

**IN THE HIGH COURT OF ANDHRA PRADESH: AMARAVATI**  
**HON'BLE Mr. JUSTICE PRASHANT KUMAR MISHRA, CHIEF JUSTICE**  
**&**  
**HON'BLE Mr. JUSTICE M. SATYANARAYANA MURTHY**

**Writ Petition No.30946 of 2021**  
**and**  
**Writ Petition No.1420 of 2022**  
*(through Video Conferencing)*

**Writ Petition No.30946 of 2021**

Dr. Sireesha Simhadri, W/o. S. Venkat Krishna Kishore,  
Aged about 40 years, Occ: Doctor, R/o. Flat No.203,  
Siddhartha Residency, HUDA Colony Road, Chanda  
Nagar, Hyderabad, and another ... Petitioners

Versus

The State of Andhra Pradesh, rep. by its Principal  
Secretary, Department of Health, Medical & Family  
Welfare, Secretariat Buildings, Velagapudi, Guntur  
District, Andhra Pradesh, and others ... Respondents

Counsel for the petitioners : Mr. M.R.K. Chakravarthy

Counsel for respondent No.1 : Mr. S. Appadhara Reddy, G.P for  
Health, Medical and Family  
Welfare

Counsel for respondent No.4 : Mr. G. Vijaya Kumar, Standing  
Counsel

**Writ Petition No.1420 of 2022**

Dr. Bathineni Sreeharsha, S/o. Sri Narayana Rao,  
Aged about 33 years, Occ: Medical Officer (Tribal)  
(Dammapeta), R/o.H.No.1-337/1, Banjara Colony,  
Madhira, Khammam District, Telangana, and others ... Petitioners

Versus

Union of India, rep. by its Secretary, Ministry of  
Law and Justice, 4<sup>th</sup> Floor, A-Wing, Shashtri Bhawan,  
New Delhi – 110 001, and others ... Respondents

Counsel for the petitioners : Mr. P. Thirumala Rao

Counsel for respondent No.2 : Mr. S. Appadhara Reddy, G.P for  
Health, Medical and Family  
Welfare

Counsel for respondent No.4 : Mr. G. Vijaya Kumar, Standing  
Counsel

Date of hearing : 27.01.2022

Date of order : 01.02.2022

**COMMON ORDER**

***(Prashant Kumar Mishra, CJ)***

In W.P.No.30946 of 2021, the petitioners, two in number, have prayed for issuance of a Writ of Mandamus declaring the action of the respondents in issuing G.O.Ms.No.703, Health, Medical and Family Welfare Department (C1) dated 13.12.2021, so far as it relates to denial of opportunity to the qualified in-service local candidates/Doctors (Petitioners) who served in Government Health Institutions in Andhra Pradesh and Telangana State while reserving 50% of the seats in the State Government quota, 30% of clinical and 50% of non-clinical seats exclusively to the service candidates serving in Government Health Institutions in the State of Andhra Pradesh **alone**. Challenge is also drawn, in this Writ Petition, to Notification No.1236/EA2/PG/2021 dated 23.12.2021 issued by the 4<sup>th</sup> respondent-Dr. NTR University of Health Sciences, as illegal, arbitrary, discriminatory and violative of Articles 14, 16, 19 and 21 of the Constitution of India and Section 95 of the Andhra Pradesh Reorganisation Act, 2014 (for short, “the 2014 Act”) and the Andhra Pradesh Educational Institutions (Regulation of Admissions) Order 1974 and to set aside the same to the extent indicated and consequently direct the respondents to implement the reservation for the qualified local in-service candidates/Doctors (Petitioners) in the matter of admissions to Post Graduate Medical Courses for the academic year 2021-22 as per the Andhra Pradesh Educational Institutions (Regulation of Admissions) Order 1974 and the Rules framed thereunder, by

considering their services rendered in Government Health Institutions in Andhra Pradesh and Telangana State.

