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

**(1)** **CWP No.4324 of 2015**

Dr. Mitthat and others ...Petitioners

Versus

State of Punjab and others ...Respondents

**(2)** **CWP No.4761 of 2015**

Varun Khullar and others ...Petitioners

Versus

State of Punjab and others ...Respondents

**(3)** **CWP No.4708 of 2015**

Heena Arora & another ...Petitioners

Versus

State of Punjab and others ...Respondents

**(4)** **CWP No.5486 of 2015**

Dr. Komalpreet Kaur ...Petitioner

Versus

State of Punjab and others ...Respondents

**(5)** **CWP No.5423 of 2015**

Dr. Gagandeep Shergill and others ...Petitioners

Versus

State of Punjab and others ...Respondents

(6) **CWP No.6241 of 2015**

Dr. Tanu Arora ...Petitioner

Versus

Baba Farid University of Health Sciences and another ...Respondents

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**Date of decision: 13th April, 2015**

**CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain**

Present: Mr. Gurminder Singh, Senior Advocate, with
Mr. Yagyadeep, Advocate, for the petitioners
in CWP No.4324 of 2015.

Mr. Puneet Jindal, Senior Advocate, with
Ms. Sakshi, Advocate, for the petitioners
in CWP No.4761 of 2015.

Mr. Akshay Bhan, Senior Advocate, with
Mr. Amandeep Singh, Advocate, for the petitioners
in CWP No.4708 of 2015.

Mr. Vikas Singh, Advocate,
for the petitioner for CWP No.5486 of 2015.

Mr. JPS Sidhu, Advocate,
for the petitioners in CWP No.5423 of 2015.

Mr. Vivek Salathia, Advocate,
for the petitioner in CWP No.6241 of 2015.

Mr. Kamal Sehgal, Addl. A.G., Punjab.

Mr. K.S.Sandhu, Advocate,
for the respondent-University.

Mr. Gagneshwar Walia, Advocate,
for the respondent-MCI.

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**Rakesh Kumar Jain, J.**

This order shall dispose of six petitions bearing CWP No.4324 of 2015 titled as "Dr. Mitthat and others v. State of Punjab and others" (here-in-after referred to as the "1st petition"), CWP No.4761 of 2015 titled as "Varun Khullar and others v. State of Punjab and others" (here-in-after referred to as the "2nd petition"), CWP No.4708 of 2015 titled as "Heena

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Arora and another v. State of Punjab and others" (here-in-after referred to as the "3rd petition"), CWP No.5486 of 2015 titled as "Dr. Komalpreet Kaur v. State of Punjab and others" (here-in-after referred to as the "4th petition"), CWP No.5423 of 2015 titled as "Dr. Gagandeep Shergill and others v. State of Punjab and others" (here-in-after referred to as the "5th petition") and CWP No.6241 of 2015 titled as "Dr. Tanu Arora v. Baba Farid University of Health Sciences and another" (here-in-after referred to as the "6th petition") as all pertain to admission in the Post Graduate Medical Course.

The 1st petition is filed by 12 petitioners in which the prayer made is for quashing clause/para 27(I) of the notification dated 25.02.2015 issued by the Department of Medical Education & Research, Punjab, further incorporated in Part-B of the prospectus issued by the Baba Farid University of Health Sciences, Faridkot (here-in-after referred to as the "University") whereby entire 40% of State quota seats have been reserved for the students having Punjab Resident Status/Domicile and 60% of the 50% State quota seats, provided to the in service Medical Officers, serving with the State Government, being excessive and against the provisions of Regulation 9 of the Postgraduate Medical Education Regulations, 2000 wherein the reservation is envisaged only for the PG Diploma Courses and not for the Degree Courses and also for a writ in the nature of *mandamus* directing the respondents to fill up all State quota and Government quota seats other than the seats reserved for in service doctors on the basis of institutional preference from amongst the graduates from the medical colleges affiliated to the University.

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The 2nd petition is filed by 10 petitioners in which they have prayed that para 27(I) of the notification dated 25.02.215 whereby reservation out of 40% quota has been given up to the extent of half (50%) on the basis of `Institutional Preference' for those students alone who have passed their qualifying examination from the University and/or in the alternative the newly incorporated institutional reservation to the extent of 50% out of 40% State Quota should be applied in such a manner that graduates from the University are admitted only against their own quota i.e. 50% (20% of the overall intake for PG courses) leaving remaining 50% (20% of the overall intake for PG course) for Punjab residential status holder graduates/MBBS from universities other than the University.

The 3rd petition is filed by the two petitioners in which they have prayed that clause/para 27(I) of the notification dated 25.02.2015 be quashed to the extent whereby the State quota seats are to be filled from amongst the candidates having resident status and clause/para 27(V)(iv) to (viii) be also quashed whereby reservation has been granted to sports person, children/grand children of terrorism and riots affected persons, wards of Defence Personnel, wards of Punjab Police Personnel, Punjab Armed Police, Paramilitary Forces and Children/grand children of freedom fighters of Punjab, to the extent of total 9%.

The 4th petition is filed by the sole petitioner who has prayed for quashing of the seat matrix for admission to Post Graduate courses in Medical Colleges of Punjab, published on 20.03.2015 on the website of the Department of Medical Education and Research, Punjab, by which as

against the permissible reservation of 9% seats, as many as 22% of the 40% State quota seats in Government Medical Colleges have been reserved for micro categories such as Freedom Fighters, Sportsmen, Ex-servicemen etc., for issuance of a writ in the nature of *mandamus* directing the respondent not to treat Institutional Preference as a separate reservation and to revise the seat matrix so as to earmark 32 seats out of 63 seats (instead of only 16 earmarked now) in the 40% State quota seats in Government Medical Colleges, being filled up on the basis of Institutional Preference, in accordance with clause 27(I) of the notification dated 25.02.2015, as earmarking only 16 seats is in contravention of the provisions of the aforesaid government notification and for issuance of a writ in the nature of *mandamus* directing the respondents to revise the seat matrix so as to distribute the seats of all specialties proportionately between the 60% quota and 40% of State seats and between various reserved categories.

The 5th petition is filed by 4 petitioners in which they have prayed for quashing of Clause 29 of the notification dated 25.02.2015, incorporated in Part-B of the prospectus issued by the University as per which after exhausting all the eligible reserved category candidates in 60% quota, the vacant seats are directly transferred to same category candidates of 40% quota without firstly being given to General candidates of 60% quota and also for issuance of a writ in the nature of *mandamus* directing the respondents firstly to fill the vacant PG seats in medical education of reserved category candidates of 60% quota from the eligible 60% in service quota general category candidates.

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The 6th petition is filed by the sole petitioner, presently posted as Rural Medical Officer, Subsidiary Health Centre, Balkalan, Block Verka, District Amritsar, who has prayed for the issuance of a writ in the nature of mandamus, directing respondent no.1 to draw up merit list of the candidates by granting incentives to the petitioner in accordance with Clause 9 of the Post Graduate Medical Education (Amendment) Regulations 2012 Part-I, as per which, while determining the merit of the candidates, weightage in marks at the rate of 10% subject to a maximum limit of 30% of the marks secured in the National Eligibility Test has to be given to the petitioner who is in service under the Government/Public Authority in remote and/or difficult area.

