein below:

"(i) 23 (twenty three) seats (6 in Degree and 17 in Diploma) shall be reserved in each session for the doctors appointed in the State Health Services on regular basis on the recommendation of the Commission and who have completed five years or more service in rural areas. However, for counting the experience of 5(five) years of service in rural areas, period of working under Regulation 3(f) of the Assam Public Service Commission (Limitation and Functions) Regulation, 1951 or service under any Society/Agency created by the State Government or National Rural Health

Mission shall also be counted. The applicant must complete the required period of service in rural areas on or before 31st May of the year of admission and a certificate to this effect shall be submitted in the format at Appendix-III along the application form for Post Graduate Entrance Examination."

6. The controversy raised in this appeal by way of special leave centers around the interpretation of the said Rule. Neither in the first order of the High Court dated 30th July, 2013 nor in the contempt order passed by the learned Single Judge dated 20th September, 2013 or in the order impugned herein we do not find any detailed reference or discussion about the application of the said Rule to the case of the Appellants. The sum and substance of the stand of the Learned Counsel for the State is that the said Rule consists of two paras, that in the first instance, the applicant in order to be eligible to claim under the Rural Service Quota of the State should satisfy the requirement of a substantive appointment in the State Health Service on regular basis based on the recommendation of the Service Commission and that thereafter for the purpose of counting Rural Service experience of five years even the service put in by the concerned applicant in the National Rural Health Mission can be taken into account.

7. Ms. Meenakshi Arora, learned senior counsel appearing for the Appellants would, however, contend that the satisfaction of either of the conditions would be sufficient to enable a candidate to claim for admission for Post Graduate Course under the Rural Service Quota of the State.

8. Having bestowed our serious consideration to the above referred Rule, we find from the above referred to Rule, in the foremost, the reservation of 23 seats in each session is for the doctors appointed in the State Health Service on regular basis on the recommendation of the Commission. In other words, the first and foremost requirement to be satisfied in order to claim eligibility for admission under the above referred to Rule, a candidate must be a doctor in the service of the State and that too based on the recommendation of the Public Service Commission. In the event of the said condition being satisfied then for the purpose of counting five years of experience in the rural areas, it is provided that apart from service under various other categories, the service under the National Rural Health Mission can

also be counted. A reading of the above Rule can only result in the above said interpretation and cannot be interpreted in any other manner.

9. Inasmuch as we find that the Appellants failed to satisfy the main requirement of appointment under the State Health Service on regular basis based on the recommendation of the Commission, their service with the National Rural Health Mission for a period of five years will be of no consequence for the purpose of applying the said Rule. The reliance placed upon the communication of the State dated 1st August, 2013 and 7th August, 2013 as well as the ultimate order passed on 28th August, 2013 by the Family Welfare Department of the State will also be of no assistance to the Appellants. There cannot be an estoppel against the statutory provision. When the Rule relating to admission for the in service candidates is clear to the effect stated above, the reliance placed upon the above circumstances will be no help to the Appellants.

10. In the light of the said conclusion of ours, we are not in a position to interfere with the order impugned for reasons we have adduced in this judgment. As a consequence, interim relief granted by this Court on 28th March, 2014 stands vacated. This appeal, therefore, stands dismissed.