

THE HIGH COURT OF SIKKIM : GANGTOK
(Civil Extra Ordinary Jurisdiction)

SINGLE BENCH: THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

W.P. (C) No. 02 of 2022

Dr. Deoraj Gurung,
S/o Shri Kamal Kr. Gurung,
R/o House No.68,
Opposite SMIT Main Gate,
Majithar, East Sikkim.

..... Petitioner

Versus

1. State of Sikkim,
Through the Chief Secretary,
Government of Sikkim,
Gangtok, East Sikkim.

2. Health Care, Human Service & Family Welfare
Department,
Through the Secretary,
Government of Sikkim,
Gangtok, East Sikkim.

.....Respondents

**Application under Article 226 of the Constitution of
India, 1950**

*(For quashing the impugned Office Memorandum No.1236/H & FW dated
08.12.2021 issued by the Director General cum Secretary, Health & Family Welfare
Department, Government of Sikkim.)*

Appearance:

Mr. Tashi Rapten Barfungpa, Mr. Hem Lall Manger,
Ms. Parvin Manger and Ms. Tshering Laki, Advocates
for the Petitioner.

Mr. Sudesh Joshi, Additional Advocate General, Mr.
Thinlay Dorjee Bhutia, Government Advocate and Mr.
Sujan Sunwar, Assistant Government Advocate and
Ms. Neera Thapa, Advocate, for the Respondents.

24.06.2022
O R D E R (ORAL)

Bhaskar Raj Pradhan, J.

1. Vide Office Order No.1171/G/DOP dated 19.03.2021 the petitioner was appointed as General Duty Medical Officer (GDMO) in the Junior Grade under General Duty & Public Health Wing of Sikkim State Health Service, Health and Family Welfare Department.

2. On 23.02.2021 the National Board of Examinations New Delhi inviting applications for National Eligibility cum Entrance Test (NEET-PG 2021. It transpires that the petitioner submitted the application online through the National Board of Examinations website. The examination was to be held on 18.04.2021 which was however postponed till further orders. On 13.07.2021 notice was issued by the National Board of Examinations informing that NEET-PG 2021 was rescheduled to be held on 11th September 2021.

3. On 08.09.2021 No Objection Certificate (NOC) was issued bearing No.4589/H & FW stating *inter alia*: “The Department of Health & Family Welfare, Government of Sikkim has no objection to the following doctors (GDMOs) to appear for the National Eligibility Entrance Examination (NEET-PG 2021) scheduled on 11.09.2021 tentatively (subject to postponement as per COVID-19 pandemic

situation)". 23 doctors had been allowed to sit for NEET-PG 2021 including the petitioner. The NOC also specified that the Department's permission is subject to allotment of seats in clinical subjects by the Institute as per the present need in the State. It specified that the nomination shall be within the sponsorship and was further subject to the approval of the State Government. It also stated that the NOC issued earlier for the entrance examination scheduled on 18th April, 2021 stood cancelled.

4. This document reflects that the Department of Health & Family Welfare had clearly given its NOC to the petitioner along with 22 others who were GDMOs of the State Government to sit for the NEET-PG 2021 subject to the condition prescribed therein.

5. The NEET-PG 2021 Examination was held on 11.09.2021 and the result declared on 28.09.2021. The petitioner scored 408 out of 800 and obtained the rank of 42677.

6. On 09.11.2021 the Additional Director (Medical Education) Health & Family Welfare Department issued a communication bearing No.4870/H & FW to the Medical Superintendent, STNM Hospital and the Chief Medical Officers of the District Hospitals at Gyalshing, Mangan, Namchi and Singtam. It stated that the specified Post

Graduate Degree seats were allotted at Regional Institute of Medical Sciences, Imphal (RIMS) for the beneficiary State of Sikkim for the academic session 2021-2022. It specified that the allotment of seats in Pathology, Microbiology, Biochemistry, etc. was subject to Departmental undertaking. It also specified that the eligibility criteria for admission laid down by the National Medical Commission would be applicable; the nomination would be made in accordance with the existing norms for allotment of Post Graduate Degree Seats as the Departmental in-service candidate; the application of willing candidates should reach the office of the Additional Director, Medical Education, Health Secretariat on or before 17th November, 2021. It further specified that the date of counselling would be intimated as and when announced by RIMS, Imphal.

