

CWP No.18928 of 2013
CWP No.18938 of 2013

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(1) **CWP No.18928 of 2013**
Date of decision:04.05.2015

Dr. Tanya Gill ...Petitioner

Versus

State of Punjab and others ...Respondents

(2) **CWP No.18938 of 2013**
Date of decision:04.05.2015

Dr. Anjali Nagpal ...Petitioner

Versus

State of Punjab and others ...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Rajesh Sethi, Advocate,
for the petitioner.

Mr. Anant Kataria, AAG, Punjab.

Mr. Gautam Pathania, Advocate,
for respondent No.2.

Mr. Gurpreet Singh Dhillon, Advocate,
for private respondents.

Rakesh Kumar Jain, J.

This order shall dispose of two petitions bearing CWP No.18928 and 18938 of 2013 as both are inter-connected. However, for the sake of convenience, the facts are being extracted from CWP No.18928 of 2013.

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The petitioner has prayed for a writ in the nature of *mandamus*, directing respondent no.2-Baba Farid University of Health Sciences, Faridkot (hereinafter referred to as the “University”) to consider case of the petitioner for admission in the Postgraduate Medical Course against the 40% State quota for open category for the session-2013 by way of giving incentive @ 10% weightage for each year of service rendered in ‘difficult’ area as per proviso to sub-clause IV of Clause 9 of the Post Graduate Medical Education (Amendment) Regulations, 2012, as amended upto date.

At the time when the petition was filed, the petitioner was posted as PCMS Doctor in Mini Primary Health Centre, Village Ladpur, District Fatehgarh Sahib, Punjab. She appeared in NEET-PG-2013 and scored 898.5 marks and got 420 State rank. The University issued the prospectus for admission in the post graduate medical/dental courses for the session-2013. The important dates for the purposes of submission of fee and counselling etc. are as under:-

“IMPORTANT DATES

1	Availability of Prospectus	17.05.2013
2	Last date for depositing fee in University Account in Oriental Bank of Commerce (OBC) through challan form available at university website and filling online admission application form. Bank Account number mentioned on challan Form.	25.05.2013
3	Last date for obtaining Eligibility Certificate under NRI Quota	25.05.2013
4	Last date for submitting printout copy of admission application form by hand only alongwith self attested copies of certificates and university copy of challan form at University.	26.05.2013
5	Last date for submitting admission application form for NRI quota	26.05.2013

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**First counselling will be held at GGS Medical College,
Sadiq Road, Faridkot as under:**

Dental	Medical
27.05.2013 (8.00 a.m. to 9.00 a.m.) - NRI seats of all Pvt. Colleges	27.05.2013 (8.00 a.m. to 9.00 a.m.) NRI seats of all Pvt. Colleges
60% Quota – 9.00 a.m. to 10.00 a.m.	[60% Quota] – 9.00 a.m. to 11.00 a.m.
40% Quota in Govt. College and all seats of Private Colleges – 10.00 a.m. to 12.00 Noon.	40% Quota in Govt. Colleges and all seats of Private Colleges – 11.00 a.m. onwards

**Second counselling for all courses will be held at GGS
Medical College, Sadiq Road, Faridkot as under:**

Dental	Medical
30.05.2013 (8.00 a.m. to 9.00 a.m.) - NRI seats of all Pvt. Colleges	30.05.2013 (8.00 a.m. to 9.00 a.m.) NRI seats of all Pvt. Colleges
60% Quota – 9.00 a.m. to 10.00 a.m.	[60% Quota] – 9.00 a.m. to 11.00 a.m.
40% Quota in Govt. College and all seats of Private Colleges – 10.00 a.m. to 12.00 Noon.	40% Quota in Govt. Colleges and all seats of Private Colleges – 11.00 a.m. onwards

As per Clause 2.1 of the General Eligibility conditions, contained in the prospectus for the session-2013, the admission to PG courses (MD/MS/PG Diploma/MDS) was open to candidates who had qualified NEET(PG)-2013/NEET (MDS)-2013 and were eligible as per Punjab Govt. notification (incorporated in the prospectus in Part-B) and possessing basic qualifications of MBBS for various Medical PG Courses and BDS for various Dental PG Courses and the merit/eligibility was to be determined as per Punjab Govt. notification(s).

