

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 354/2020 (D.B.)

Dr. Prashant S/o Pralhad Meshram,
Aged 40 yrs. Occ. Service,
R/o Gujrati Colony, Vidya Nagar,
Bhandara.

Applicant.

Versus

- 1) State of Maharashtra,
through its Principal Secretary,
Public Health Department,
10th floor G.T. Hospital Complex Building,
New Mantralaya, Mumbai-400 001.
- 2) Director,
Public Health Department,
Aryogya Bhawan St. Georges Hospital Compound,
C.S.T., Mumbai-01
- 3) Deputy Director of Health Services,
Nagpur Region, Mata Kacheri Compound,
Sraddhanand Peth, Nagpur-440 022.
- 4) Civil Surgeon,
General Hospital, Bhandara.

Respondents.

Shri N.D. Thombre, Advocate for the applicant.

Shri A.P. Potnis, P.O. for respondents.

**Coram :- Shri Shree Bhagwan,
Vice-Chairman and
Shri Anand Karanjkar, Member (J).**

Dated :- 16th October, 2020.

JUDGMENT

Per : Anand Karanjkar : Member (J).

Heard Shri N.D. Thombre, learned counsel for the applicant and Shri A.P. Potnis, learned P.O. for the respondents.

2. This application is filed for quashing the letter dated 7/7/2020 and for directing the respondent no.3 to forward the proposal of the applicant to the respondent no.2 and direct to consider the candidature of the applicant for NEET-PG 2020. The facts in brief are as under –

3. The applicant was appointed as Medical Officer on ad-hoc basis on 4/2/2010. Thereafter vide Government G.R. dated 6/5/2015 the applicant was regularised as Medical Officer in the Government service. The applicant applied to appear in NEET-PG examination and cleared the same. The applicant had submitted his application to appear in the examination, through the respondent no.4 the Civil Surgeon, Bhandara to the respondent no.3 the Deputy Director of Health Services, Nagpur Region. The respondent no.4 forwarded the application to the respondent no.3 with recommendation and also informed that there was no departmental inquiry pending against the applicant. The respondent no.3 thereafter forwarded the application of the applicant to the respondent no.2 and respondent no.2 returned the application form for the reason that for appearing in the examination

the applicant did not seek permission of the Deputy Director Health Services and therefore the applicant could not be considered for the deputation to the course.

4. It is contention of the applicant that he was not aware of the G.R. dated 19/3/2019. It is submitted that the applicant for the first time learnt that it was necessary for him to seek permission of the Deputy Director of Health Services for appearing in the examination. It is contention of the applicant that the letter dated 18/10/2019 was written by the respondent no.3 to all the Civil Surgeons, District Health Officers, Medical Superintendents etc. and it was informed that the copy of the Government G.R. be forwarded to the Medical Officers, Group-A. It is submitted that the Civil Surgeon, Bhandara did not comply this formality and therefore the applicant was not fault.

5. The second contention of the applicant is that the respondent no.2 had prepared the select list and in that select list names of Dr. Kalpesh Bhoje, Dr. Pritishkumar Jaiswal, Dr. Nikhil Punde, Dr. Samadhan Raut and Dr. Navnath Kamble are included. It is submission of the applicant that all the above named Medical Officers did not take prior sanction to appear in the NEET-PG examination, but they are considered suitable and their names are entered in the select list. According to the applicant, this procedure followed by the respondents is illegal as the applicant is also standing

on the same footing, therefore, miscarriage of justice is caused by not selecting the applicant though he scored more marks in the examination.

6. In the present matter, the applicant has also filed the rejoinder and in the rejoinder contention is raised by the applicant that now the respondents are coming with a case that disciplinary proceeding is pending against the applicant and therefore the applicant was not eligible to appear in the examination.

7. It is submission of the learned counsel for the applicant that the procedure followed by the respondents is illegal, the respondents were bound to decide and complete the inquiry against the applicant within one year at the outer limit, but it is not done and therefore, now the respondents have no right to initiate the disciplinary inquiry against the applicant. It is submitted that till today the matter is under consideration of the respondents and no decision is taken to serve the charge sheet on the applicant. On the basis of this ground, it is submitted that direction be given to the respondents to include the name of the applicant in the select list for the P.G. course.

