

IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

DATED THIS THE 30TH DAY OF APRIL, 2015

PRESENT

THE HON'BLE MR.JUSTICE B.S.PATIL

AND

THE HON'BLE MR.JUSTICE P.S.DINESH KUMAR

W.P. NO.103761/2014 (EDN-AD)

BETWEEN

VENKATESH RATHOD
S/O. HOOBAPPA RATHOD

AGE: 28 YEARS, PRESENTLY WORKING AS
MEDICAL OFFICER, PRIMARY HEALTH CENTRE,
KANAVI GADAG TALUK. DIST: GADAG

R/O. AT POST: ATTIKATTI
TO: MUNDARAGI, DIST: GADAG

... PETITIONER

(BY SRI. J S SHETTY, ADV.)

AND

1. THE STATE OF KARNATAKA
BY ITS SECRETARY
DEPARTMENT OF HEALTH AND
FAMILY WELFARE (MEDICAL EDUCATION)
VIKASA SOUDHA, BANGALORE
2. THE COMMISSIONER
DEPARTMENT OF HEALTH AND FAMILY WELFARE
ANAND RAO CIRCLE, BANGALORE
3. THE UNDER SECRETARY
TO GOVERNMENT
DEPARTMENT OF HEALTH AND FAMILY WELFARE
(MEDICAL EDUCATION)

VIKASA SOUDHA, BANGALORE

4. THE DIRECTOR OF
HEALTH AND FAMILY WELFARE
MEDICAL EDUCATION DEPARTMENT
DIRECTORATE OF HEALTH AND
FAMILY WELFARE SERVICES,
ANAND RAO CIRCLE, BANGALORE
5. DISTRICT HEALTH OFFICER
GADAG DISTRICT, GADAG
6. EXECUTIVE DIRECTOR
KARNATAKA EXAMINATIONS AUTHORITY,
PGET-2014 (MEDICAL) SAMPIGE ROAD
18TH CROSS, MALLESHWARAM,
BANGALORE 560012
7. NATIONAL BOARD OF EXAMINATIONS
ANSARI NAGAR, RING ROAD,
NEW DELHI 110029,
BY ITS EXECUTIVE DIRECTOR
8. THE RAJIV GANDHI UNIVERSITY OF
HEALTH SCIENCES
4TH BLOCK, JAYANAGAR,
BANGALORE, BY ITS REGISTRAR
9. UNION OF INDIA
R/BY ITS SECRETARY
DEPARTMENT OF LABOUR AND
EMPLOYMENT (MEDICAL EDUCATION)
NEW DELHI 110002

(BY SMT. VEEN HEGDE, HCGP FOR R1 TO R6,
SRI. SHIVAKUMAR S. BADAWADAGI, ADV. FOR R8,
SRI. P.N.HOSAMANI, ADV. FOR R9,
R7 – SERVICE HELD SUFFICIENT)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE SECOND RESPONDENT TO INCLUDE THE NAME OF THE PETITIONER AS THE IN-SERVICE CANDIDATE FOR ADMISSION

TO PGET 2014 MEDICAL ADMISSION SESSION, BY CONSIDERING THE REPRESENTATION DATED 04.03.2014 MADE BY THE PETITIONER, THE COPY OF WHICH HAS BEEN PRODUCED HEREWITH AT ANNEXURE-A AND FURTHER DIRECTING THE RESPONDENTS TO ALLOW THE PETITIONER TO PARTICIPATE IN THE COUNSELING AS IN-SERVICE CANDIDATE, BY CONSIDERING THE APPLICATION ALREADY FILED BY THE PETITIONER AND THE MARKS OBTAINED BY HIM IN ADMISSION TEST CONDUCTED BY THE SEVENTH RESPONDENT, BY GRANTING ALL THE BENEFITS AVAILABLE TO "IN SERVICE CANDIDATE" S.

THIS WRIT PETITION BEING HEARD AND RESERVED FOR JUDGMENT, THIS DAY COMING ON FOR PRONOUNCEMENT OF JUDGMENT, **P.S.DINESH KUMAR J.**, MADE THE FOLLOWING:

ORDER

Petitioner, a Doctor with MBBS qualification desirous of pursuing his post graduation has preferred this writ petition, *inter alia* with a prayer for a writ of mandamus to the respondents to consider his representation dated 04.03.2014 for admission to the post graduate course as an "in service candidate".

