



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

901 WRIT PETITION NO.11047 OF 2022

**MAJEDKHAN RAJJAK KHAN
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY PUBLICHEALTH
DEPARTMENT MANTRALAYA MUMBAI**

...
Advocate for Petitioner : Mr. V. A. Dhakne
AGP for Respondent Nos. 1, 3 and 4 : Mr. A.R. Kale

...
**CORAM : ARUN R. PEDNEKER, J.
VACATION COURT
DATED : OCTOBER 29th, 2022.**

PER COURT :

1. Heard the learned counsel for respective parties. The learned counsel for petitioner submits that respondent Nos. 2 and 5 are privately served, but not appeared.
2. The learned AGP at the outset raises objection on the maintainability of this writ petition and submitted that the petitioner has alternate remedy before the Maharashtra Administrative Tribunal as the petition relates to the service benefit and service condition. The learned counsel for the petitioner submits that this petition is as regards the admission to the Post Graduate Medical Course and as such, this writ petition is maintainable before this Court.
3. As regards the issue of maintainability of this writ petition is concerned, the jurisdiction of this Court is not barred even if there is an alternate remedy available. The Hon'ble Supreme Court in the case of **M/s Radha Krishan Industries Vs. State of Himachal Pradesh and Ors, 2021 SCC Online SC 334** has summarised the principles governing the exercise of writ jurisdiction by the High Court in the presence of an alternate

remedy. At para 27 of the Radha Krishan Industries (*supra*) judgment the Hon'ble Supreme Court has observed as under :-

"27. The principles of law which emerge are that :

(i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;

(ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;

(iii) Exception to the rule of alternate remedy arises where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the virus of a legislation is challenged;

(iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;

(v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and

(vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.

4. This Court has earlier exercised jurisdiction in similar facts. Two orders passed by this Court in Writ Petition No. 10703/2022 between Syed Aquib Ashanuddin s/o. Tariq Imaduddin Vs. The State of Maharashtra and others, dated 13th October, 2022, Aurangabad Bench (Coram : Ravindra V. Ghuge and Sanjay A. Deshmukh, JJ.) and order passed in Writ Petition No. 5793/2022 between Dr. Sandeep s/o. Devrao Wadhawe Vs. National Board for Examination in Medical Sciences and others, dated 3rd October, 2022, Nagpur Bench (Coram : Sunil B. Shukre and G.A. Sanap, JJ.) whereby this Court passed the similar orders exercising powers under Article 226 of the Constitution of India and the same has not been challenged by any authority and also there is urgency in this matter and therefore, I proceed to entertain this writ petition. Thus, without examining the issue of alternate remedy, I have proceeded to exercise jurisdiction under Article 226 in this matter.

5. On the merits, the learned counsel for the petitioner submits that the petitioner has qualified on merits for admission to NEET-PG-2022 in CAP Round II. The respondent No. 4 – The Deputy Director, Health Services, Aurangabad has submitted A, B, C, D applications of the petitioner to respondent No. 3 – The Director, Commissionerate of Health Services with remarks that for issuing NOC to the petitioner some information is not received from respondent No. 5. However, the respondent No. 5 has not forwarded the required information to the respondent No. 4. Further queries raised by the respondent No. 4 has not been satisfied by respondent No. 5 and as such, NOC is pending.

6. The learned counsel further submits that there is no impediment to grant of NOC and the petitioner has completed all the required formalities.

It is mentioned that the petitioner has become eligible on 25.10.2022 on publication of provisional list of eligible candidate and therefore, he has approached to this Court at this Stage. The learned counsel for the petitioner submits that the A, B, C, D applications which are required for grant of NOC are already submitted to respondent No. 4 and respondent No. 4 has submitted the same to respondent No. 3.

7. In the similar situation, this Court (Nagpur Bench) in Writ Petition No. 5793/2022 by an order dated 3rd October, 2022 has directed respondent Nos. 4 and 5 (respondent Nos. 2 and 3 therein) to grant ex post facto permission to the petitioner to appear at the NEET (PG) examination from the category of "in-service Medical Officers" and has further directed the respondents to process the result of the petitioner in accordance with law on the basis of the ex post facto permission to be granted to the petitioner by the respondent Nos. 4 and 5. The relevant paragraph Nos. 3 reads as under :-

"3) We accordingly direct the respondent Nos. 2 and 3 to grant ex post facto permission to the petitioner to appear at the NEET (PG) examination from the category of 'in-service Medical Officers' within two weeks from today. We further direct the respondents to process the result of the petitioner in accordance with law on the basis of the ex post facto permission to be granted to the petitioner by respondent nos. 2 and 3."

8. Relying upon the aforesaid directions, I hereby direct the respondent No. 5 to give the required information to the respondent No. 4 for granting NOC, if there is no legal impediment for the same. Respondent No. 4 is directed to grant ex post facto NOC and the same may be communicated to respondent Nos. 2 and 3. All the authorities on the basis of ex post facto

permission to consider the case of the petitioner as 'in service candidate', if there is no other legal impediment in considering this case.

9. The above directions are given on the basis that the petitioner is not at fault for the grant of NOC. If it is found that there is any impediment for issuing NOC or he is ineligible on any account, he same may not be considered.

10. The admission process of the second round will be closed on 30.10.2022. Thus, the respondent Nos. 4 and 5 to consider the grant of NOC today itself, if this order is served on them on time.

11. List this matter on 15.11.2022 before the appropriate Bench.

12. Parties to act on the ordinary copy of this order which will be uploaded today.

[ARUN R. PEDNEKER, J.]

ssc/