The basic facts applicable to all the aforesaid cases are that the Government of India established the National Board of Examination (NBE) in 1975 with the objective of improving the quality of Medical Education by establishing high and uniform standards of postgraduate examinations in modern medicine on All India Basis. The NBE conducts entry and exit examinations at Postgraduate, Post Doctoral level and licensing examinations as Screening Test for Indian Nationals with Foreign Medical Qualifications for admission to 50% MD/MS/Diploma Courses Seats.

Pursuant to the directions issued by the Supreme Court on 23.03.2012 in IA No.16 of 2012 in Civil Appeal No.1944 of 1993, the All India Post Graduate Medical Entrance Examination (AIPGMEE) was decided to be conducted through online throughout the country (except the State of Jammu and Kashmir and erstwhile Andhra Pradesh). The

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AIPGMEE is a qualifying-cum-ranking examination, notified under the provisions of Post-Graduate Medical Education Regulations, 2000 framed by the Medical Council of India with the prior approval of the Government of India. As per Information Bulletin issued by the NBE, advertisement was issued on 08.08.2014 for admission; Information Bulletin was made available from 29th August to 10th October 2014; online registration for AIPGMEE was opened from 29th August to 10th October 2014; examination for AIPGMEE were held from 1st December to 6th December, 2014 and the result was declared on 15th January, 2015. On the basis of the All India Ranking, counselling for 50% All India Quota Seats was held between 21.02.2015 to 26.02.215 (upto 5.00 p.m.).

The State of Punjab issued notification dated 25.02.2015 providing the seat distribution in Government Institutions. The relevant portion of the notification dated 25.02.2015 is reproduced as under:-

> "**27. Seat distribution in Govt. Institutions** (Govt. Medical/Dental College, Amritsar & Patiala, GGS Medical/Dental College, Faridkot.)
>
> **I.** In the Govt. Institutions, 50% of the total seats shall be filled by the Government of India at all India level through All India Test-2015. The remaining seats shall be filled through AIPGMEE/ AIPGDEE-2015 at the state level from amongst the candidates having Punjab Resident status. Out of State quota seats 60% seats shall be filled up from amongst the eligible PCMS (Medical/Dental) in service doctors & 40% seats shall be open to all eligible Medical/Dental graduates. Out of these 40% seats the Governor of

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Punjab is further pleased to reserve, by way of institutional preference upto 50% available seats who have passed their qualifying examination from Baba Farid University of Health Sciences, Faridkot except Christian Medical College, Ludhiana. There shall be separate merit list for in-service 60% quota candidates for Medical /Dental Colleges and a separate merit list for those who are not covered under the category of in-service candidates.

**II.** For 60% quota candidates PCMS (Medical/Dental) in service doctors).

a) The Eligibility requirements are as under:

i. Regular PCMS(Medical/Dental) employee
ii. Has completed 4 years service in very difficult (Category-D) area or 6 years service in difficult (Category C) area or an appropriate combination of **b**oth. In case of candidates who have completed 5 years 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.
iii. RMO's once they are selected in PCMS (Medical/Dental), will be given benefits of rural service rendered by them as RMO's under Zila Parishad.
iv. Has cleared the probation period
v. Has Good service record
vi. Has no vigilance/departmental/disciplinary inquiry pending against him/her.
vii. Will have 10 years of service left after completion of the course.

b) The period of rural service shall be computed as on March 31st 2015.

c) Adhoc service rendered in respective category will be counted for the purpose of computing the stipulated period.

d) Weightage of 1 mark for each year of service

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in difficult area & 1.5 marks for most difficult area over & above the eligibility of rural service shall be given, subject to a maximum of 5 marks.

e) PCMS (Medical/Dental) in service candidates will submit along with the application a certificate regarding length of service, length of rural service, number of years of service left after completion of PG course & that no department/vigilance inquiry is pending against the candidate.

f) All PCMS (Medical/Dental) doctors who are selected for admission to post graduate courses shall have to produce a No Objection Certificate from the Govt. of Punjab, Department of Health & Family Welfare.

g) All in service doctors shall have to submit a bond of Rs 40 lakhs to serve the Punjab Government for a period of 10 years after completion of post graduate course. If the candidate fails to do so he/she shall have to submit the bond money with the government.

**III. For 40 % quota candidates**

40% quota seats shall be open to all eligible medical/dental graduates. Any candidate in state government employment shall produce a No Objection Certificate from his/her employer.

**IV. For 40% & All India quota candidates**

Candidates selected in All India quota will be considered at par with 40% state quota candidates.

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They will get fixed emoluments/stipends as determined by the Government from time to time for the course period of 3 years subject to the following conditions:

i. The candidate is to submit a bond of Rs.15 lakhs to serve the Government of Punjab for a period of three years after completion of PG. This clause will not be applicable in case the offer is not given by the Government of Punjab within a period of one year of passing of the postgraduate examination.
ii. The candidate will inform the Government of Punjab that he has passed the postgraduate examination.
iii. Failure to serve the Government of Punjab for a period of three years will lead to deposition/ recovery of bond money to the Government of Punjab i.e. Rs.15.00 lakhs.

**V Reservation in Government Colleges**

i. Scheduled caste 25%
ii. Backward class 5%
iii. Physically handicapped 3%

Only orthopedically handicap is entitled to reservation in physically handicapped category & shall have locomotor disability of lower limbs between 50%-70%(PH-1). With this disability but otherwise found medically fit to pursue the course in the speciality concerned by the Medical Board duly constituted by the government & consisting of Heads of Departments of Orthopaedics of 3 Medical Colleges. In case the candidates are not available then the candidates with disability of 40% to 50% (PH-2) may be considered.

iv. Sports Persons 2%

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Credit will be given for the sports achievement made during the MBBS/BDS academic course only & shall be graded by the Director Sports, Punjab with a minimum benchmark of B grading.

v. Children/Grand-children of terrorism - 1% and riot affected persons - 1% (in order of preference to the exclusion of the next category)

i. Persons killed in terrorist activities in Punjab or in 1984 riots outside Punjab.

ii. Terrorism or riot affected or displaced person of Punjab origin. Preference will be given to a candidate whose parent or guardian is killed in such situation (Guardian to be considered only in case neither parent was alive at the relevant time).

vi. Wards of Defence personnel ( in order of preference to the exclusion of the next category) 2%

a. Retired Defence personnel/ex-servicemen

b. Killed in action

c. Disabled in action to the extent of 50% or above & boarded out of service

d. Died while in service & Death attributed to Military service

e. Disabled in service & boarded out with disability attributed to Military service

f. Gallantry Award winners both serving /retired

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vii. Wards of Punjab Police personnel, Punjab Armed Police, Punjab Home guards & Para military forces 2% (in order of preference to the exclusion of the next category) "

a. Killed in action
b. Disabled in action to the extent of 50%
c. Winners of President's Police medal for Gallantry
d. Winners of Police medal for Gallantry

A certificate issued by the Inspector General of Police (HQ) Punjab shall have to be produced. In case of Paramilitary forces, this certificate shall be counter signed by the IG Police (HQ) Punjab.

viii. Children/Grandchildren of Freedom fighters of Punjab 1%

**Note 1** The availability of seats for reservation shall be as per hundred point roster being maintained categorywise/subjectwise/ institutionwise.

