

2023 SCC OnLine Bom 1521

In the High Court of Bombay<sup>+</sup>

(BEFORE A.S. CHANDURKAR AND VRUSHALI V. JOSHI, JJ.)

Arun Kumar Arivalgan ... Petitioner;

*Versus*

All India Institute of Medical Sciences ...  
Respondent.

Writ Petition No. 4561/2023

Decided on July 24, 2023

Advocates who appeared in this case:

Mr. Harish Dangre, Counsel for the Petitioner.

Mr. N.S. Deshpande, Deputy Solicitor General of India for the respondent.

The Judgment of the Court was delivered by

A.S. CHANDURKAR, J.:— Heard.

2. By this writ petition filed under Article 226 of the Constitution of India the petitioner seeks declaration that he satisfies the eligibility criteria of rendering minimum continuous service of five years as a regular employee of the All India Institute of Medical Sciences, Nagpur (for short "AIIMS") for appearing in the entrance examination for the Ph.D. programme, July 2023 session.

3. It is the case of the petitioner that on 16.8.2018 he was selected on the post of Tutor, Department of Anatomy of AIIMS and having joined the said post and served continuously he is eligible to apply and participate in the entrance examination that was to be conducted by AIIMS in the July 2023 session. The last date for submission of applications through e-mail was 27.6.2023 while the last date for submission of application in hard copy was 5.7.2023. The said examination is scheduled on 25.7.2023. Since the name of the petitioner did not figure in the list of eligible candidates as an in service candidate in the notice published on 20.7.2023 he has approached this Court by filing the present writ petition.

4. The learned counsel for the petitioner submitted that in terms of the prospectus published by AIIMS the final list of eligible candidates for the entrance examination was to be published on 19.7.2023 and after conduct of the admission process the last date for joining the Ph.D. programme was 31.8.2023. As regards the non-medical candidates the eligibility prescribed vide clause 5.2 was duly satisfied by the petitioner. As per clause 10.1 a candidate was required to be a

regular employee of the institution and was required to have rendered minimum of five years continuous service at the institution. In the light of the certificate issued by the Director and Chief Executive Officer, AIIMS on 14.6.2023 coupled with the approval given by the Head of the Department where the petitioner was serving he was eligible to appear at the entrance examination. Having joined as an in service candidate on 16.8.2018 the period of five years would have been completed on 15.8.2023 and as the last date for joining the Ph.D. programme was 31.8.2023 it was clear that prior to that last date the petitioner would have completed five years of continuous service. The candidature of the petitioner has been treated as ineligible by misconstruing clause 10.1 of the prospectus. Since the matter pertains to eligibility for appearing in the entrance examination and the petitioner being duly eligible it ought to be held that the AIIMS was not justified in holding the petitioner ineligible as per the notice dated 10.7.2023.

5. Per contra, the learned Deputy Solicitor General of India for the respondent submitted that as the last date for submission of hard copy of the application was 5.7.2023 and the petitioner had not completed the period of continuous service of five years on that date he was rightly held ineligible for participating in the entrance examination. The question of eligibility ought to be determined as existing on the last date of making of such application and not the last date for joining the Ph.D. programme. In support of his submissions reliance was placed on the decision in the case of *Mrs. Rekha Chaturvedi v. University of Rajasthan* reported in AIR 1993 SCW 1488 and *Ashok Kumar Sonkar v. Union of India* reported in (2007) 4 SCC 54.

6. Having heard the learned counsel for the parties and having perused the documents on record we are of the view that on the last date of making the application for seeking admission to the Ph.D. programme, July 2023 the petitioner did not satisfy the requirements of clause 10.1 of the prospectus as he had not rendered the minimum continuous service of five years on the last date of submission of application. Undisputedly the petitioner was appointed on the post of Tutor on 16.8.2018. The continuous service of five years on that post as an in service candidate would be completed on 15.8.2023. Since the last date of submission of application forms by hard copy was 5.7.2023 it was necessary for a candidate to have satisfied the requirements of clause 10.1 as on that date. When the final list of eligible candidates was published on 19.7.2023 the petitioner had not completed continuous service of five years. This conclusion as recorded is on the basis of ratio of the decisions in *Mrs. Rekha Chaturvedi* and *Ashok Kumar Sonkar* (supra).

7. The last date for joining the Ph.D. programme cannot be taken to

be the basis for eligibility inasmuch as the final list of eligible candidates was to be published on 19.7.2023. On that date the petitioner had not completed continuous service of five years. The certificates relied upon by the petitioner as issued by the Director as well as the Head of the Department are only with a view to permit the petitioner to pursue the Ph.D. programme as an in service candidate. These certificates are subject to satisfaction of requisite eligibility as prescribed.

8. Since the petitioner is not found to be eligible to appear in the entrance examination as on the last date of submission of applications, no fault can be found with the notice dated 10.7.2023 that finds the petitioner ineligible to appear in the said examination for having not completed continuous service of five years on the last date of submitting the application. We, therefore, do not find any merit in the writ petition. It is accordingly dismissed with no orders as to costs.

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† Nagpur Bench

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