2. In W.P.No.1420 of 2022, the petitioners five in number, have prayed for declaring the action of the 2<sup>nd</sup> respondent-State in amending Sub-Rule (2) of Rule 3 of the Andhra Pradesh Medical Colleges (Admission into Postgraduate Medical Courses) Rules, 1997 issued vide G.O.Ms.No.150 dated 11.12.2021 to the extent of altering the eligibility criteria for in-service candidates and thus excluding the petitioners and depriving them of an equal opportunity of availing a seat in Post Graduate Medical Courses for the academic year 2021-2022 in the State of Andhra Pradesh, as illegal, arbitrary, discriminatory and violative of Articles 14, 16, 19 and 21 of the Constitution of India and in contravention of Section 95 of the 2014 Act and the Andhra Pradesh Educational Institutions (Regulation of Admissions) Order 1974. Prayer has also been made for declaring the prospectus notification vide No.1236/EA2/PG/2021 dated 23.12.2021, issued by the 4<sup>th</sup> respondent-Dr.NTR University of Health Sciences, in consequence to the impugned G.O.Ms.No.150 dated 11.12.2021, as illegal, without jurisdiction and consequently quash the said G.O., as also the prospectus notification vide No.1236/EA2/PG/2021 dated 23.12.2021, issued by the 4<sup>th</sup> respondent-Dr. NTR University of Health Sciences, to the extent of altering the eligibility criteria for in-service candidates so as to exclude the in-service candidates serving in the State of Telangana and consequently direct respondent Nos.2 and 4 to implement the in-service quota reservation for the petitioners (as non-local in-service candidate) in the matter of admission to Post Graduate Medical Degree Courses

for the academic year 2021-22 as per the Andhra Pradesh Educational Institutions (Regulation of Admissions) Order 1974 and all other allied State Government instructions framed in consonance with Article 371-D of the Constitution of India and in terms of Section 95 of the 2014 Act.

3. To appreciate the eligibility of the petitioners vis-à-vis the Andhra Pradesh Public Employment (Organisation of Local Cadres and Regulation of Direct Recruitment) Order, 1975 (for short, “the Presidential Order”) and under Section 95 of the 2014 Act, it would be necessary to refer to the University from where they have passed their qualifying examination and the services rendered by them either in the State of Telangana or in the State of Andhra Pradesh, as the case may be.

**W.P.No.30946 of 2021**

	University from where MBBS passed	Service rendered
Petitioner No.1	Guntur Medical College	APIMS Dispensary, Sanath nagar, Hyderabad (04.04.2013 to 03.04.2016)  ESI Dispensary, Bolarum, Hyderabad (04.04.2016 to 05.10.2018)  ESI Dispensary, Jaggayyapeta (from 2018 till today)
Petitioner No.2	Maharaja Institute of Medical Sciences	ESI Dispensary, Rezimental Bazar, Hyderabad (29.05.2013 to 05.10.2014)  Remained in leave

		<p>from 06.10.2014 to 24.01.2016</p> <p>ESI Dispensary, Balanagar, Mahabubnagar, Telanana State (from 25.01.2016 onwards)</p>
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**W.P.No.1420 of 2022**

All the five petitioners in this Writ Petition are claiming the benefit of in-service candidates in the State of Andhra Pradesh on the strength of Section 95 of the Act of 2014 and they appear to be serving in the State of Telangana. There is no averment or document as to their local area. However, since they are claiming entitlement as non-local in-service candidates for admission to Post Graduate Medical Courses in the State of Andhra Pradesh, it seems they have not passed their qualifying examination, i.e. MBBS course from any local area, i.e. University located within the State of Andhra Pradesh. Be that as it may, since their prayer for treating them as in-service candidates is based on the legal effect of Section 95 of the 2014 Act, the same is considered in this common order.