**Note 2** All the certificates shall be as per latest instructions issued by the Government of Punjab.

VI. **Fee structure for the Government Institutions for the year 2015 will be as notified by the government.**

28. **I. Distribution of seats in Private Institutions would be :**

Govt. Quota Seats - 50%

Management/Minority Quota Seats - 50%

(including 15% NRI Quota)

Candidates seeking admission in Private Institutions should be residents of Punjab. However, in case adequate number of candidates having' Punjab resident status

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aren't available even after lowering of minimum marks as above, only then the seats will be offered to other State candidates.

**II. Reservation in Private Colleges:**

Reservations in Private Unaided Health Sciences Educational Institutions shall be as notified by the Punjab Govt.

The reservation will be as follows:

| | | |
|---|---|---|
| (i) | Schedule Caste | 25% |
| (ii) | Backward Classes | 5% |
| (iii) | Physically handicapped as per MCI/DCI guidelines | 3% |

(**Note:** The Scheduled Caste & Backward Class Certificate must be as per the latest instructions issued by the Government of Punjab)

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29. **Conversion of seats under All India/60%/ 40% Quota Unfilled seats:**

All India Quota - The vacant seats transferred from All India quota, will be transferred to same category of candidates of 40% state quota.

After exhausting all the eligible reserve category candidates in 60% quota, the vacant seats shall be transferred to same category candidates of 40% quota and after exhausting all reserve category candidates in 40% quota seats will be transferred to General Category 'candidates of 40% quota. In case of non-availability of general category candidates in 60% quota the vacant seat(s) shall be offered to the eligible general category candidates in 40% quota."

The University was established for the purpose of affiliating, teaching and ensuring proper and systematic instruction, training and

research in Modern Systems of Medicine and Indian Systems of Medicine. It is not only affiliating and examining body but also a teaching and research centre in health sciences. The University issued its prospectus of the Post Graduate Medical/Dental Courses for admission to the MD/MS/PG Diploma and MDS Courses for the session 2015, prescribing the following important dates:-

| | | |
|---|---|---|
| 1 | Availability of Prospectus | 06/03/15 |
| 2 | Last date for applying online Admission Application Form through University Website i.e. www.bfuhs.ac.in | 25.03.2015 |
| 3 | Last date for depositing fee of Rs. 8000 (Rs.4000 for SC candidates) in University Account in any branch of Oriental Bank of Commerce (OBC) through challan form which will be generated on successful filling of online admission application form at university website. Bank Account Number mentioned on Challan Form. | 26.03.2015 Upto 4:00 PM |
| 4 | Last date for submitting printout copy of online Admission Application Form alongwith self attested copies of certificates and university copy of challan form at University.<br>Note: Late fee will be accepted only in the form of DD of Rs.4000/- favouring Registrar, BFUHS payable at Faridkot. | 26.03.2015 (Without Late fee)<br>Before 1st counsellling (With Late Fee) |
| **For NRI Candidates** | | |
| 5 | Last date for submitting admission application form for **NRI quota** (Application form for getting NRI candidates is separately available on University website.) | 25.03.2015 |
| 6 | Special Entrance Test for NRI candidates will be held on | 27.03.2015 at 11:00 AM |

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

| Date | Course | Time | Quota/Seats/Colleges |
|---|---|---|---|
| **28.03.2015** | MDS | 09:00:00 am | NRI Quota Seats of all Pvt. Colleges |
| | | 09:30:00 am | 60 % Quota Seats of Govt. colleges |
| | | 10:00:00 am | 40% Quota Seats of Govt. Colleges and Govt./Management Quota Seats of Private Colleges. |

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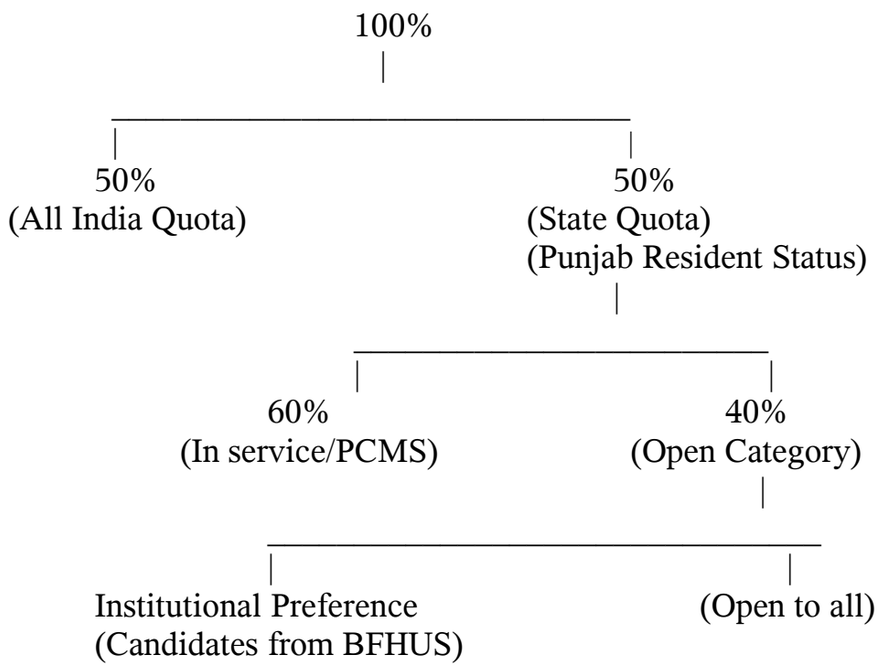
| Date | Course | Time | Quota/Seats/Colleges |
|---|---|---|---|
| **29.03.2015** | MD/MS/ Dip. | 11:00 AM | 60% Quota Seats of Govt. Colleges |
| **30.03.2015** | MD/MS/ Dip. | 09:00:00 am | NRI Quota Seats of All Pvt. Colleges |
| | | 10:00:00 AM | 40% Quota Seats of Govt. Colleges and Govt./Management Quota Seats of Private Colleges. |

The notification dated 25.02.2015 issued by the State Government providing various reservations etc., which has already been reproduced here-in-above also forms part of prospectus as Part-B, issued by the University. The reservations provided on various counts can be described by way of the following chart:-




**1st petition**

The petitioners in the 1st petition have passed their MBBS degree from the University or from the colleges affiliated to it. Out of 14 petitioners, petitioners no.2 to 9 are residents of Punjab, petitioners no.10 and 11 are residents of Haryana and petitioners no.1 and 12 are residents of

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Chandigarh.

