

IN THE HIGH COURT OF ANDHRA PRADESH: AMARAVATI

WRIT PETITION No.22643 of 2024

Dr. A. Himabindu, W/o. Dr.P. Harnatha Reddy,
Aged 37 years, Civil Assistant Surgeon,
PHC Putur, Ananthapur District,
Andhra Pradesh & 4 others.

...Petitioners

Versus

The State of Andhra Pradesh,
Rep. by its Principal Secretary to
Government Health, Medical & Family
Welfare Department, Secretariat Building,
Amaravati, Guntur District,
Andhra Pradesh and 3 others.

...Respondents

Advocate for Petitioners

: Mr. P.V.Krishnaiah

Advocate(s) for Respondents

: Mrs. S. Pranathi (Special
Government Pleader for
Respondents 1 to 3.

Mrs. Tata Venkata Sridevi
(Standing Counsel for Dr. NTR
University of Health Sciences for
respondent No.4.

**CORAM: THE CHIEF JUSTICE DHIRAJ SINGH THAKUR
SRI JUSTICE R. RAGHUNANDAN RAO**

DATE:

The Court made the following Order:

(per Hon'ble Sri Justice R. Raghunandan Rao)

Heard Sri Mr. P.V. Krishnaiah, learned counsel appearing for the
petitioners, Mrs.S. Pranathi, Special Government Pleader for respondents

1 to 3 and Mrs. Tata Venkata Sridevi, the learned Standing Counsel for Dr. N.T.R. University of Health Sciences, appearing for respondent No.4.

2. The admissions to educational courses, in the State of Andhra Pradesh, is regulated by the Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983. The Government of Andhra Pradesh, for regulating the admissions in P.G. Medical Courses, exercising its power under Section 15 of this Act, issued The Andhra Pradesh Medical Colleges (Admission into P.G. Medical Colleges) Rules, 1997, by way of G.O.Ms.No.260, dated 10.07.1997. Certain amendments were carried out, to these Rules, up to 07.10.2022.

3. The Government constituted a committee to consider the effect of the judgment of the Hon'ble Supreme Court in the case of **Tamil Nadu Medical Officers' Association & Others vs. Union of India & Others**¹, upholding reservations given to in-service candidates for admission in to P.G. Medical Courses. On the basis of the report given by the committee, the admission rules were amended by G.O.Ms.No.150, dated 11.12.2021. By virtue of this amendment, 30% of clinical seats and 50% of non-clinical seats, in the State Government quota of P.G. Medical seats, were exclusively reserved for in-service

¹ (2021) 6 SCC 568

candidates. The eligibility criterion for such reservation was also set out in the amended rules.

4. Subsequently, the Government again constituted another committee to go into the suitability of the reservation, to in-service candidates and the percentage of reservation that should be given to in-service candidates. On the basis of the report given by the new committee, G.O.Ms.No.85, dated 20.07.2024 was issued, reducing the seats reserved for in-service candidates to 15% of clinical seats and 30% in non-clinical specialty seats. As objections had been raised to such a reduction, the Government reconsidered the percentage of reservation and issued G.O.Ms.No.127, dated 01.10.2024 increasing the quota of clinical seats from 15% to 20% while retaining the quota of 30% in non-clinical specialty seats.

5. Aggrieved by the reduction of the seats available for in-service candidates, the petitioners, who are all working in the medical services of the State have filed the present Writ Petition challenging G.O.Ms.No.85 and 127. Apart from this, the petitioners also challenged a part of sub-section (2) of Section 15 of the Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983.

6. Sri P.V. Krishnaiah, learned counsel appearing for the petitioners, while reiterating the grounds raised in the Writ petition contends as follows:

- i) The doctors, who had joined medical services of the State, and more specifically the petitioners herein, had expected entry into P.G. Medical Courses, on the basis of their services in the medical services of the State. The petitioners have a right of legitimate expectation that they would be given admission into P.G. Medical seats because of their services in the medical services of the State. Learned counsel for the petitioners would also contend that one of the reasons for the petitioners opting to join the medical services of the State was the expectation that they would be eligible for the seats reserved for in-service candidates;
- ii) The amendments were carried out on the basis of the reports of the Committee. This committee was appointed with a predetermined objective of coming up with a report to support the decision of the Government to reduce in-service quota of seats. The report of such a committee cannot be the basis for reduction of in-service quota seats;