As per Clause 14 of the notification dated 05.04.2013, contained in Part-B of the prospectus for the session-2013, 50% of the seats in the Govt. Medical Colleges were to be filled up by the Govt. of India at

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All India level through NEET-PG-2013 and the remaining 50% seats were to be filled up at the State level from amongst the candidates having Punjab resident status. Out of the 50% State quota seats, 60% seats were to be filled up from amongst the regular PCMS in-service doctors having rendered/completed 04 years service in very difficult (category D) area or 06 years service in difficult (category C) or an appropriate combination of both. Clause 14 of the notification dated 05.04.2013, contained in Part-B of the prospectus for the session-2013, is as under:-

“14. (I) Government Institution (Government Medical College, Amritsar and Patiala, G.G.S. Medical College, Faridkot; Government Dental College, Patiala and Amritsar.

In the Government institutions, 50% of the total seats in every such institution shall be filled by the Government of India at all India level through NEET-PG-2013. The remaining seats shall be filled through NEET-PG at State Level from amongst candidates having Punjab resident status. Out of the remaining seats, 60% seats shall be filled up from amongst the eligible PCMS/PCMS (Dental)/PDES in-service doctors and 40% shall be open to all eligible medical/dental graduates.

A. For 60% Seats in Post Graduate Degree for PCMS/PCMS (Dental)/PDES.

The Eligibility to 60% quota candidates will be as per

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letters of Deptt. of Health and Family Welfare Endst.
No.26/12/94-5HB2/795-805 dated 31.01.2011; and
Memo No.26/12/94-5HB2/4456-58 dated 17.07.2012
No.2/149/12-1HBI/7260-77 dated 13.09.2012 and any
other notification issued from time to time.

- a) The eligibility requirements are as under:
- (i) Regular PCMS employee; and
 - (ii) Have completed four years' service in very difficult (Category D) area or six year service in difficult (Category C) or on appropriate combination of both and in case of candidates who have completed 5 year of service as on 01.01.2012, they should have completed 2 years of service in most difficult areas or 3 years of service in difficult areas; and RMO once they are selected in PCMS, they will be given benefits of rural service rendered by them as RMO's under Zila Parishads.
 - (iii) Have cleared the probation period; and
 - (iv) Whose service record is good; and
 - (v) After completion of Post Graduate Course have minimum of 10 years' service left; and
 - (vi) There is no

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vigilance/departmental/disciplinary inquiry
pending against the employee.

- b) The period of rural service shall be computed as on March 31st of corresponding year.
- c) Ad-hoc service rendered in respective category will be counted for purpose of computing the stipulated period of three years.
- d) Weightage of 1.0 mark for each year's service in difficult area and 1.5 marks for most difficult area over and above the eligibility of rural service shall be given, subject to a maximum of 5 marks.”

Since the petitioner had joined regular service as PCMS doctor on 15.03.2011, therefore, she was not eligible for admission in the 60% in-service PCMS doctors quota and had to compete in the open category for the remaining 40% State quota seats. The petitioner has averred that she has been posted in the difficult area since the date of her joining on 15.03.2011 and rendered 2 years' service, therefore, as per the proviso added vide Post Graduate Medical Education (Amendment) Regulations, 2012, she was entitled to weightage by way of incentive @ 10% of the marks obtained for each years of service in remote or difficult areas. The aforesaid proviso to Sub-Clause IV of Clause 9, added vide notification dated 15.02.2012, is reproduced as under:-

“Provided that in determining the merit of
candidates who are in service of government/public

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authority, weightage in the marks may be given by the Government/Competent Authority as an incentive at the rate of 10% of the marks obtained for each year of service in remote and/or difficult areas upto the maximum of 30% of the marks obtained in National Eligibility-cum-Entrance Test. The remote and difficult areas shall be as defined by State Government/Competent authority from time to time.”

The case of the petitioner is that in the year 2013, some of the Rural Medical Officers (RMOs), who were appointed on contract basis to work with the Zila Parishads in the State of Punjab, approached this Court by way of filing various writ petitions and claimed parity with the regular PCMS doctors who were entitled to be considered for admission to Postgraduate Medical Course for the session-2013 against the 60% in-service PCMS doctors quota on the basis of length of service rendered in 'difficult' or 'more difficult' areas. Those writ petitions were dismissed on 22.05.2013, with the lead case titled as **Dr. Manu Gupta v. State of Punjab and others**, reported as 2013(3) SCT 632 and the RMOs were denied parity with the PCMS doctors. The RMOs filed LPA No.1043 of 2013 which was dismissed on 25.07.2013 and the view expressed by the Single Judge was upheld but it was observed by the Division Bench that the RMOs were not to be precluded from being considered in the open quota as per their merit giving due weightage of their rural service as contained in the prospectus. It is alleged that though the counselling for the seats which

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remained vacant in the 60% in-service PCMS doctors quota and were subsequently made available to be filled up from 40% open category was held on 30.07.2013, the petitioner, who had rendered 02 years' service in 'difficult' area since her joining on 15.03.2011, was not given weightage by way of incentive @ 10% of each year and, thus, respondent no.1 has acted illegally and arbitrarily in denying the said benefit.