When the writ petition was filed, clause/para 27(1) of the notification dated 25.02.2015, incorporated as it is in Part-B of the prospectus issued by the University, was challenged but during the pendency of the writ petition, the State of Punjab issued another notification No.5/33/2014-5HB-III/483 dated 25.03.2015, reserving 50% seats, out of 40% seats open to all eligible Medical graduates, by way of institutional preference upto 50% available seats for general category candidates, which has also been challenged. The relevant amendment in clause/para 27(1) of the notification dated 25.02.2015, by way of notification dated 25.03.2015, is as under:-

> **27. Seat distribution in Govt. Institutions (**Govt. Medical/Dental College, Amritsar & Patiala, GGS Medical/Dental College, Faridkot.)
>
> **I.** In the Govt. Institutions, 50% of the total seats shall be filled by the Government of India at all India level through All India Test-2015. The remaining seats shall be filled through AIPGMEE/AIPGDEE-2015 at the state level from amongst the candidates having Punjab Resident Status. Out of State Quota seats 60% seats shall be filled up from amongst the eligible PCMS (Medical/Dental) in service doctors & 40% seats shall be open to all eligible Medical/Dental graduates. Out of these 40% seats the Governor of Punjab is further pleased to reserve, by way of institutional preference upto 50% available seats for general category candidate who have passed

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> their qualifying examination from Baba Farid University of Health Sciences, Faridkot except Christian Medical College, Ludhiana. There shall be separate merit list for in-service 60% quota candidates for Medical/Dental Colleges and a separate merit list for those who are not covered under the category of in-service candidates. In 40% quota, after exhausting all Punjab resident candidates, seats remaining vacant will be offered to the other state resident."

As per notifications dated 25.02.215 and 25.03.2015, 50% of the total seats in Government colleges have been earmarked for All India quota and the remaining 50% are State quota seats. Out of the total seats, 30% (60% of the State quota seats) have been kept reserved for the in-service PCMS doctors and the remaining 20% (40% of the State quota) for the fresh graduates in open category. There are total 153 seats in the State quota in the Government colleges out of which 90 are for in-service PCMS doctors and 63 for fresh graduates, whereas in the private colleges, there are 130 seats, out of which 50% are Government Quota seats and 50% are the Management Quota seats.

It may be pertinent to mention that after the notice was issued in this petition, a short reply has been filed by way of an affidavit of the Director, Medical Education & research, Punjab, on behalf of respondents no.1 and 2. An application bearing CM No.4068 of 2015 was also filed under Order 1 Rule 10 of the Code of Civil Procedure, 1908 for impleading Dr. Gagandeep Shergill S/o Megha Singh, R/o H. No.606, JTPL City, SAS Nagar, Mohali and Dr. Pankaj Kumar C/o Sh. Amritpal, R/o Village Boha,

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Tehsil Budhlada, District Mansa as party respondents. The application was allowed on 06.03.2015 and the amended memo of parties was taken on record.

Learned counsel for the petitioners has submitted that the respondents, while reserving 40% of the total State Quota seats for the candidates having Punjab resident status, have failed to follow the judgments of the Supreme Court in the cases of **Dr. Pradeep Jain and others v. Union of India and others,** (1984) 3 Supreme Court Cases 654, **Magan Mehrotra and others v. Union of India and others,** (2003) 11 Supreme Court Cases 186 and **Nikhil Himthani v. State of Uttarakhand and others,** (2013) 10 Supreme Court Cases 237, in which it has been held that the State quota seats are not to be filled on the basis of the resident status but on the basis of the institutional preference.

Learned counsel for the petitioners has further submitted that in the case of **Vishal Goyal and others v. State of Karnataka and others,** (2014) 11 Supreme Court Cases 456, it has been held by the Supreme Court that the principles laid down in **Dr. Pradeep Jain's case (supra)** have to be followed while granting admissions to the seats allotted to the State quota in postgraduate medical course even in the private colleges.

As regards the challenge to a part of clause 27(1) of the notification dated 25.02.215 whereby reservation to the extent of 60% has been provided to the in-service PCMS doctors, it is submitted that the reservation is excessive and is against the Regulation 9 of the Postgraduate Medical Education Regulations, 2000 wherein the only reservation

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envisaged is for the PG Diploma Courses. It is further submitted that though the reservation for in-service PCMS doctors has been upheld, but the quantum of reservation i.e. 60% is highly excessive because very few eligible doctors compete for 90 seats earmarked for them, out of which most of the seats remained unfilled during the past few years. In this regard, he has also relied upon a judgment of the Supreme Court in the case of **State of T.N. v. T. Dhilipkumar and others,** 1995(5) Scale 208 to contend that the Supreme Court has clearly held that no reservation beyond 50% is contemplated for the in-service doctors.

The Regulation 9 of the Postgraduate Medical Education Regulations, 2000 is also reproduced here-as-under for the ready reference:-

> **"9. SELECTION OF POSTGRADUATE STUDENTS.**
>
> (1) Students for Post Graduate medical courses shall be selected strictly on the basis of their inter-se Academic Merit.
>
> (a) 3% seats of the annual sanctioned intake capacity shall be filled up by candidates with locomotory disability of lower limbs between 50% to 70%.
>
> Provided that in case any seat in this 3% quota remains unfilled on account of unavailability of candidates with locomotory disability of lower limbs between 50% to 70% then any such unfilled seat in this 3% quota shall be filled up by persons with locomotory disability of lower limbs between 40% to 50% - before they are included in the annual sanctioned seats for General Category candidates.

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Provided further that this entire exercise shall be completed by each medical college/institution as per the statutory time schedule for admissions and in no case any admission will be made in the Postgraduate Medical course after 31st of May.

(b) 50% of the seats in Post Graduate Diploma Courses shall be reserved for Medical Officers in the Government services, who have served for at least three years in remote and difficult areas. After acquiring the PG Diploma, the Medical Officers shall serve for two more years in remote and/or difficult areas as decided by the competent State authorities from time to time.

9(2) For determining the `Academic Merit', the University/Institution may adopt the following methodology:-

(a) On the basis of merit as determined by a `Competitive Test' conducted by the state government or by the competent authority appointed by the state government or by the university/group of universities in the same state; or

(b) On the basis of merit as determined by a centralized competitive test held at the national level; or

(c) On the basis of the individual cumulative performance at the first, second and third MBBS examinations provided admissions are University wise. Or

(d) Combination of (a) and (c)

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Further provided that in determining the merit and the entrance test for postgraduate admission weightage in the marks may be given as an incentive at the rate of 10% of the marks obtained for each year in service in remote or difficult areas upto the maximum of 30% of the marks obtained as decided by the competent State authorities from time to time.

Provided that wherever `Entrance Test' for postgraduates admission is held by a state government or a university or any other authorized examining body, the minimum percentage of marks for eligibility for admission to postgraduate medical course shall be 50 percent for general category candidates, 45% for persons with locomotory disability of lower limbs in the same manner as stipulated in Clause 9(1)(a) above and 40 percent for the candidates belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes.

Provided further that in Non-Governmental institutions fifty percent of the total seats shall be filled by the Competent Authority notified by the State Government and the remaining fifty percent by the management(s) of the institution on the basis of inter-se Academic Merit.

(3)(i) The Universities and other authorities concerned shall organize admission process in such a way that teaching in postgraduate courses starts by 2nd May and by 1st August for super specialty courses each year. For this purpose, they shall follow the time schedule indicated in Appendix-III.