4. Heard learned counsel for the parties and considered the material on record.

5. It is contended by the learned counsel for the petitioners that Section 95 of the 2014 Act mandates that in order to ensure equal opportunities for quality higher education to all students in the successor States, the existing admission quotas in all government or private, aided or unaided, institutions of higher, technical and medical education insofar as it is provided under article 371D of the Constitution, shall continue as such for a period of ten years

during which the existing common admission process shall continue. Therefore, ten years' period being available upto 2024, the petitioners are entitled to be considered for admission in Post Graduate Medical Courses as in-service candidates in the State of Telangana as well as in the State of Andhra Pradesh. According to them, the special reservation for the candidates belonging to the State of Andhra Pradesh alone vide the impugned amendment, vide G.O.Ms.No.703 dated 13.12.2021 is illegal, being in violation of Section 95 of the 2014 Act. It is also argued that the amendment is made to manipulate the admission process and oust the candidates like the petitioners who have either completed their studies in the State of Andhra Pradesh or serving in the State of Andhra Pradesh and/or the State of Telangana; such candidates who worked in the State of Telangana were considered up to the last academic year, therefore, the departure from common admission process has no sanction in law and they cannot be denied admission on the ground that they have not completed 7 years continuous service in the Government Health Institutions in the State of Andhra Pradesh.

6. According to the petitioners, they have been in continuous regular service in terms of the mandate stipulated under the Andhra Pradesh Educational Institutions (Regulation of Admissions) Order 1974 and all other allied State Government instructions framed in consonance with Article 371-D of the Constitution of India and in terms of Section 95 of the 2014 Act. Therefore, the petitioners in W.P.No.1420 of 2022 are eligible to be considered as non-local candidates against 15% unreserved seats for in-service candidates in the matter of admission to Post

Graduate Medical Courses. However, by issuing impugned G.O.Ms.No.150 dated 11.12.2021, the State of Andhra Pradesh has altered the eligibility criteria in violation of the Presidential Order issued under Article 371-D of the Constitution of India.

7. Per contra, the learned Government Pleader for Medical, Health & Family Welfare has argued that after completion of specialization course, the in-service candidates are required to be available to serve in Government facilities in the same area (Tribal/Rural/Continuous regular service) from where the reservation was sought, to a minimum of five years subject to the availability of vacancies in respective specialities through a bond. The penalty of indemnity bond shall be Rs.15 lakhs per year for non-rendering services after completion of such course for in-service candidates. The Government of Andhra Pradesh is having no administrative control over the in-service candidates of Telangana State and in case they discontinue the course in the middle, penalty of indemnity bond would not be collected by the Government of Andhra Pradesh. According to the learned Government Pleader, after bifurcation of the State, Doctors who were working in the unified State were allocated to the State of Telangana or the State of Andhra Pradesh as per the norms issued by the Government of India; therefore, the petitioners, having been allocated and serving in the State of Telangana, are not entitled to be considered as in-service candidates in the State of Andhra Pradesh. Referring to an order dated 24.08.2017 passed in WPMP No.33741 of 2017 & batch by a Division Bench of the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh, it is argued that law is settled that

Presidential Order issued under Article 371-D of the Constitution of India is not applicable to Post Graduate Medical Courses and Super speciality Courses. While submitting that the petitioners are also claiming to be in-service candidates in the State of Telangana, therefore, they are not entitled to be considered as in-service candidates for both the States, learned Government Pleader has prayed for dismissal of both the writ petitions.

8. Before proceeding to discuss the arguments advanced by the learned counsel for the parties, it would be necessary to refer to some of the provisions including different G.Os. issued by the Government of Andhra Pradesh from time to time.

9. The Government of Andhra Pradesh, in exercise of powers under the Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983 (for short, "the 1983 Act"), has framed Rules known as the Andhra Pradesh Medical Colleges (Admission into Post Graduate Medical Courses) Rules, 1997 (for short, "the 1997 Rules"). Sub-rule (2) of Rule 3 thereof provides that 15% of seats in clinical subjects, i.e. in Medicine Surgery, Obstetrics & Gynaecology Groups and 30% of the seats in non-clinical subjects in each group for Degree and Diploma Courses separately are reserved for in-service candidates in each category under in-service quota. It further provides for rendering of particular years of regular service, which presently stands at 7 years continuous regular service. The expression "Continuous regular service" has been defined under clause (c) of sub-rule (2) of Rule 3, to mean regular service in Andhra Pradesh in the following services, namely:-

- (a) Andhra Pradesh Medical & Health Services;
- (b) Andhra Pradesh Insurance Medical Services;
- (c) Andhra Pradesh Vaidya Vidhana Parishad; or
- (d) University of Health sciences.