- iii) The reasons given by the committee, were that some of the in-service candidates who had obtained the benefit of the P.G. Medical Courses had not come back to work in the medical services and as such, granting reservation was not meet the objectives of such reservation. The second reason given by the committee was that, the in-service candidates who had already completed one P.G. Medical Course were applying for entry into a second medical course and this was not in line with the objective of reserving seats for in-service candidates. The learned counsel would contend that these reasons do not, in any manner, make out a case for reduction of seats available to in-service candidates.
- iv) The amendment of Rules, by virtue of the above Government Orders, has to be placed before the Legislative Assembly, failing which they cannot be brought into force. However, amended Rules are being implemented, without placing the amended Rules before the Legislative Assembly or the Legislative Council.
- v) The requirement of placing Rules or amended Rules, before the Legislative Assembly or Legislative Council is to ensure that the power of delegated legislation given to the executive is subjected to legislative review. Further, this requirement is to ensure that the

delegation of legislative power is not treated to be excessive delegation which would render any delegated legislation by the executive, void.

- vi) The requirement of placing the Rules or amended Rules or amended Rules before the legislature, was stipulated in Section 15 of the Act. However, the following part of Section 15 reads as follows:

15. Power to make rules- (1) So however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule..”

- vii) This part of Section 15(1) effectively empowers the executive to pass any kind of Rules and undertake acts under such Rules which would thereafter be protected by virtue of this provision, even if the legislature was to set aside such rules. This would effectively give unbridled power to the executive to undertake any kind of activity, which does not meet the approval of the legislature and the same would be exclusive delegation.

7. The 1st respondent has filed a counter affidavit, stating that the impugned G.O. had been placed before the Andhra Pradesh Legislative Assembly, on 13.11.2011, and the same is evidenced vide U.O.Note.No.226/Legn./2021, dated 05.12.2024. The 1st respondent

contends that the requirement of placing rules framed by the executive, before the Legislature is only directory and not mandatory. Further, non compliance of this requirement would not be fatal and would not make the rules ineffective or unimplementable.

8. The report of the committee, on the basis of which the impugned G.Os., had been issued has also been placed before this Court by the 1st respondent. The observations, of the committee, which are relevant, are as follows:

- i) Policy of reservation for in-service candidates, had been started on account of a number of posts, in the medical services, being left vacant due to non-availability of specialists. By virtue of the system of reservation, for in-service candidates, a large number of specialists are now available within the medical services and the vacancies in specialist posts had come down substantially;
- ii) The reservations are fixed on a percentage of the available seats. There has been a substantial increase of P.G. seats in both Government and Private Medical Colleges on account of which the number of seats that would be available to in-service candidates has increased on account of the increase of the overall seats;

- iii) The recruitment of specialists by the Andhra Pradesh State Medical Recruitment Board has also resulted in the number of vacancies, in specialist posts had come down substantially;
- iv) In certain specialties, the number of in-service candidates who have already obtained necessary P.G. qualification and the number of candidates who are pursuing such P.G. Courses is more than the number of posts available and as such, in-service candidates with the necessary P.G. qualifications cannot be accommodated, as such posts are not available.

9. The purpose of private reservations for in-service candidates, is ensure that the medical services of the State, are staffed with adequate number of specialists, who can ensure maintenance of standards of medical assistance to the patients who attend government hospitals. Accordingly, one of the considerations, for fixation of seats to be reserved for in-service candidates, would the vacancy position of such specialist posts and the number of specialists that are available, in house, for filling up such posts. The State, after taking into account this factor, cannot be prohibited from altering the number of seats which are to be reserved for in-service candidates. The report, placed before this Court, by the 1st respondent sets out, in detail, the number of seats that would be available. The statistics set

out in this report clearly make a case for reduction of the seats that are made available to in-service candidates.

10. In the circumstances, the contention of the petitioners that the reduction of seats, for in-service candidates, has been made on a predetermined basis cannot be accepted.

11. The challenge to provision of section 15(1) of the Act, to the extent of the provision extracted above, would be academic in the present case as the requirement of placing the Rules before the legislature had been carried out .

12. For all the aforesaid reasons, this Writ Petition is dismissed. There shall be no order as to costs.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

DHIRAJ SINGH THAKUR ,CJ

R. RAGHUNANDAN RAO, J

RJS