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(ii) There shall be no admission of students in respect of any academic session beyond 31st May for postgraduate courses and 30th September for super specialty courses under any circumstances. The Universities shall not register any student admitted beyond the said date.

(iii) The Medical Council of India may direct, that any student identified as having obtained admission after the last date for closure of admission be discharged from the course of study, or any medical qualification granted to such a student shall not be a recognized qualification for the purpose of the Indian Medical Council Act, 1956."

The petitioners have further averred in para 15 of this petition as to how in the past, 60% quota of the in-service PCMS doctors has not been exhausted or remained unfilled. The averments made in para 15 of this petition is also reproduced as under:-

"15. That the State Government has been continuing with 60% quota for in-service PCMS doctors in Post Graduate Degree courses for many years without having any quantifiable data in support. The State of Punjab reserves 60% seats for in-service PCMS Doctors in PG courses, as opposed to other states, none of which has more than 50% reservation for in-service PCMS Doctors (for instance, U.P. 30%, Maharashtra 25%, Kerala 40%, Telengana 30%, West Bengal 40%, Odisha 50%, Rajsthan 50%, Gujarat 25%, Uttarakhand 50% and Haryana 50%). As an illustration the prospectus issued by some States from time to time are annexed herewith as Annexure P-3. It is pertinent to mention here that in Punjab, for 40% quota (about 60 seats) nearly 2500

candidates compete whereas for 60% quota (about 90 seats) the competition in the last several years has been between 50-60 in-service PCMS Doctors only. Hence, allocating 60% quota to such a small number of doctors is patently unfair. As per information received under RTI, out of 60% in-service quota, most of the seats remain unfilled every year. A chart containing the information in hereunder in regard to 90 reserved seats:-

| Sr. No. | Year | Seats Filled |
|---|---|---|
| 1 | 1999 | 101 |
| 2 | 2000 | 91 |
| 3 | 2010 | 13 |
| 4 | 2011 | 27 |
| 5 | 2012 | 42 |
| 6 | 2013 | 36 |
| 7 | 2014 | 40 |

The PCMS are getting huge unfair advantage over fresh medical graduates in admission to PG against state quota seats. Because of very limited recruitment in PCMS in the past decade, there are only a handful of PCMS doctors who become eligible for 60% quota every year. The vacant unfilled seats are converted to 40% quota. However, most of these are seats for basic subjects and other less attractive subjects. Thus, this small number of seats earmarked for huge number of 40% direct candidates need to be increased by reducing the quota of in-service PCMS doctors to 50% or less. This will ensure more merit based selection as envisaged by MCI Regulations. Further, a comparison has been made to clarify the undue advantage given to the in-service PCMS Doctors by providing them 60% reservation. A few examples explaining as to how merit is compromised are hereunder:-

(a) In the most sought after branch of Radiology, the

seats in 60% PCMS (General category) quota went to candidates whose AIPGMEE ranks were 16187 and 21258, whereas in 40% quota (General category) the seats went to candidates whose AIPGMEE Ranks were as high as 200 and 460.

(b) In another important branch of Pediatrics, 2 seats in 60% PCMS (General category) quota went to candidates whose AIPGMEE ranks were ZERO (who could not even qualify for 50% All India Quota and hence no All India rank given), whereas in 40% quota (General category) the seats went to candidates whose AIPGMEE Ranks were as 1249, 1478 and 1824.

(c) In another important branch of Gynecology & Obstetrics, 2 seats in 60% PCMS (General category) quota went to the candidates whose AIPGMEE ranks were 24827 and 15739 whereas in 40% quota (General category) the only seat went to the candidate whose AIPGMEE Rank was 1465.

The above examples have been taken from the admission made to the Government Colleges in 2014. The relevant result of the first counseling is annexed herewith as Annexure P-4. It is thus apparent that there is no nexus with the objective sought to be achieved by providing for reservation. The reservation in favour of the in-service doctors is not a constitutional obligation but a channel for admission earmarked for different considerations. These considerations are required to be supported by some foundational facts which would justify such a large scale reservation. More so when as per the data enumerated above it is clear that merit is a victim in this

process. This clearly goes against the very spirit of merit in higher courses of medical education and is unsustainable in law."

It is argued that though as per judgment of the Supreme Court in **State of T.N.'s case (supra)**, the Government was obliged to constitute a High Powered Committee to give reservation to in-service PCMS doctors but it has failed to constitute any committee and has further failed to collect data of each year, on the basis of which the reservation is to be contemplated or to be justified to the extent of 60% for the in-service PCMS doctors and, thus, the action of the respondents-State has been termed as arbitrary and unreasonable being violative of Article 14 of the Constitution of India.

Though there are 5 respondents in this petition but a short reply has been filed only on behalf of respondents no.1 and 2 in which it is averred that insofar as the 50% All India Quota is concerned, though seats can be filled up without requirement of any domicile but out of the remaining 50% seats, meant for the State quota, 60% are reserved for the in-service PCMS doctors and 40% for other fresh graduates from the State of Punjab. It is alleged that the decision to reserve 40% of the State quota seats for the domiciles of the Punjab was taken in the previous session also but there was no challenge to it.

However, counsel appearing on behalf of the State has argued that the question with regard to reservation of seats for the residents of Punjab has already been decided by the Supreme Court in the case of **Saurabh Chaudri and others v. Union of India and others,** (2003) 11

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Supreme Court Cases 146 and by the Division Bench of this Court in the case of **Dr. Subhash Chander Meel and others v. State of Haryana and others,** 2014(2) SCT 478 (P&H) holding that the reservation on the basis of domicile is permissible.

**2nd petition**

The 2nd petition is diametrically opposite to 1st petition insofar as the question of reservation on the basis of resident status is concerned. It is averred therein that the petitioners are the domiciles/ residents of the State of Punjab though they have passed their qualifying examination of MBBS from the medical colleges/institutes outside the State of Punjab except for petitioner no.7 who has passed his MBBS from a foreign country and cleared Foreign Medical Graduate Examination, conducted by the Medical Council of India. It is submitted that till 24.02.215, the position for grant of admission to the PG courses in the Government institutions of the State of Punjab was as under:-

> "**Seat distribution in Government Institution (Govt. Medical College Amritsar and Patiala, GGS Medical College, Faridkot)**
>
> **I.** In the Govt. Institutions, 50% of the total seats shall be filled by the Govt. of India at all India level through AIPGMEE-2014. The remaining seats shall be filled through AIPGMEE-2014 at the state level from amongst the candidates having Punjab Resident status. Out of State quota seats 60% seats shall be filled up from amongst the eligible PCMS in service doctors & 40% seats shall be open to all eligible medical graduates. There shall be separate merit list for in-service 60%

quota candidates for Medical Colleges and a separate merit list for those who are not covered under the category of in-service candidates.

