

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 586 OF 2016

DISTRICT : THANE

Dr Sachin Suresh Chappalwar,)
Working as Medical Officer, Class-II,)
Primary Health Centre, Khadawali,)
Tal-Kalya, Dist-Thane.)
R/o: Block no. 102, Mohan Heights,)
Narayan Nagar Road, Titwala [E],)
Dist-Thane.)...**Applicant**

Versus

1. The Director of Health Services,)
[M.S], Mumbai.)
Having office at Arogya Bhavan,)
In the campus of St. Georges)
Hospital, P.D Mello Road,)
Mumbai 400 001.)
2. The State of Maharashtra,)
Through Addl. Chief Secretary,)
Public Health Department,)
Mantralya, Mumbai 400 032.)

3. B.J Government Medical College,)
Pune.)
4. Dr Sandip Vairagar,)
Working as Junior Resident-1 and)
Prosecuting P.G (DGO) in B.J)
Medical College, Pune.)...**Respondents**

Shri A.V Bandiwadekar, learned advocate for the Applicant.

Ms Neelima Gohad, Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

DATE : 16.09.2016

ORDER

1. Heard Shri A.V Bandiwadekar, learned advocate for the Applicant and Ms Neelima Gohad, Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant challenging the order dated 30.5.2016 passed by the Respondent no. 1 cancelling the Applicant's admission to the Post Graduate Diploma in Gynecology (DGO) for 2016-17 in view of the pending Departmental

Enquiry against him and nominating the Respondent no. 4 for the said course.

3. This Tribunal has passed an interim order dated 30.6.2016, directing the Respondents no 1 to 3 to allow the Applicant to join the Post Graduate Diploma in Gynecology for the year 2016-17, subject to the final outcome of this Original Application. As the interim order was not implemented by order dated 10.8.2016, Suo Moto Contempt proceedings were initiated against the Respondents no 1 & 2. The Respondents no 1 to 3 have filed Writ Petition no. 9038 of 2016 and the interim order dated 30.6.2016 was challenged. By order dated 22.8.2016, Hon'ble High Court has stayed the contempt proceedings before this Tribunal and the same have been stayed by this Tribunal.

4. Learned Counsel for the Applicant argued that Hon'ble High Court has not stayed the interim order passed by this Tribunal dated 30.6.2016. Only the contempt proceedings have been stayed by Hon'ble Bombay High Court by order dated 22.8.2016. In the aforesaid order, Hon'ble High Court has taken cognizance of the submission made by State that a proposal has been submitted to drop Departmental Enquiry (D.E) initiated against the Respondent no. 1 in Writ Petition, who is the present Applicant. Once the D.E against the

Applicant is dropped, there will be no legal basis for the impugned order dated 30.5.2016.

5. Learned Counsel for the applicant stated that the Applicant has filled online application for PGM-CET-2016. The application has no column regarding Departmental Enquiry. The Applicant had no occasion to inform the Respondents 1 & 2 that he was facing a D.E. In the Brochure for PGM/PGD-CEG-2016 also, there is no mention that an in-service candidate facing a D.E should not apply. Learned Counsel for the Applicant argued that the Applicant would have been posted on deputation on being selected for the D.G.O course. As the Applicant had applied from S.T category, if no suitable candidate was available, the post should have been kept vacant for 3 years as per the MAHARASHTRA SCHEDULED CASTES, SCHEDULED TRIBES, DENOTIFIED TRIBES, (VIMUKTA JATIS), NOMADIC TRIBES, OTHER BACKWARD CATEGORY (REGULATION OF ISSUANCE AND VERIFICATION OF) CASTE CERTIFICATE ACT, 2000. The charges in the D.E against the Applicant are of minor nature and the same should have been decided long back, as it was initiated in October, 2015. Now that the Respondents no 1 & 2 have decided to withdraw the D.E, the Applicant is fully eligible to be depute for D.G.O course in PGM-CET-2016.

6. Learned Presenting Officer (P.O) argued on behalf of the Respondents no 1 to 3 that the matter is pending in Hon'ble Bombay High Court and this Tribunal should await the decision of Hon'ble Bombay High Court. Learned Presenting Officer clarified that she has no instructions that the Government has decided to withdraw the D.E against the Applicant. Learned Presenting Officer reiterated that the Applicant was not eligible to be selected for deputation to any course pursuant to PGM/PGD-CET-2016 as a D.E was pending against him. Clause 7.12.2 of the Brochure made it clear that eligibility of in-service candidates will be as per provisions mentioned in G.Rs dated 30.1.2012 and 2.3.2012. G.R dated 3.5.2011 makes a clear provision that if a D.E is pending against an in-service candidate, he will not be eligible to be deputed for a Study Course. Learned Presenting Officer argued that Brochure for PGM/PGD-CET-2016 provides that if no candidates from S.T category was available, a candidate from S.C category can be selected.

7. It is seen that Hon'ble High Court in Writ Petition no 9038/2016 filed by the State against the interim order of this Tribunal dated 30.6.2016 has stayed the contempt proceedings against the Respondent nos 1 & 2. The Contempt Proceedings have accordingly been stayed. There is, however, no stay to the present proceedings. The Applicant's and the Respondents no 1

to 3 have not put forward any new arguments in the course of final hearing and have reiterated arguments put forth during the hearing for interim relief, which culminated in interim order dated 30.5.2016. The Applicant has submitted copy of his on-line application to show that the form did not seek any information about D.E pending against an in-service candidate. This claim is correct. Para 7.12.2 of the Brochure for PGM/PGD-CET-2016 talks of G.R dated 30.1.2012 and 2.3.2012. The copies of these G.Rs have not been placed on record by the Respondents. In the affidavit of the Respondent no. 1 dated 23.6.2016, it is stated in para 2 that the Applicant is not eligible for a S.T quota seat for Post Graduation Course as a D.E is pending against him and G.R dated 3.5.2011 is quoted. However, that G.R is not mentioned in the Brochure for PGM/PGD-CET-2016 in para 7.12.2. It appears that the claim of the Applicant that he was not aware at the time of filling up the form for the course that pending D.E is a disqualification has merit. However, considering the fact, that the charges in the charge sheet issued to the Applicant are of minor nature, I reiterate that the Respondents no 1 & 2 should not have blacked the candidature of the Applicant, who belongs to S.T category, when candidates from that category except the Applicant are not available.

8. The other issues regarding the interchangeability of reservation from S.T to S.C category,

the Respondents have not placed any new material on record which will require any rethinking. After considering all the relevant facts and circumstances of the case and the material on record, I reiterate the view taken by me in the interim order dated 30.6.2016 that it was not permissible to grant seat reserved for S.T candidate to S.C candidate interim order dated 30.6.2016 should be read along with this order. There is a small typographical mistake in para 12 of the interim order and that Respondent no. 3 should be read as Respondent no. 4.

9. Having regard to the aforesaid facts and circumstances of the case, this Original Application is allowed. The Applicant is held eligible for admission to Post Graduate Diploma Course in Gynecology for the year 2016-17 from S.T category. Order dated 30.5.2016 passed by the Respondent no. 1 is quashed and set aside. There will be no order as to costs.

(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai
Date : 16.09.2016
Dictation taken by : A.K. Nair.