10. Rule 4 of the 1977 Rules provides for reservation in favour of local candidates. According to this Rule, admission to 85% of the seats shall be reserved in favour of the local candidates in relation to the local area as provided in Andhra Pradesh Educational Institutions (Regulation of Admission) Order, 1974. What would be the local area for the purposes of the Rules has been provided in clause (B) of sub-rule (1) of Rule 4, which reads as under:

“B) LOCAL AREA:

- (i) The part of the State comprising the Districts of Srikakulam, Vizianagaram, Visakhapatnam, East Godavari, West Godavari, Krishna, Guntur and Prakasam (Andhra University and Nagarjuna University area) shall be regarded as the local area for the purposes of admission to the Andhra Medical College, Visakhapatnam, Rangaraya Medical College, Kakinada and Guntur Medical College, Guntur.
- (ii) The part of the State comprising the Districts of Adilabad, Hyderabad including cities of Hyderabad and Secunderabad, Ranga Reddy, Karimnagar, Khammam, Medak, Mahaboobnagar, Nalgonda, Nizamabad and Warangal (Osmania University and Kakatiya University area) shall be regarded as local area for the purpose of admission to the Osmania Medical College, Hyderabad, Gandhi Medical College, Hyderabad and Kakatiya Medical College, Warangal.

- (iii) The part of the State comprising the Districts of Ananthapur, Kurnool, Chittoor, Cuddapah and Nellore, i.e., Sri Venkateswara University area shall be regarded as local area for the purpose of admission to the Kurnool Medical College, Kurnool and Sri Venkateswara Medical College, Tirupathi.”

11. Similarly, provision for local candidates has been made under clause (C) of sub-rule (1) of Rule 4, which reads as under:

(C) LOCAL CANDIDATES

(I) A candidate for admission shall be regarded as local candidate in relation to a local area:-

- (i) If the candidate studies in an Educational Institution or Educational Institutions in such local area for a period of not less than four consecutive academic years ending with the academic year in which the candidate appeared or as the case may be first appeared in the relevant qualifying examination.

or

- (ii) Where during the whole or any part of the four consecutive academic years ending with the academic year in which the candidate appeared or as the case may be first appeared

For the relevant qualifying examination the candidate has not studied in educational institutions, if the candidate had resided in that local area for a period of not less than four years immediately preceding the date of commencement of the relevant qualifying examination, in which the candidate appeared or as the case may be first appeared.”

12. The procedure for admission to any course of study to a candidate, who is not regarded as a local candidate under sub-rule (I) above, has been made in sub-rule (II) of clause (C) of sub-rule (1) of Rule 4.

13. Clause (E) of sub-rule (1) of Rule 4 provides that if a local candidate in respect of a local area is not available to fill any seat reserved or allocated in favour of local candidate in respect of that local area, such seats shall be filled in as if it had not been reserved.

14. The eligibility for admission to the remaining 15% of un-reserved seats has been provided under clause (G) of sub-rule (1) of Rule 4, which reads as under:

“(G) The following categories are eligible to apply for admission to the remaining 15% of un-reserved seats.

- (i) All candidates defined under sub-rule (C) of rule-4.
- (ii) Candidates who have resided in the State for total period of ten years excluding the period of study outside the State or either of those parents have resided in the State for a total period of ten years excluding the period of employment outside the State.
- (iii) Candidates who are children of parents who are in the employment of the State or Central Government, Public Sector Corporations, Local bodies, Universities and other similar quasi – Public Institutions in the State.
- (iv) Candidates, who are spouses of those in employment of the State or Central Government,

Public Sector Corporations, Local Bodies, Universities and Educational Institutions recognized by the Government or a University or other competent authority and similar other quasi Government institutions within the State.

- (v) Candidates, who are employed in the State Government undertakings, Public Sector, Corporations, local bodies, Universities and other similar quasi-public institutions within the State.
- (vi) Candidates who are spouses of the local candidates as per rule-4(C).”