**II.** For 60% quota candidates (PCMS in service doctors)

i. The eligibility requirements are as under:-

i. Regular PCMS employee

ii. Has completed 4 years service in very difficult (category D) area or 6 years service in difficult (category C) area or an appropriate combination of both. In case of candidates who have completed 5 years 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.

iii. RMO's once they are selected in PCMS will be given benefits of rural service rendered by them as a RMO's under Zila Parishad.

iv. Has cleared the probation period.

v. Has good service record.

vi. Has no vigilance/departmental/disciplinary inquiry pending against him/her.

vii. Will have 10 years of service left after completion of the course.

ii. The period of rural service shall be computed as on March 31, 2014.

iii. Adhoc service rendered in respective category will be counted for the purpose of computing the stipulated period.

iv. Weighage of 1 mark for each year of service in difficult area and 1½ mark for most difficult area over and above the eligibility of rural service shall

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be given, subject to a maximum of 5 marks.

v. PCMS in-service candidates will submit alongwith the application a certificate regarding length of service, length of rural service, number of years in service left after completion PG course and that no department/vigilance enquiry is pending against the candidate.

vi. All PCMS doctors who are selected for admission to post-graduation courses shall have to produce a No Objection Certificate from the Govt. of Punjab, Department of Health and Family Welfare.

vii. All in-service doctors shall have to submit a bond of Rs.40 lakhs to serve the Punjab Govt. for a period of 10 years after completion of Post graduation course. If the candidate fails to do so, he/she shall have to deposit the bond money with the Government.

**III.** For 40% quota candidates:

40% quota seats shall be opened to all eligible medical graduates. Any candidate in State Govt. employment shall produce a No Objection Certificate from his/her employer.

**IV.** For 40% and All India Quota candidates:

Candidates selected in All India quota will be considered at par with 40% State quota candidates. They will get fixed enrollment/ stipends as determined by the Govt. from time to time for a course period 3 years subject to the following conditions:-

i. The candidate is to submit a bond of Rs.50 lakhs to serve the Govt. of Punjab for a period of 3 years after completion of PG.

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This cause will not be applicable in case the offer is not given by the Govt. of Punjab within a period of 1 year of passing of the Post Graduation examination.

ii. The candidate will inform the Govt. of Punjab that he has passed the Post graduation examination.

iii. Failure the serve the Govt. of Punjab for a period of 3 years will lead to the deposition/recovery of bond money to the Govt. of Punjab (Rs.15 lakh).”

It is argued that as per the aforesaid criteria, all eligible medical graduates belonging to the State of Punjab were entitled to compete against 40% State quota seats and because of the consistent policy, the petitioners decided to take admission for qualifying their undergraduate course in the reputed Medical Colleges outside the State of Punjab. It is further submitted that the NBE conducted the exams with the issuance of advertisement on 08.08.2014 and the result was declared on 15.01.2015. The petitioners, thus, applied not only for the All India quota seats but also for the State quota seats keeping in view the policy prevalent in regard to 40% State quota seats, but by virtue of the impugned notification dated 25.02.215, as per Clause 27(1), 40% seats, after leaving 60% seats for the in-service PCMS doctors, has been further bifurcated and has been reserved for those candidates who have passed their qualifying examination from the University. It is further argued that the reservation on the basis of institutional preference could not have been added after initiation of the admission process, to the detriment of the interest of the petitioners who had

filled their application form before 10.10.2014, submitting `Punjab Domicile', knowing fully well that they have a good chance in the domicile State as number of seats are available in their category. In support of his submission, he has relied upon a Division Bench of this Court in the case of **Mamta Bansal v. State of Punjab,** 2002(1) S.C.T. 1030, a Single Bench judgment of this Court in the case of **Geetika v. State of Punjab and others,** CWP No.17852 of 2013, decided on 20.12.2013 and a judgment of the Supreme Court in the case of **Parmender Kumar and others v. State of Haryana and others**, 2012(1) S.C.T. 285. Besides this, he has also supported the arguments raised by counsel for the State in the 1st petition, supporting domicile reservation on the basis of the judgment of the Supreme Court in **Saurabh Chaudri's case (supra) and Dr. Subhash Chander Meel's case (supra).**

Counsel for the petitioners has also argued that the issuance of notifications dated 25.02.2015 and 25.03.2015 by the State of Punjab has changed the rule of the game midway.

In this regard, I am in full agreement with the argument raised by counsel for the petitioners in the 1st petition who has submitted that the AIPGMEE examination was conducted only for the purpose of ranking of the candidates on All India basis and the State Quota, whereas it is specifically mentioned in the AIPGMEE prospectus that the State Government can prescribe the reservations. Therefore, this is not the change of the rule of the game in the midway because the AIPGMEE is only for the purpose of ranking and the reservation has to come lateron.

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In this regard, counsel for the State has also argued that though the notification has come during the pendency of the writ petition but the decision was taken in the meeting held on 14.02.2015 in this regard under the chairmanship of the Minister of Medical Education and Research, Punjab, but due to inadvertence, it could not be made Public by way of notification at the time when the notification dated 25.02.2015 was issued or immediately thereafter.

Reference has also been made to Clause 2.2 of the General Instructions contained in the prospectus issued by the NBE, which reads as under:-

> "2.2. Applicants may kindly note that appearance in AIPGMEE does not confer any automatic rights to secure a Post graduate MD/MS and Diploma seat. The selection and admission to Postgraduate seats in any medical institutions recognized for running MD/MS/Diploma courses as per Indian Medical Council Act, 1956 is subject to fulfilling the admission criteria, eligibility, medical fitness and such criteria as may be prescribed by the respective universities, medical institutions, Medical Council of India, State/Central Government."

He has further referred to relevant portion of Clause 9B of the NBE prospectus, which is as follows:-

> "9B. **ADMISSION TO MEDICAL SEATS OTHER THAN ALL INDIA 50% QUOTA SEATS IN VARIOUS STATES**
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* AIPGMEE 2015 shall be conducted by NBE for filling of the All India 50% quota of MD/MS/Post Diploma seats and other states/universities/ medical institutions may use the results of AIPGMEE 2015 at their discretion for admission to seats under their control.
* The concerned State universities/institutions that have decided to use the results of AIPGMEE 2015 are advised to widely publicize that they shall be utilizing the result of AIPGMEE 2015 to fill the Medical Post Graduate seats under their control and no separate competitive examination will be conducted by them for Admission to Academic year 2015-16.

xxx xxx xxx

* NBE shall be providing only the data of candidates and their results without applying the reservation prevalent in these particular states. The merit list/category wise lists for the State/University concerned shall be generated by the State itself as per their qualifying criteria, applicable guidelines and state reservation policies.
* At the time of publication of this bulletin following States/Universities have confirmed to NBE that they shall not be conducting their own entrance examination and shall make use of AIPGMEE 2015 for admission to MD/MS/PG diploma courses under their control"

The petitioners' counsel in the 2nd petition has further argued that the Government of Punjab had issued instructions on 06.06.1996 that instead of using the word "Domicile", the word "Residence" be used while

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granting residence certificate to a *bona fide* resident of Punjab and according to him, a candidate who had studied for a period of 5 years would be a resident of Punjab.

I have heard learned counsel for the parties in the 1st and 2nd petition and examined the available record with their able assistance.