8. It is contention of the learned P.O. that the provisions of the G.R. dated 19/3/2019 were mandatory. Our attention is invited to Clause 4.1 of the G.R. which is as under -

“4.1 i dsk ifj {kl (NEET-PG) cl .; kl l a/kr mi l pkyd] vkjkk; l ok] ifjeMG ; kph ys[kh ijokuxh ?ksksvfuoł; vkgs r l p i dsk ifj {kyk (NEET-PG) cl .; kl kBh mi l pkyd kph ijokuxh u ?krk Flk/ vtZ dj.; k&; k l ok x r oSkdh; vf/kdk&; kauk in0; q rj vH; kl dækl kBh dk; æDr dsys tk.kkj ukgh**-

The learned P.O. has also invited our attention to Clause no.4.5 which is as under -

“4.5 oSkdh; vf/kdkjh ; kauh e[; ky; h jkgu l ok nsksvko’; d vkgs oSkdh; vf/kdkjh ; k&; k vui fLFrheGsxkkhj vktkjh #X.kkoj mi pkj >kysukghr] ‘kofoPNnu >kysukgh v’ kh , dgh ?kVuk ; k dkyko/khe/; s >kysy h vl wu; j v’ kh ?kVuk ?kMysy h vl Y; kl o ikFkfed pksd’ khe/; s r l s fl /n >kY; kl] r l p l a/kr vf/kdk&; kfo#/n foHkkxh; pksd’ kh vkns khr >kY; kl] iyfcr vl Y; kl r l p vU; dkj .kkp; k vuitakusoSkdh; vf/kdk&; kfo#/n foHkkxh; pksd’ kh vFlok QkSt nkjh izdj .k iyfcr@ l # vl Y; kl R; kl (NEET-PG) i dsk ifj {kl cl .; kl vik= l et.; kl ; bly**-

9. On the basis of Clause no. 4.1, it is submitted that it was essential condition to obtain prior permission of the Deputy Director of Health Services for appearing in the NEET-PG examination and it was cleared in the G.R. that who did not seek such permission and appears in the examination, would not be relieved for the P.G. study. So far as contention of the applicant that five Medical Officers who did not seek prior permission to appear in the examination, but selected in the final list is concerned, the learned P.O. has submitted that there was a Meeting held by the Hon’ble Health Minister on 23/9/2020 and

in that Meeting decision was taken to give ex-post-facto permission to appear in the examination. It is submitted that as there was no disciplinary inquiry pending against these five Medical Officers, therefore, their names are included in the final selection list and as there was disciplinary inquiry was pending before the Disciplinary Authority, therefore, the applicant was not included in the final select list. Thus the respondents have justified their action.

10. The first material point is whether the Hon'ble Minister can take unilateral decision in the Meeting and dilute the provision in the G.R. It is settled legal position that the G.R. has a status of law and if any amendment or alternation is to be made in the G.R., then it is necessary to issue later G.R. to remove the defect. In our view the Hon'ble Minister had no authority in law to relax the condition no.4.1 in the G.R. that condition is mandatory and it is specifically mentioned in the condition that if any candidate appears in the examination without seeking permission, then he would not be relieved for the post. Under these circumstances, the decision taken by the Hon'ble Minister in the Meeting held on 23/9/2020 is apparently causing substantive damage to clause no.4.1 of the G.R. and the Hon'ble Minister had no authority in law to do so. We are therefore, of the view that the selection of the Medical Officers after giving ex-post-facto sanction is illegal, it cannot be sustained. The legal position is settled that if relief is granted to

some other persons in violation of the G.R. or law, such act is not binding on the judicial authority. The judicial authority cannot condone the illegal act. We are therefore, of the view that the respondents have committed the illegality in including the names of Dr. Kalpesh Bhoje, Dr. Pritishkumar Jaiswal, Dr. Nikhil Punde, Dr. Samadhan Raut and Dr. Navnath Kamble in the final select list. In view of this discussion, we are of the firmed view that the clause no.4.1 of the G.R. was mandatory and no relief can be granted to the applicant on this basis.