7. By this communication the Health & Family Welfare Department sought for nominations from the Medical Superintendent as well as the Chief Medical Officers of all four districts for allotment of Post Graduate Degree seats from Departmental in-service candidates along with application of willing candidates. Similar communication was made on the same date vide communication No. 4871/H&FW for nomination of candidates for Post

Graduate Degree Course in Sikkim Manipal Institute of Medical Sciences (SMIMS).

8. On 11.11.2021, pursuant to this information, the petitioner wrote to the Additional Director, Medical Education seeking his nomination for the post of Post Graduate Degree Course in SMIMS and RIMS as per the communication bearing reference Nos.4870 and 4871 dated 09.11.2021. It also specified that he had qualified in the NEET-PG 2021 held on 11.09.2021.

9. It is at this juncture that the Health & Family Welfare Department issued Office Memorandum bearing No.1236/H&FW dated 08.12.2021 (impugned office memorandum) prescribing the eligibility criteria to undergo higher medical courses (DNB/ MD/ MS/ Postdoctoral/ Diploma) amongst the NEET qualified candidates under the State Quota Sponsored Category (Post Graduate Seat allotted to the beneficiaries State) in clinical/non clinical subjects, at any institute/college recognised by National Medical Commission.

10. On 27.12.2021 the petitioner sent his representation to the Director General-cum-Secretary, Health & Family Welfare Department against the impugned office memorandum stating *inter alia* that the NEET-PG 2021 examination was supposed to be held in the month of

January 2021 which was however, rescheduled to 18.04.2021 due to the pandemic. That after being rescheduled for number of times, the NEET-PG 2021 was finally conducted on 11.09.2021 and result declared on 28.09.2021. That the counselling process was scheduled to begin on 25.10.2021 which was put on hold by the Central Government due to the petition filed in the Hon'ble Supreme Court of India, with regard to Economically Weaker Section Reservation in NEET. That on 08.09.2021 NOC was issued to 23 GDMOs for appearing in NEET-PG 2021. Those NEET-PG qualified candidates were invited for Post Graduation Degree Course in RIMS and SMIMS vide communication Nos.4870 and 4871 dated 09.11.2021 respectively. It was pleaded that the introduction of the new eligibility criteria at the last moment was extremely discouraging and demoralizing after serving the State in difficult times during both the waves of COVID and preparing for the exam in extreme conditions during the pandemic.

11. On 10.01.2022 the communication from the Directorate General of Health Services (DGHS) New Delhi to the Secretary National Medical Commission announced the counselling dates as 20.01.2022 to 24.01.2022. At this

stage the petitioner approached this court challenging the eligibility criteria in the impugned office memorandum.

12. The respondent nos. 1 and 2 (the respondents) have filed their counter affidavit contesting the writ petition. The fact that the petitioner had been appointed by the respondents is not disputed. The fact that the petitioner along with 22 others were granted no objection certificate to appear in the NEET-PG 2021 is also not disputed. The respondents have sought to provide this court with the rationale and the object for issuance of the impugned office memorandum. It is submitted that it was issued to encourage graduate doctors to render service in rural areas in Primary Health Centers and Community Health Centers. It is submitted that the object is to strengthen the health care facilities in the rural areas by incentivizing the postings of graduate doctors in rural areas which is a permissible classification. It is contested that the petitioner do not qualify the eligibility criteria as he is still under the probation period of one year and permitting the petitioner under the State quota sponsored category would be unjust and unfair to other government doctors who have completed three years of service.

13. The petitioner as well as the respondents filed additional affidavits along with additional documents.

Although opportunity was granted, the facts stated therein and documents annexed thereto are not contested. Opportunity was also granted to the respondents to contest the additional facts and documents appearing in the rejoinder. However, the learned Additional Advocate General submitted that the writ petition may be decided on the basis of the pleadings and documents already placed on record by the parties.

14. In the additional affidavit filed by the respondents on 20.06.2022 the Sikkim State Health Service (Amendment) Rules, 2001 (Amendment Rules, 2001) was annexed. The learned Additional Advocate General submitted a perusal of schedule II thereof would reflect that the eligibility criteria for selection of candidates for undergoing in-service training for post graduation degree were more rigid than the impugned office memorandum.