From the resume of the aforesaid facts and the argument raised by counsel for the parties, the following questions emerge for consideration in the 1st & 2nd petitions:-

1. Whether there can be reservation for admission in the postgraduate medical course to the State quota seats on the basis of “residence” or “institutional preference”?
2. Whether reservation of 60% in the postgraduate medical course to the State quota seats for in-service PCMS doctors is excessive?

In **Dr. Pradeep Jain's case (supra),** the question before the Supreme Court was as to whether the admissions to a medical college or any other institution of higher learning situate in a State can be confined to those who have their `domicile' within the State or who are resident within the State for a specified number of years or can any reservation in admission be made for them so as to give them precedence over those who do not possess `domicile' or residential qualification within the State?

The aforesaid question was answered by the Supreme Court in the following manner:-

> “We are therefore of the view that so far as admissions to post-graduate courses, such as MS, MD

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and the like are concerned, it would be eminently desirable not to provide for any reservation based on residence requirement within the State or on institutional preference. But, having regard to broader considerations of equality of opportunity and institutional continuity in education which has its own importance and value, we would direct that though residence requirement within the State shall not be a ground for reservation in admissions to post-graduate courses, a certain percentage of seats may in the present circumstances, be reserved on the basis of institutional preference in the sense that a student who has passed MBBS course from a medical college or university, may be given preference for admission to the post-graduate course in the same medical college or university but such reservation on the basis of institutional preference should not in any event exceed 50 percent of the total number of open seats available for admission to the post-graduate course. This outer limit which we are fixing will also be subject to revision on the lower side by the India Medical Council in the same manner as directed by us in the case of admissions to the MBBS course. But, even in regard to admissions to the post-graduate course, we would direct that so far as super specialties such as neuro-surgery and cardiology are concerned, there should be no reservation at all even on the basis of institutional preference and admissions should be granted purely on merit on all-India basis.

23. What we have said about in regard to admissions to the MBBS and post-graduate courses must apply equally in relation to admissions to the BDS and MDS courses. So far as admissions to the BDS and MDS

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courses are concerned, it will be the Indian Dental Council which is the statutory body of dental practitioners, which will have to carry out the directions given by us to the Indian Medical Council in regard to admissions to MBBS and post-graduate courses. The directions given by us to the Indian Medical Council may therefore be read as applicable mutatis mutandis to the Indian Dental Council so far as admissions to BDS and MDS courses are concerned.

24. The decisions reached by us in these writ petitions will bind the Union of India, the State Governments and Administrations of Union Territories because it lays down the law for the entire country and moreover we have reached this decision after giving notice to the Union of India and all the State Governments and Union Territories. We may point out that it is not necessary for us to give any further directions in these writ petitions in regard to the admissions of the petitioners in the writ petitions, because the academic term for which the admissions were sought has already expired and so far as concerns the petitioners who have already been provisionally admitted, we have directed that the provisional admissions given to them shall not be disturbed but they shall be treated as final admissions. The writ petitions and the civil appeal will accordingly stand disposed of in the above terms. There will be no order as to costs in the writ petitions and the civil appeal."

The view expressed by the Supreme Court in **Pradeep Jain's case (supra)** was reiterated in **Magan Mehrotra's case (supra)** in which the petitioners were aggrieved against the Information Bulletin issued by the

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Delhi University whereby, following the judgment of the Supreme Court in the case of **Parag Gupta (Dr) v. University of Delhi,** (2000) 5 SCC 684, it was stipulated that the candidates who have passed MBBS examination from any university other than Delhi University having been allotted the same under 15% quota by the Director General, Health Services would also be eligible if he/she is a permanent resident of the National Capital Territory of Delhi. The judgment in **Parag Gupta's case (supra)** was impliedly overruled and it was held that the matter of dealing with the admission to the postgraduate medical course, it would not be ideal to have any reservation of residence requirement but the students passing out their undergraduate courses in the very institution should have some preferential treatment and, thus, the Information Bulletin issued by the Delhi University in relation to the postdoctoral postgraduate degree was held contrary to the directions of the Court in **Pradeep Jain's case (supra)** and was quashed. The Court further directed the States of Assam, Tamil Nadu, Goa and Karnataka to follow the pattern of institutional preference as has been indicated in **Pradeep Jain's case (supra).**

In **Nikhil Himthani's case (supra),** the petitioner was the permanent resident of Delhi who had qualified All India Pre-Medical Test conducted by the Central Board of Secondary Education for the 15% seats reserved for the All India quota. He was admitted in the MBBS course in the Medical College at Haldwani in the State of Uttarakhand and completed his MBBS course in March, 2012 and the internship in March, 2013. He then appeared in the NEET Examination, 2013, conducted by the Medical

Council of India, qualified the examination and claimed to have secured 60th rank of the State of Uttarakhand. The Department of Medical Education, Uttarakhand, published an Information Bulletin on 07.06.2013 for counselling in MD/MS/MDS/PG Diploma courses in the medical colleges of Uttarakhand State through NEET-PG-2013/MDS-2013 for the academic session 2013-14 and in the Information Bulletin, the eligibility criteria for admission was laid that a candidate should have passed his MBBS examination from Uttarakhand in any of the colleges named therein admitted through competitive examination (Uttarakhand State PMT) or a domicile of Uttarakhand who have passed MBBS examination from medical colleges of other States admitted through 15% All India Quota. The said petitioner was neither admitted in the Medical College at Haldwani through the competitive examination (Uttarakhand State PMT) nor was a domicile of Uttarakhand, therefore, he was not fulfilling both the criterions but after referring to the decisions of the Supreme Court in **Pradeep Jain's case (supra)** and **Magan Mehrotra's case (supra),** it was held thus:

> "19. Thus, it will be clear from what has been held by the three-Judge Bench of this Court in Magan Mehrotra v. Union of India that no preference can be given to the candidates on the basis of domicile to compete for the institutional quota of the State if such candidates have done their MBBS course in colleges outside the State in view of the decisions of this Court in Pradeep Jain v. Union of India. Hence, Clauses 2 and 3 of the eligibility

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criteria in the Information Bulletin are also violative of Article 14 of the Constitution."

On the other hand, the respondents have laid heavy reliance upon the decision of five Judge Bench of the Supreme Court in **Saurabh Chaudri's case (supra)** in which the core question, regarding the constitutional validity of reservation, whether based on domicile or institution in the matter of admission into postgraduate courses was involved.

