

PETITIONER:
GOVERNMENT OF ANDHRA PRADESH AND OTHERS

Vs.

RESPONDENT:
DR. V. NAGARAJU AND OTHERS

DATE OF JUDGMENT: 16/09/1998

BENCH:
S.SAGHIR AHMAD, S.RAJENDRA BABU

ACT:

HEADNOTE:

JUDGMENT:
JUDGMENT

Rajendra Babu.J.

The respondents were working as Civil Assistant Surgeons in the rural service of the State of Andhra Pradesh, appeared for the entrance test and were selected for undergoing the course of Post Graduation in different subjects. The entrance examination was conducted for the academic years 1986-87 and 1987-88. The respondents were not selected towards the quota of reserved category for the inservice candidates and their selection fell outside the quota reserved for such candidates. The Director of Health and Family Welfare issued a circular in Rc.No. 19636/E6A 88. Dated 14.6.1988 to the effect that candidates who secured a certificate from the Principal concerned that they were selected for the Post Graduation Courses against the seats allotted for unserved candidates quota alone will be paid their salaries. The respondents challenged the action of the Director before the Tribunal. The Tribunal on the basis of the interpretation placed on the relevant Rules held that all unserved candidates are eligible to get their salaries whether they are selected against unserved quota or outside such quota and, therefore, the Director was not competent to issue such instruction which is contrary to the relevant rules. The Tribunal concluded that the respondents would be entitled to get their salaries light from the time they joined the post graduate courses till the end of their courses and the same should be paid without any delay. The State being aggrieved by the action of the respondents has filed these appeals.

The principal question arising for consideration before us is whether the inservice candidates who are selected outside the quota reserved for inservice candidates could also be entitled to the same benefits as candidates selected against such reserved quota.

Rules have been framed by the State of Andhra Pradesh known as 'Rules for Admission to Post Graduate Courses in the Medical Colleges in the State of Andhra Pradesh'. Rule 3 provides for reservations. Rule 3(2) states that 15% of seats in clinical subjects, in Medicine, Surgery, Obstetrics and Gynecology groups and 30% of seats in Non-Clinical

subjects or in each group are reserved for inservice candidates, the reservation of inservice candidates shall be applicable in each categories. Candidates selected on merit in respective categories shall be counted against inservice quota. Explanation added thereto states that an inservice candidate is one who has put in a minimum of two years service on duty in the respective service. The Govt. in the Memorandum No. 1209/E2/88-2 dated 28th November, 1988 stated that only the inservice candidates who are selected against the quota provided in Rule 3(2) read with Rule 19(1) alone are entitled for deputation. The Rule 19(1) reads as follows:-

"Rule 19(1) In-service candidates (of the Medical and Health Department) who have put in a rural service of two years on duty or more and are selected for admission in clinical subjects and non-clinical subjects will be deputed to the Post-graduate studies."

Sub-rule (2) thereof states that any candidate in Government service other than the "inservice" candidate defined under rule 3(2) if selected for any Post Graduate course shall not be entitled for any kind of leave including extra-ordinary leave without allowances for prosecuting Post-Graduate Courses, unless he has put in a minimum of two years of service on duty in the respective service.

Rule 11(8) provides for stipends. It is made clear that an inservice candidate shall not be paid stipends if they draw leave salary but they will be paid stipends if they are sanctioned extraordinary leave. The Tribunal in the present case has interpreted Rule 19(2) as to mean that all those candidates who have put in a service of minimum of two years if selected for post graduate courses would be entitled to the same benefits as candidates who have been selected against the reserved quota for unreserved candidates relying upon explanation to Rule 3(2).

The learned counsel for the appellants seriously challenged this view of the Tribunal and submitted that the concept of inservice candidates has got to be understood by reading Rule 3(2) and explanation thereof together and not separately.

However, Shri Kanta Rao and Shri Subba Rao, learned counsel for the respondents submitted that as long as the respondents answer the description of inservice candidates as provided in the explanation to Rule 3(2) there should not be any kind of distinction between those who are selected against the reserved quota and those who are selected on merit and the two should be categorised together and all benefits given to them should be common.

Shri Kanta Rao, learned counsel for the respondents very vehemently submitted that there cannot be different classes of persons in the same service and relied upon the decision of the Andhra Pradesh High Court in Dr.P.Indra Devi Vs Selection Committee Constituted for selection of candidates for P.G.Medical courses in the S.V.University for the year 1985-86 represented by its Chairman, Director of Medical Education. Hyderabad and Others reported in 1986 (2) ALT 433. That decision is only to the effect of enabling all eligible candidates whether against inservice quotas or otherwise to participate in the examinations for selection. The other two decisions in 1983 SC 803 and 1998 (1) SCC 727 relied upon by the learned counsel have no relevance to the present case.

The meaning to be attributed to the expression "inservice candidates" in 19(2) will have to be understood with reference to Rule 3(2) along with explanation thereof.

The candidates who have been selected against the quota reserved in rule 3(2) have got to be in rural service of two years on duty or more and have got to be selected in the appropriate subjects leading to their being deputed for post-graduate studies. If we read rule 19 along with Rule 3(2) it becomes clear that an inservice candidate is one who has put in a minimum of two years service in respective fields in the rural areas and is selected against the reserved quota and not all candidates who have put in 2 years rural service and are selected to Post Graduate studies. Thus the view taken by the Tribunal on the meaning of inservice candidates suffers from fallacy of reading rules in compartments and not together. The intention of the Government in framing these rules is clear that it is only those candidates who have been selected against the reserved quota who will be entitled to be deputed and not others that is why sub-rule (2) of Rule 19 provided that if any candidate in Government service other than the inservice candidates is selected for any post graduation courses should not be entitled for any kind of leave including extra-ordinary leave without allowances for prosecuting Post-Graduate Courses, unless he has put in a minimum of two years of service on duty in the respective service. In Government service there are two kinds of candidates those who are selected against reserved quota and those who are selected otherwise than such quota. Those candidates who are covered by Rule 3(2) are those who have been selected against the quota reserved for the inservice candidates while others who are in Government service are selected are those who fall outside such category. The former will be entitled to extra-ordinary leave or other kinds of leave for prosecuting the Post Graduate studies and the condition thereto is that they should have put in a minimum of two years service. Therefore, the view taken by the Tribunal that the respondents will be treated at par with the other inservice candidates cannot be upheld and the order made by the Tribunal is set aside.

In the circumstances of the case, we think if any amount of money has been paid to any of the respondents on the basis that there is no distinction between the inservice candidates and other candidates in Government service who have been selected to the Post Graduate studies the same shall not be recovered.

Subject to what we have stated regarding recovery of the amounts the appeals shall stand allowed and the order made by the Tribunal shall stand set aside. The applications filed by the respondents before the Tribunal shall also stand dismissed.