15. In the additional affidavit filed by the petitioner along with the various documents annexed therein the list of candidates who had cleared NEET-PG 2021 and applied for Post Graduate seats at RIMS and SMIMS for academic session 2021-2022 under the signature of various officers of the Health & Family Welfare Department is also annexed which reflects the name of the petitioner at serial number 3 therein.

16. A perusal of the Amendment Rules, 2001 reflects that selection of candidates for undergoing in-service training for post graduation was to be made on the basis of seniority-cum-merit. The candidates were required to be deputed for the post graduate studies as per actual requirement/need of department. The upper age limit was 45 years. The candidate should have served in the rural areas for at least 3 years prior to be considered for post graduation studies.

17. If the respondents had followed the Amendment Rules, 2001 then they would not have issued the NOC to the DGMOs who did not fulfil the eligibility criteria as was done in the present case. None of the communications placed before this court concerning the nominations reflects the application of the Amendment Rules, 2001 including the impugned office memorandum. At this stage the learned Additional Advocate General on a query from the court, on instructions received, states that the Amendment Rules, 2001 may not have been followed after 2016.

18. In the rejoinder filed by the petitioner as well as the additional affidavit the petitioner states that consequent to the NOC granted on 08.09.2021 other similarly situated candidates had also been nominated by the respondent

nos. 1 and 2. The learned Additional Advocate General submits that all these nominations were done as per the impugned office memorandum.

19. On 19.01.2022 on hearing the learned counsel for the parties and considering the fact that NOC had been issued to the petitioner on 08.09.2021 pursuant to which he had appeared for NEET-PG 2021 and cleared it but still he was not being permitted to sit for the counselling scheduled on 20.01.2022 solely on the ground that the subsequent impugned office memorandum dated 08.12.2021 prescribed eligibility criteria which had not been fulfilled by the petitioner this court thought it fit to permit the petitioner to appear for the counselling as per law subject to the final outcome of the writ petition. This court was of the *prima facie* view that not permitting the petitioner to sit for the counselling would gravely prejudice him and cause him irreparable harm. After the passing of the interim order the petitioner appeared for the counselling and secured a seat for M.S. (General Surgery) at RIMS. It is not the case of the respondents that the impugned office memorandum was made effective retrospectively. Therefore, the impugned memorandum could have come into effect only after it would be notified.

20. At the hearing the learned Additional Advocate General stated, on instructions, that between 2010 and 2018 there has been no appointment of DGMOs. However, in the year 2018 and 2019 there were appointments.

21. It is quite evident that the respondent nos. 1 and 2 had issued the impugned office memorandum in ignorance of the Amendment Rules, 2001. Admittedly in spite of the Amendment Rules, 2001 the petitioner as well as others similarly placed had been nominated as in-service candidates for post graduate courses. The NOC granted to the petitioner as well as other communications reflects the clear intent of the respondents to permit the petitioner as well as others to apply for the seats as in-service candidates. If the respondents were aware of the Amendment Rules, 2001 at the relevant time there was no need to issue the impugned office memorandum. If the respondents sought to further amend the Sikkim State Health Service Rules, 1993 it could have been done by yet another amendment and not by the impugned office memorandum.

22. Quite evidently the petitioner laboured to prepare and succeed in the NEET-PG 2021 on the strength of the NOC. The respondents while granting the NOC were fully aware of the fact that the petitioner was a serving doctor who had

not done 3 years of service in the rural areas. The communication No. 4870 dated 09.11.2021 reflects that the application of the petitioners had been in fact sought for.

23. Keeping in mind all the above facts the learned Additional Advocate General fairly submits that at this stage it would not be wise on the part of the respondents to contest this writ petition further. More so because the petitioner who is an in-service candidate would acquire a post graduation degree which would further benefit the State. It is his categorical submission that even if the writ petitioner was not successful the seat which has been allotted to him would go waste since the admission process is already over. It is submitted that it would be better to examine the Amendment Rules, 2001 as well as the impugned office memorandum and come out with a clear policy which is not only legal but also in sync with the States duties as a welfare State.

24. Considering the facts and circumstances of this case as well as the stand taken by the respondents the writ petition is disposed confirming the interim order dated 19.01.2022 passed by this court. Pending application is disposed off as well.

25. It is made clear that this order has been passed in the peculiar facts and circumstances of this case and therefore, it shall not be taken as a precedent.

**(Bhaskar Raj Pradhan)
Judge**

Approved for reporting : **No**
Internet : **Yes**
to/