It is needless to mention here that the petitioner could not get admission in the session-2013 and now with the efflux of time, she has missed the bus insofar as the session-2013 is concerned and has, thus, prayed that she may be given admission in the present session of 2015. She has also sworn an affidavit dated 24.04.2015 in which it is averred that she has appeared in the AIPGMEE (2015) Test conducted by the National Board of Examinations (NBE); her Testing ID was CD 1060452; she appeared as a General Category candidate (referred to as UR); scored 1154.0405 marks out of 1500 and her AIPGMEE rank is 10755 and her University rank is 362.

Counsel for the petitioner has argued that though the session-2013 is over in which the petitioner had applied for admission, yet this Court can allow the petitioner admission in the session 2015 by giving her weightage of 10% of the marks obtained in NEET-PG-2013 for each year's of service rendered in the remote area as the petitioner is not at fault. It is also submitted by him that if the RMOs can be given weightage, enhancing their merit, the petitioner also deserves to be given the weightage on the basis of same regulation of the Medical Council of India. In this regard, he

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has relied upon various judgments of the Supreme Court in the cases of **C. Tulasi Priya v. A.P. State Council of Higher Education**, 1999 AIR (SC) 199, **M. Sreedevi v. University of Medical Sciences, A.P.**, 2002(10) SCC 760, **Aman Deep Jaswal v. State of Punjab and others**, 2006(9) SCC 597, **Dolly Chhanda v. Chairman, JEE**, 2004 AIR(SC) 5043 and **Asha v. Pt. B.D. Sharma University of Health Sciences & Ors.**, 2012(7) SCC 389.

On the other hand, counsel for the respondents has submitted that in the matter of admission to the Postgraduate Medical Course, the admission cannot be given in the current session of 2015 on the basis of merit of the petitioner of the session 2013 and in this regard, he has relied upon a judgment of the Supreme Court in the case of **Chandigarh Administration and another v. Jasmine Kaur and others**, Civil Appeal Nos.8377-8378 of 2014, arising out of SLP(C) Nos.18137-18138 of 2014, decided on 01.09.2014.

It is further submitted that the petitioner is a regular PCMS doctor who cannot be equated with the RMO and cannot be allowed to encroach upon the seats earmarked for 40% open category candidates as the regular PCMS doctors have already been earmarked 60% quota in the prospectus for the session-2013. It is further submitted that the petitioner is a general category candidate who is asking for 20% weightage in the marks obtained by her in NEET-PG-2013 on the basis that she has served in the remote/difficult area, which cannot be permitted in view of the latest judgment of this Court in the case of **Dr. Mitthat and others v. State of Punjab and others**, CWP No.4324 of 2015, decided on 13.04.2015.

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After hearing learned counsel for the petitioner and examining the available record, I am of the considered opinion that there is no merit in both the writ petitions and the same deserve to be dismissed because the petitioner has already missed the bus insofar as the admission in the session-2013 is concerned, in view of the decision of the Supreme Court in **Chandigarh Administration's case (supra)** in which it has been held that a medical seat has life only in the year it falls that too only till the cut-off date, fixed by the Court i.e. 30th September in the respective year and carry forward principle is unknown to the professional courses like medical, engineering, dental etc. and there is no power with the Board to carry forward a vacancy to a succeeding year and that if the Board or the Court indulges in such an exercise, in the absence of any rule or regulation, that will be at the expense of other meritorious candidates waiting for admissions in the succeeding years.

Insofar as the present case is concerned, it is neither a case of exceptional circumstance on account of which the Court can be persuaded and the schedule relating to admission, which is to be strictly and unscrupulously adhered to, can be deviated from nor it is a case where the petitioner is entitled to any sort of compensation because the petitioner is not entitled to any kind of relief as 10% weightage was meant for RMOs and not for the regular in-service PCMS doctors. The petitioner could not enter the 60% in-service PCMS doctor's quota because she was not qualifying 4 years/6 years service in remote areas and had only 2 years of difficult area service on the basis of which she has tried to take advantage of

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the order passed by this Court in **Dr. Manu Gupta's case (supra)** passed in the case of RMOs to claim 20% weightage.

In **Dr. Mitthat's case (supra)**, this Court has held that such kind of weightage cannot be granted as such encroachment or inroad or appropriation of seats earmarked for open category candidates (direct admission category) would definitely affect the candidates who compete strictly on the basis of the merit.

In view of the aforesaid discussion, I do not find any merit in both the writ petitions and hence, the same are hereby dismissed.

May 04, 2015
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(Rakesh Kumar Jain)
Judge