15. Vide G.O.P.No.646 dated 10.07.1979, the Government of Andhra Pradesh issued comprehensive instructions for clarifying certain anomalies and situations where the candidates belonging to the State of Andhra Pradesh are regarded as non-local candidates in all the local areas within the State. In order to avoid that situation, the Government clarified thus in paragraph-11:

“11. As clarifications were being sought on the question as to who should be considered eligible to apply as candidates belonging to the State of Andhra Pradesh for the purpose of admission to courses of studies offered by educational institutions, subject to the control of the State Government against the 15% of the available seats kept unreserved in terms of the Andhra Pradesh Educational Institutions (Regulation of Admissions) Order, 1974 the Government after careful consideration have directed that the following categories of candidates may be treated as eligible to apply for admissions to educational institutions in the

State, subject to the control of the State Government, as candidates belonging to the State of Andhra Pradesh against the 15% of the available seats left unreserved in terms of the Presidential Order:

- (i) All local candidates defined in the Presidential Order;
- (ii) (ii) Candidates who have resided in the State for a total period of ten years excluding periods of study outside the State; or either of whose parents have resided in the State for a total period of ten years excluding periods of employment outside the State;
- (iii) (iii) Candidates who are children of parents who are in the employment of this State or Central Government, Public Sector corporations, Local Bodies, Universities and other similar quasi-Public Institutions within the State; and
- (iv) Candidates who are spouses of those in the employment of this State or Central Government, Public Sector Corporations, Local Bodies, Universities and educational institutions recognised by the Government a University or other competent authority and similar other quasi-Government institutions within the State.”

16. Admission to Post Graduate Courses in the Unified State of Andhra Pradesh and in both the successor States, after bifurcation,

has continuously been followed under the above provision. However, the Government of Andhra Pradesh has issued G.O.Ms.No.150, Health, Medical and Family Welfare (C1) Department dated 11.12.2021 making the following amendment in sub-rule (2) of Rule 3 of the 1977 Rules. The whole amendment is extracted hereinbelow:

“In the said rules, for sub-rule (2) of Rule 3, except the existing items (i) to (vi) under NOTE therein, the following shall be substituted, namely;-

“(2) (a), Out of 50% of the seats in State Government quota, 30% of clinical & 50% of non-clinical seats will be exclusively allocated to in service candidates serving in Government Health institutions in the State of Andhra Pradesh.

- i. The seats in above categories MD/MS/MDS will be filled up based on the marks obtained in the NEET-PG Examination.
- ii. The candidate should have a left over service of 10 years at least.
- iii. The candidates before seeking admission under in-service quota should complete;
  1. **In Tribal areas:** minimum three (3) years of regular and continuous service in PHCs/CHCs/Area Hospitals/District Hospitals/Sample Survey cum assessment units/Leprosy temporary hospitalization wards & any Tribal Institute recognized by Government of Andhra Pradesh.
  2. **In Rural areas:** minimum four (4) years of regular and continuous service in PHCs/CHCs/Area Hospitals/District Hospitals/MCH/Sample Survey cum assessment units/Leprosy Control Units/Leprosy temporary hospitalization

wards/Mobile Medical Units & any Rural Institute recognized by Government of Andhra Pradesh.

3. Minimum seven **(7) years of continuous regular service** in AP Medical & Health Services/A.P.V.V.P./AP Insurance Medical Services/University of Health Sciences.

(b) Moreover, seats allotted to in-service candidates which become vacant after 2<sup>nd</sup> counselling of NEET will automatically revert to non-service candidates for further stray counselling.

(c) After completion of specialization, the in-service doctors to be available to serve in Government facilities in the same area (Tribal/Rural/Continuous regular service) from where the reservation was sought, to a minimum of five (5) years, subject to the availability of vacancies in respective specialities, through a bond.

(d) The penalty of indemnity bond shall be @ Rs.15 lakh per year for non-rendering services after completion of such course for in-service candidates as stated above.

(e) In case of an in-service candidate, in the event she/he leaves the course before its completion or the competent authority concludes that the in service candidate has not shown sufficient progress in the studies or has failed to complete the course in proper time or fails to resume duty even after the expiry of the termination of the period of deputation or at any time within a period of ten (10) years after completion of the higher studies, it shall be lawful to the Government to make recovery of the amount (including pay and allowances, stipend, DA, tuition fee etc., along with penalty and applicable interest) spent on higher studies or specialized training from the salary of the candidate.”