2. Pleadings in the writ petition disclose that petitioner after obtaining a degree in MBBS in 2009 was appointed as a Medical Officer with the State Government. He began his service on 17.09.2010 from the Primary Health Centre, Kanavi, Gadag District. As per extant rules, an "in

service candidate" desirous of pursuing his higher studies was required to complete three years of service. By a notification dated 23.11.2013 amending Sub Rule (2) of Rule 3 and clause (a) of Sub Rule 1 of the Rule 10 of Karnataka Conduct of Entrance Test for Selection and Admission to Post Graduate Medical and Dental Degree and Diploma course Rules 2006 ("2006 Rules" for short) the eligibility criteria to apply for post graduation course was increased from three years to five years. The petitioner having realised that he was rendered ineligible for consideration of his candidature for post graduation course pursuant to amendment applied for a seat as a private candidate without reference to his service in the State Government. In the meanwhile, similarly situated doctors challenged the 2006 Rules in W.P. Nos.845-846/2014 and connected petitions before the Principal Bench of this Court and vide order dated 29.01.2014, this Court granted an interim order of stay of the said Rules and directed petitioners therein to submit online application on or before 30.01.2014 for the academic year 2014-15. So far as the petitioner is concerned, his application having been filed as a private

candidate was considered in the general quota and he was permitted to appear for the examination, wherein he secured 3051st rank.

3. Subsequent thereto, the petitioner having learnt about the interim order passed by the Principal Bench staying the operation of the 2006 Rules, submitted a representation on 04.03.2014 to consider his case as an “in service candidate” and to allow him to participate in the admission process. Thereafter, he filed this writ petition *inter alia* praying for a writ of mandamus directing the 2nd respondent to include his name as an “in service candidate” for admission to PGET 2014 Medical Admission Counselling Session by considering his representation dated 04.03.2014.

4. We have heard Shri J.S.Shetty, learned counsel for the petitioner and Smt. Veena Hegde, Shri Shivakumar S. Badawadagi and Shri P.N.Hosamani, learned Counsel for the respondents.

5. Learned counsel for the petitioner vehemently submits that he was compelled to submit an application as a

private candidate, though he was in government service pursuant to notification dated 23.11.2013, amending the qualifying service for application as an “in service candidate” from three years to five years. Subsequently, the said amendment having been stayed by the Principal Bench of this Court, the respondent – Authorities are duty bound to consider his representation and treat him as an “in service candidate”.

6. Per contra, learned HCGP submits that admittedly petitioner is a Doctor, working under the State Government. He has consciously applied as a private candidate. The Principal Bench of this Court vide order dated 29.01.2014 had extended the time to submit online application till 30.01.2014 which is not been availed of by the petitioner. In the circumstances, petitioner is not entitled for any reliefs prayed for.

7. We have given our anxious consideration to the submissions made on behalf of parties and perused the records.

8. The short question that arises for our consideration in this case is:

“Whether or not the petitioner who did not avail of the benefit of interim order dated 29.01.2014 is entitled for consideration of his representation submitted to the respondents?”

9. The facts in this case are not in dispute and fall within a narrow compass. Admittedly, petitioner is a Doctor in government service. By the notification dated 23.11.2013, the State Government increased the qualifying service to apply for a post graduation seat for “in service candidates” from three years to five years. Without challenging the said notification, the petitioner submitted his application as a general candidate. The Principal Bench of this Court in Writ Petitions filed by similarly situated Government Doctors stayed the operation of the notification dated 23.11.2013 and permitted them to submit e-application on or before 30.01.2014. The petitioner was not diligent and did not take the benefit of the interim order passed by this Court. On the other hand, he submitted a representation to the respondents on 04.03.2014 requesting them to allow him to participate in

the admission process and grant the benefit of "in service candidate". In order to compel the respondents to consider his application, the petitioner got filed this writ petition. This Court by interim order dated 24.03.2014 directed the respondents to consider his case as "in service candidate". Pursuant thereto, the petitioner was permitted to participate in the process of selection. However, in the merit list prepared by the respondent, the petitioner was not successful in getting a seat. Upon another I.A. filed by the petitioner, this Court vide order dated 30.04.2014 directed the respondents to permit the petitioner to appear in the ensuing counselling scheduled on 05.05.2014. It is the claim of the petitioner that though he was found eligible for a seat in general medicine in KIMS Hospital, his name was not published. By order dated 02.07.2014, this Court directed the respondents to provide admission to the petitioner subject to production of documents and payment of fees. However, according to the petitioner, despite the interim order dated 02.07.2014 the respondents did not allot the seat in M.D. (G.M.Medicine) but allotted a seat in MD (Skin) in Bangalore Medical College on

07.07.2014 and the petitioner got himself admitted in the College. The grievance of the petitioner is that though he has finally secured a seat in MD (Skin), the respondent – State did not relieve him from duties enabling him to pursue his career. The petitioner filed I.A.No.6/2014 on 25.08.2014 praying for a direction to relieve him on deputation to pursue his post graduation. However, no orders were passed in the said application. Finally on 11.09.2014, the respondent – State communicated that the petitioner was not entitled to be relieved from duties, as he has not completed five years of service. The petitioner challenged the said order in W.P.No.109027/2014.

