2024:BHC-AUG:26607-DB

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10599 OF 2024

Dr. Deepak s/o. Laxmanrao Analdas
Age 44 years, Occ. Service as Medical
Officer, R/o. Unani Dispensary, Ardhapur,
Tq. Ardhapur, District Nanded.

.. Petitioner

Versus

1. The State of Maharashtra
through its Desk Officer,
Public Health Department,
having office at G.T. Hospital,
Complex Building, 10th Floor,
New Mantralayla, Mumbai -32.

2. Director of Health Service,
Arogya Sent Georges Hospital,
Campus P Dimelo Road, Mumbai.

3. Deputy Director of Health Services,
Latur, District Latur.

4. District Health Officer,
Nanded, District Nanded.

CORAM : SMT. VIBHA KANKANWADI
& S.G. CHAPALGAONKAR, JJ.

DATE : 25th OCTOBER, 2024.

JUDGMENT [PER S.G. CHAPALGAONKAR, J] :-

1. The petitioner impugns the order dated 24.9.2024, passed by respondent No.3, thereby withdrawing No Objection Certificate (NOC) granted in favour of the petitioner for admission to AIAPGET 2024 on the ground that Crime No. 689 of 2017 has been registered against the petitioner at Pulgaon Police Station, for offences punishable under Sections 498A, 494 r/w. 34 of IPC as well as Section 3(1)(r)(s) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act.

2. Mr. G.J. Karne, learned Advocate appearing for the petitioner submits that on 18.7.2019, the petitioner has been appointed as Medical Officer – Group B and posted at Primary Health Center at Tamloor, Dist. Nanded. On 16.4.2024, a public notice was issued inviting on-line applications for All India Ayush Post Graduate Entrance Test (AIAPGET)-2024. Since the petitioner was holding necessary qualification, he had submitted an application for grant of NOC to participate in the process. Consequently, respondent No.3 had issued NOC vide order dated 28.6.2024. The petitioner appeared for the said examination. He secured 184 marks out of 400. However, respondent No.3 cancelled the NOC vide impugned order dated 24.9.2024, giving the reason that criminal proceeding is pending against the petitioner and in view of Clause No.4.5 in the Govt. Resolution dated 19.7.2023, his NOC is liable to be cancelled.

3. Mr. Karne further submits that merely because criminal case is pending against the petitioner, respondent No.3 could not have withdrawn the NOC which is granted in his favour. Mr. Karne would submit that right to education is plenary right of a citizen flowing from Article 21 of the Constitution of India . Such right needs to be

recognized even for in-service candidates and cannot be circumvented by putting arbitrary condition. Mr. Karne would further submit that on account of trifle dispute of the petitioner and his wife, she has filed a false report against the petitoiner. Consequently, criminal case has been registered against him. It is matrimonial dispute. Pendency of such criminal case cannot be treated as impediment to the right of the petitioner to pursue educatoin or acquire higher qualification. To buttress his contentions, he relied upon the judgment delivered by the Division Bench of this Court in ***W.P. No. 4415 of 2024 in the matter of Kailas Pawar vs. State of Maharashtra dated 26.3.2024 (Coram : G.S. Kulkarni and Firdos Pooniwala, JJ)***

4. Per contra, Mr. A.M. Phule, learned AGP appearing for respondent Nos. 1 to 3 and Mrs. Yogita Thorat, learned advocate appearing for respondent No.4 supports the impugned order. Mr. Phule reliying upon the affidavit in reply filed on behalf of the respondent No.3 submit that the policy of the Government to grant permission for pursuing Post-Graduate education by in-service Medical Officers has been regulated by Govt. Resolution dated 19.7.2023. Clause 4.5 thereof prescribes that Medical Officer, against whom a deparemental inquiry or criminal case is pending or proposed, shall be treated as ineligible for NEET-PG entrance test. The Deputy Directors shall not issue NOC in favour of such medical officers for participating in NEET-PG entrance test.

5. Mr. Phule, therefore, submits that the petitoiner was ineligible for grant of NOC to pursue NEET-PG entrance test. However, he had obtained NOC by suppression of the fact regarding pendency of the criminal case. The District Health Officer, Nanded has apprised such

fact to the office of Deputy Director. Consequently, NOC granted in favour of the petitioner vide order dated 28.6.2024 has been withdrawn under the impugned order.

6. Mr. Phule would further submit that since the petitoiner obtained NOC by supression of material fact, such NOC is *non-est* and rightly withdrawn under the impugned order. To buttress his contentin, he relies upon the judgment delivered by the Division Bench of this Court in the case of Kedar Pawar vs. State of Maharashtra (Writ petition NO. 4045 of 2022 dated 7.4.2022 (Coram S.B. Shukre and G.A. Sanap, JJ.). He would further point out that said judgment is confirmed by the Supreme Court in SLP (C) No. 900 of 2022 vide order dated 13.5.2024.

7. Having considered the submissions advanced by learned advocate appearing for respective parties, it can be observed that the petitioner is working as Medical Officer Group-D under the establishment of Zilla Parishad, Nanded. In pursuance of the public notice inviting on-line application for All India Ayush Post Graduate Entrance Test, 2024, the petitioner had applied for grant of NOC. The respondent No.4 District Health Officer forwarded the proposal to the office of respondent No.3 vide communication dated 12.6.2024. The said proposal was favourably considered, subject to conditions stipulated in Govt. Resolution dated 19.7.2023. The petitioner was granted NOC for candidature to AIPGET 2024 vide order dated 28.6.2024. In deference to the aforesaid NOC, the petitioner appeared for the entrance test and secured place in the merit list. However, on 24.9.2024, taking cognizance of the communication dated 18.9.2024 submitted by District Health Officer, Nanded (respondent No.4), the respondent No.3

cancelled the NOC and declared the petitioner disqualified for AIPGET 2024.