17. In consequence of the impugned G.O.Ms.No.150 dated 11.12.2021, the respondent-University issued the impugned Notification bearing No.1236/EA2/PG/2021 dated 23.12.2021, providing the details of reservations for in-service candidates. As a result of the impugned G.O.Ms.No.150 dated 11.12.2021 and the Notification issued by the respondent-University, the petitioners who are Doctors serving in the State of Telangana, have become ineligible to be considered for admission in Post Graduate Courses available in the Medical Colleges in the State of Andhra Pradesh, necessitating the present writ petitions on the ground that the impugned actions/orders are violative of Section 95 of the 2014 Act. The said provision is reproduced hereinbelow for ready reference:

“95. In order to ensure equal opportunities for quality higher education to all students in the successor States, the existing admission quotas in all government or private, aided or unaided, institutions of higher, technical and medical education in so far as it is provided under article 371D of the Constitution, shall continue as such for a period of ten years during which the existing common admission process shall continue.”

18. Although reference is made to Article 371-D of the Constitution of India, however, the main focus of the petitioners' arguments revolves around the benefit accruing to them under Section 95 of the 2014 Act. Therefore, the present order will focus around this core issue. Section 95 of the 2014 Act, which has already been extracted in the preceding paragraph, categorically provides that the Government of Andhra Pradesh and the Government of Telangana are mandated in law to maintain the

existing admission quota in all government or private, aided or unaided, institutions of higher, technical and medical education as provided under Article 371-D of the Constitution of India, for a period of ten years during which the existing common admission process shall continue. The expressions “all students in the successor states” and “the existing common admission process” together with the expressions “the existing admission quota” and “shall continue” are important and relevant for the adjudication of the issue brought before this Court. A deep perusal of the provision would make it manifest that the existing common admission process shall continue as such for a period of ten years. The focus in the legislative wisdom under Section 95 of the 2014 Act is for continuation of the existing common admission process in relation to the existing admission quota in all government or private, aided or unaided, institutions of higher, technical and **medical education**. As a result, both the States are obligated in law to continue the existing common admission process for a period of ten years in the field relating to **medical education** amongst others.

19. True it is that it appears paradoxical that a person who is not serving in the State of Andhra Pradesh is still treated to be in-service candidate in that State. However, as long as the mandate of Section 95 of the 2014 Act is operative, we have no option but to give full effect to the legal provision. The words of the provision as employed in Section 95 of the 2014 Act have to be read and given effect to as it is, as the Court is not entitled to read down the provision and as a matter of fact, there is no such challenge drawn before this Court.

20. In taking the above view, we are fortified by a judgment rendered by a Division Bench of the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in **Dr. Phanindra Kumar Nagisetty v. Dr. N.T.R. University of Health Sciences**, reported in **2016 (6) ALT 288**.

21. In view of the above discussion, the impugned amendment vide G.O.Ms.No.150 dated 11.12.2021 restricting consideration of eligibility of Doctors serving only in the State of Andhra Pradesh, is in violation of Section 95 of the 2014 Act. Therefore, we have no hesitation in setting aside the amendment to the extent it restricts such consideration to the Doctors serving only in the State of Andhra Pradesh. Resultantly, the petitioners who are serving in the State of Telangana are also entitled to be considered as in-service local or in-service non-local candidates under the respective quota for which they have applied. Consequent upon setting aside the impugned amendment vide G.O.Ms.No.150 dated 11.12.2021 to the extent indicated above, the resultant Notification dated 23.12.2021 issued vide Notification No.1236/EA2/PG/2021 shall also stand set aside to the same extent.

22. Resultantly, both the writ petitions are allowed to the extent indicated above. No order as to costs. Pending miscellaneous applications, if any, shall stand closed.

**Sd/-**

**PRASHANT KUMAR MISHRA, CJ**

MRR

**Sd/-**

**M. SATYANARAYANA MURTHY, J**