11. The applicant is highly placing reliance on the letter dated 18/10/2019 written by the Deputy Director of Health Services, Nagpur to the Civil Surgeon, Bhandara. It is submitted by the applicant that in this letter there was a direction to send the copy of the G.R. to all Group-A Medical Officers and the respondent no.4 did not comply this direction, therefore, the applicant was not at fault. In this regard, we are of the view that the principle is that ignorance of law is no excuse, no person can raise a defence that he was not aware of the Govt. G.R. and therefore, he had done some act or some omission. Secondly, if any direction is issued by the officer of Government which is not in the G.R. then, it will not bind the Government. After reading the G.R. dated 19/3/2019, it seems that in the said G.R. there was no direction to circulate the same to all Group-A Medical Officers in the State of Maharashtra. Under these circumstances merely because it

was directed in the letter dated 18/10/2019 by the respondent no.3 to circulate the copy of the G.R. for the knowledge of the Group-A Medical Officers, it cannot bind the Government. Therefore we do not see any merit in the contention of the applicant that there is illegality committed by the Government in not selecting him.

12. So far as clause no.4.5 of the G.R. is concerned, it is stated in the G.R. that medical treatment not given to seriously injured patient, post mortem not conducted in time, were the serious instances and the Medical Officer responsible for the same shall be ineligible to appear in the examination. It is also mentioned in clause no.4.5 that if such incident occurred and in preliminary inquiry it was found that the Medical Officer was responsible, then also such Officer shall not be eligible to appear in the examination. In the present case it seems that when the applicant was working at Rural Hospital, Katol, District Nagpur complaint was received against the applicant that he did not give proper treatment to the relatives of the patient, there was no proper diagnosis and inhuman treatment was given and due to this behaviour of the applicant, there was a death of the patient, the news was flashed in the news paper and accordingly there was preliminary inquiry and after the preliminary inquiry, the respondent no.3 the Deputy Director of Health Services prepared the charge sheet under Rule 8 of the Maharashtra Civil Services (Discipline & Appeal) Rules,

1979 and it was forwarded to the Directorate for further action. The Directorate noticed there were some defects in the charge sheet and called further information, thereafter corrected charge sheet was prepared and it was forwarded to the Directorate of the Health Services (M.S.) for further action. It seems that the Committee was found that prima facie misconduct was committed by the applicant and that matter is pending for consideration. The submission made by the learned counsel for the applicant that the respondents were bound to take decision at the outer limit within one year and thereafter the respondents have no right to initiate the departmental inquiry against the applicant is concerned, we would like to point out that this law is laid down by the Hon'ble Apex Court (in case of **Prem Nath Bali Vs. Registrar, High Court of Delhi & Ano., AIR 2016 SCC,101**) only where departmental inquiry is initiated and it is continued for years. Here we would like to point that in the preliminary inquiry the applicant is found guilty of the misconduct and the draft charge sheet is already forwarded for consideration to the disciplinary authority. In this proceeding, without hearing the disciplinary authority, it is not suitable to take any decision otherwise it will be injustice. At this stage fact is that the applicant was found prima facie guilty of the misconduct by the Committee and draft charge sheet is forwarded to the Directorate on 29/12/2018, therefore, as per Clause no.4.5 of the G.R. dated

19/3/2020 the applicant is not entitled to appear in the examination. In view of this, we do not see any merit in this complaint. Hence, the following order-

ORDER

The O.A. stands dismissed. No order as to costs.

(Anand Karanjkar)
Member(J).

(Shree Bhagwan)
Vice-Chairman.

Dated :- 16/10/2020.

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I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble V.C. and Member (J).

Judgment pronounced on : 16/10/2020.

Uploaded on : 21/10/2020.