8. Respondent No.4 justified the aforesaid order by filing affidavit in reply, mainly, relying upon clause 4.5 of the Government Resolution dated 19.7.2023, which stipulates that Medical Officer, against whom criminal case is pending would not be eligible for in-service NEET P.G. Entrance Test. Although it is sought to be contended that the petitioner had obtained NOC by suppression of fact about criminal case is pending against him, the reasons mentioned in the impugned order do not stipulate that withdrawal of the NOC was for said reason. Only reason employed is that, petitioner incurred ineligibility owing to clause No.4.5 of the Government Resolution dated 19.7.2023.

9. In aforesaid background, the limited question that arises for our consideration is :-

"Whether in facts of the case, respondents could have declared the petitioner ineligible for AIAPGET -Entrance Test, only because a criminal case is pending against him.

10. The issue is no more res-integra. The Division Bench of this Court in W.P. No. 4415 of 2024 dealt with self-same clause of Government Resolution dated 19.3.2019 and observed in para. Nos. 22 and 23 as under :-

> *"22. It is thus clear, that right to education is implicit in the right to life and personal liberty guaranteed and flowing from Article 21 of the Constitution. Such right of an in-service candidate, who intends to pursue education, needs to*

be recognized, however, certainly, such pursuit to higher education would be governed by the terms and conditions of the employment, when it comes to the exigencies of service. This would certainly not mean, that such right can be denied or taken away, merely in view of the pendency of any departmental proceedings or criminal proceedings against the employee. In this context, it may also be observed that issuance of an NOC is with an object and reason that a candidate is required to be available to discharge the duties of public employment or for any justifiable reason, it is appropriate to not permit an employee to pursue further education as an in-service candidate which can only be for some genuine reason touching the employment. In such eventuality, the State Government as an employer would have an authority not to permit the in-service candidate to undertake the P.G. Course, unless the employee fulfills the necessary criteria which may be prescribed under the Government policy. However, any criteria which is arbitrary or illegal which would per se take away the rights of higher education as recognized by the Supreme Court cannot be foisted on an in-service candidate. Moreover in fixing such norms, the State Government is required to be alive to the fact, that such employees were not privileged to complete their education in the present case, hence, there is nothing wrong to pursue further education as an in-service candidate.

23. It also cannot be overlooked that the State cannot have a policy, rule or regulation which would adversely affect the citizen's pursuit to education which he intends to achieve, much less of those who are in employment, as right to education is now recognized to be a facet of the right to liberty under Article 21 of the Constitution of India. Further, Article 41 of the Constitution mandates the State to secure the right to education, as one of the directive principles of State Policy. Also in-service candidate achieving higher education would ultimately

enure to the public benefit."

11. In the light of aforesaid observations, Clause 4.5 of the G.R. dated 19.3.2019 held to be ineffective in case of the in service candidates aspiring admission to P.G. Course. Pertinently, the petitioner is facing criminal prosecution for offence punishable under Sections 498-A, 494, 34 of IPC read with Section 3(1)(r)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, on the basis of the report made by his wife. Apparently, this is a case of matrimonial i.e. personal dispute between the petitioner and his wife. It is difficult to hold that such offence can be termed as offence relating to moral turpitude, which may have an impact on the entitlement of the petitioner to pursue his educational upliftment through in-service Post Graduate Course.

12. Although Mr. Phule, learned AGP, placed reliance on the judgment of this Court in W.P. No. 4045 of 2022 dated 7.4.2022, to contend that NOC obtained by the petitioner by exercising fraud or suppression of material fact would be non-est, we find that such contention is not consistent with the reasons mentioned in the impugned communication. The withdrawal of NOC granted in favour of the petitioner is only for the reason that a criminal case is pending against him. There is no stipulation in the impugned order that the petitioner had obtained NOC by suppression of fact about pendency of criminal case. Pertinently, in W.P. No. 4045 of 2022, this Court has not dealt with validity of clause No.4.5 of the Government Resolution of 2019 which was in vogue at relevant time. Further, the Supreme Court while confirming said order, specifically observed that observations made in that judgment should be restricted only for deciding that case and not

otherwise.

13. In that view of the matter, we are of the considered view that case of the petitioner would be governed by the law laid down by this Court in W.P. No. 4415 of 2024 vide order dated 26.3.2024 by which it is held that Clause 4.5 of the Government Resolution dated 19.7.2023, which is similar to Government Resolution dated 19.3.2019 would not apply so as to refuse NOC to pursue Post Graduate Course. Further, the facts and circumstances in W.P. No. 4415 of 2024 are similar to the facts and circumstances of the present case. Therefore, we are persuaded to follow the same course in this case as well.

14. Consequently, we proceed to pass the following order :-

O R D E R

[i] The impugned decision dated 24.09.2024 issued by respondent No.3 thereby withdrawing the NOC granted in favour of the petitioner to pursue AIAPGET 2024 Entrance Test, is hereby quashed and set aside;

[ii] Respondents are directed to restore the NOC granted to the petitioner within a period of one week from the date of this order;

[iii] Petitioner shall be treated as eligible and qualified for the AIAPGET Entrance Test 2024. Consequently, he shall be granted all consequential benefits.

[iv] Since as per the interim protection dated 26.9.2024, respondents were directed to keep one seat vacant, the petitioner shall be accommodated on such vacancy although the admission process is completed by now.

[S.G. CHAPALGAONKAR, J] **[SMT. VIBHA KANKANWADI, J]**

grt/-