10. In nutshell, the case of the petitioner is that he has finally obtained a seat in M.D.(Skin) but respondent – State have not relieved him from duties.

11. There is a classic difference between a private candidate who desires to pursue his career plan and a candidate who is in government service desires of pursuing higher studies. A private candidate is free to plan his

academic career and to pursue the same as per his free will. Whereas, in the case of an in service candidate, it shall be the prerogative of the employer State to permit or otherwise the Doctors in service to take up higher studies. This is because the State Government is enjoined with the duty under the directive principles of State to ensure proper health care to all citizens. It is for the employer – State to decide the number of Doctors required in different specialties. The respondent – State while permitting an in service Doctor to pursue his post graduate course, grants him study leave, salary and maintains him on the roll of State Government employees with protection of pay and seniority. These are special privileges made available to an “in service candidates” and therefore, the State Government is well within its right to control its employees as per its policy. In the instant case, the petitioner who is in service under the State Government applied as a private candidate on his own volition. Without pursuing that course to its logical end having secured 3051st rank he got filed this writ petition to compel the State Government to consider his candidature under the ‘in service

quota'. Though this Court by an interim order had permitted similar candidates to file e-application on or before 30.01.2014, the petitioner did not avail of the said opportunity. On the other hand, he filed repeated interlocutory applications initially to consider his case as "in service candidate" followed with a prayer to direct the respondents to provide him a seat in General Medicine in KIMS Bangalore. Subsequently, with another application seeking the respondents to relieve him from duties, as he was successful in getting a seat in MD (Skin). Thus, the petitioner has used this Court to somehow to achieve his goal of getting a post graduate course by imposing his candidature upon the respondents.

12. It was open to the petitioner to either seek admission as a general/private candidate or challenge the notification dated 23.11.2013 and seek redressal from this Court. In the list, he ought to have fallen in line with similarly situated candidates who availed the benefit of interim order dated 29.01.2014 from the Principal Bench of this Court and submitted e-application. He has done neither. On the other

hand, he has flooded this writ petition with one after the other interlocutory applications and obtained various orders which resulted in petitioner being considered for a seat in MD (Skin) in Bangalore Medical College.

13. It is relevant to note the structure of the State Government and its functions. If one department controls the admission process, the service conditions of personnel under the State Government is controlled by a different department. Although they are all limbs of the Government, in view of enormous quantum of files that the State Government deals with, it is practically impossible to co-ordinate intra department on a day today basis. We are also conscious of the fact that the State Government spends enormous amount of money on the health care and it is most desirable that meritorious Doctors must be provided with opportunities for higher studies and training which should ultimately benefit the citizen of this State. Though the petitioner in his anxiety to obtain a seat in post graduation may have initially filed an application as a private candidate did not choose to take a definite stand. He was oscillating between his status as a

private candidate and as an “in service candidate”. At this juncture, if the State Government has rejected the request of the petitioner to relieve him from duties, no exception can be taken to in the said stand. It is for the employer to decide whom to permit and whom not to permit. Having not availed of the benefit of the interim order permitting similarly situated candidates to file an e-application, the petitioner is not entitled for a seat in post graduation through the mode adopted by him. The conduct of the petitioner in this case has been an attempt to arm twist State Government by availing proceedings of this Court. This is wholly reprehensible. In our considered view, the petitioner does not have any intrinsic right to enforce against the respondent – State. He has sought to impose himself on the State Government to pursue his ostensible right and in the result has created chaos. We are of the clear opinion that there is no error on the part of the State Government in refusing to relieve the petitioner from duty enabling him to join the post graduate course which he claims to have obtained in the manner discussed above.

14. For the foregoing reasons, we hold that the writ petition is devoid of merit and is accordingly dismissed. Ordered accordingly. No costs.

15. Before pronouncing the order, learned counsel for the petitioner submits that original certificates are in the custody of the Karnataka Examinations Authority(6th respondent) and prays for a direction to the said authority to return the same. The petitioner may make an appropriate application for return of his documents. If such an application is made, 6th respondent is directed to return all the original documents forthwith to the petitioner.

16. Learned counsel further submits that once an in-service candidate applies for a seat in post graduation, there is a bar to apply again for a period of three years. Hence, he prays for appropriate direction in this behalf.

17. In this case, we have considered the petitioner as a private/a general candidate and not as an in-service candidate.

18. In that view of the matter, after hearing the counsel for the petitioner and the learned Government Advocate, we hold that dismissal of this writ petition shall not come in the way of the petitioner submitting his application for the ensuing years.

Ordered accordingly.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

Vnp/Rsh/kmv