In the said case there were 52 petitioners, original residents of Delhi, who joined various medical colleges out of Delhi for undertaking their MBBS courses of studies against the 15% all-India quota, having been qualified therefor, in the All-India Medical Entrance Examination. They intended to join the medical colleges of Delhi for their postgraduate medical courses and applied for and were granted admission forms having regard to the decision of the Supreme Court in **Parag Gupta's case (supra).** In the Information Bulletin issued by the Delhi University, it was stated that the candidates like the petitioners would be entitled to admission in postgraduate courses subject to the decision of the matter pending in **Magan Mehrotra's case (supra)** in which it was ultimately held that apart from institutional preference, no other preference including reservation on the basis of residence is envisaged in the Constitution, in view of the decision of this Court in **Pradeep Jain's case (supra).**

It was observed in the judgment that the question which was initially raised in the writ petition was as to whether reservation made by

way of institutional preference is ultra vires Articles 14 and 15 of the Constitution of India; but during hearing, a larger issues viz. as to whether any reservation, be it on residence or institutional preference, is constitutionally permissible, was raised at the Bar. According to the counsel for the respondents and the petitioners in the 2nd petition, the Supreme Court has held that the reservation on the basis of domicile is permissible and in this regard, referred to the following paragraphs of the judgment:-

> "29. The first question that arises for consideration is, whether the reservation on the basis of domicile is impermissible in terms of Clause (1) of Article 15 of the Constitution of India ? The term 'place of birth' occurs in Clause (1) of Article 15 but not 'domicile'. If a comparison is made between Article 15(1) and Article 16 (2) of the Constitution of India, it would appear that whereas the former refers to 'place of birth' alone, the latter refers to both 'domicile' and 'residence' apart from place of birth. A distinction, therefore, has been made by the makers of the Constitution themselves to the effect that the expression 'place of birth' is not synonymous to the expression "domicile" and they reflect two different concepts. It may be true, as has been pointed out by Shri Salve and pursued by Mr. Nariman, that both the expressions appeared to be synonymous to some of the members of the Constituent Assembly but the same, in our opinion, cannot be a guiding factor. In D.P. Joshi's case (supra), a Constitution Bench held so in no uncertain terms.
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> 30. This Bench is bound by the said decision.
>
> 31. In State of Uttar Pradesh and Ors. v. Pradip

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Tandon and Ors., this Court observed:

> "The reservation for rural areas cannot be sustained on the ground that the rural areas represent socially and educationally backward classes of citizens. This reservation appears to be made for the majority population of the State. Eighty per cent of the population of the State cannot be a homogeneous class. Poverty in rural areas cannot be the basis of classification to support reservation for rural areas. Poverty, is found in all parts of India, In the instructions for reservation of seats it is provided that in the application form a candidate for reserved seats from rural areas must submit a certificate of the District Magistrate of the District to which he belonged that he was born in rural areas and had a permanent home there, and is residing there or that he was born in India and his parents and guardians are still living there and earn their livelihood there. The incident of birth in rural areas is made the basic qualification. No reservation can be made on the basis of place of birth, as this would offend Article 15."
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> 32. Answer to the said question must, therefore, be rendered in the negative."

The other question was "whether reservation by way of institutional preference comes within the suspected classification warranting strict scrutiny test" regarding which it was held as under:-

> "64. The sole question, therefore, is as to whether reservation by way of institutional preference is ultra vires Article 14 of the Constitution of India. We think

not. Article 14, it will bear repetition to state, forbids class legislation but does not forbid reasonable classification, which means - (1) must be based on reasonable and intelligible differentia; and (2) such differentia must be on rational basis."

"67. This Court may therefore notice the following:

(i) The State runs the Universities.

(ii) It has to spend a lot of money in imparting medical education to the students of the State.

(iii) Those who get admission in Post Graduate Courses are also required to be paid stipends. Reservation of some seats to a reasonable extent, thus, would not violate the equality clause.

(iv) The criteria for institutional preference has now come to stay. It has worked out satisfactorily in most of the States for last about two decades.

(v) Even those States which defied the decision of this Court in Dr. Pradeep Jain's case (supra) had realized the need for institutional preference.

(vi) No sufficient material has been brought on record for departing from this well-established admission criteria.

(vii) It goes beyond any cavil of doubt that institutional preference is based on a reasonable and identifiable classification. It may be that while working out the percentage of reservation invariably some local students will have preference having regard to the fact that domicile/residence was one of the criteria for admission in MBBS Course. But together with the local students 15%, students who had competed in all India Entrance Examination would also be

getting the same benefit. The percentage of students who were to get the benefit of reservation by way of institutional preference would further go down if the decision of this Court in Dr. Pradeep Jain's case (supra) is scrupulously followed.

(viii) Giving of such a preference is a matter of State policy which can be invalidated only in the event of being violative of Article 14 of the Constitution of India.

(ix) The students who would get the benefit of institutional preference being on identifiable ground, there is hardly any scope for manipulation."

"69. As noticed hereinbefore, in D.N. Chanchala's case (supra), M.R. Mini's case (supra) and Jagadish Saran's case (supra) institutional preference has been preferred. It has been reiterated in the law laid down by way of a scheme evolved in Dr. Pradeep Jain (supra) and reiterated in Magan Mehrotra (supra).

"70. We, therefore, do not find any reason to depart from the ratio laid down by this Court in Dr. Pradeep Jain (supra). The logical corollary of our finding is that reservation by way of institutional preference must be held to be not offending Article 14 of the Constitution of India."

"72. Having regard to the facts and circumstances of the case, we are of the opinion that the original scheme as framed in Dr. Pradeep Jain's case (supra) should be reiterated in preference to Dr. Dinesh Kumar's case (supra). Reservation by way of institutional preference, therefore, should be confined to 50% of the seats since it

> is in public interest."
>
> "78. For the aforesaid reasons, we do not find any merit in the contentions advanced on behalf of the petitioners. The petitioners are not entitled to any relief. With the aforesaid directions, these writ petitions and the appeal are disposed of."

In **Dr. Subhash Chander Meel's case (supra),** the Division Bench of this Court, while referring to para 29 of the Judgment in **Saurabh Chaudri's case (supra),** held that the reservation on the basis of domicile is permissible.

I have considered the rival contentions on the issue of reservation on the basis of "residence" and "institutional preference" and am of the considered opinion that the reservation on the basis of "residence" has already been done away within the postgraduate medical courses by the Supreme Court in **Pradeep Jain's case (supra),** holding the institutional preference as per the scheme framed therein and the decisions of the Supreme Court in **Saurabh Chaudri's case (supra)** and in **Dr. Subhash Chander Meel's case (supra)** are of no help to the respondents and the petitioners in the 2nd petition have no case, who are espousing the cause of "residence" reservation because in **Dr. Pradeep Jain's case (supra)**, the specific question was as to whether the admission to a medical college or any other institution of higher learning situated in a State can be confined to those who have their `domicile' within the State or who are resident within the State for a specified number of years or can any reservation in admissions be made for them so as to give them precedence over those who do not possess `domicile' or residential qualification within the State,

irrespective of merit. The Supreme Court has dealt with the question of reservation for the MBBS (undergraduate course) and the MS/MD (postgraduate course) separately. In regard to the reservations to the MBBS (undergraduate course), the Apex Court held as under:-

> "20. The only question which remains to be considered is as to what should be the extent of reservation based on residence requirement and institutional preference. There can be no doubt that such reservation cannot completely exclude admission of students from other universities and States on the basis of merit judged in open competition. Krishna Iyer, J. rightly remarked in *Jagdish Saran's case (supra)* of the Report:
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> > "Reservation must be kept in check by the demands of competence. You cannot extend the shelter of reservation where minimum qualifications are absent. Similarly, all the best talent cannot be completely excluded by wholesale reservation. So, a certain percentage, which may be available, must be kept open for meritorious performance regardless of university, State and the like. Complete exclusion of the rest of the country for the sake of a province, wholesale banishment of proven ability to open up, hopefully, some *dalit* talent, total sacrifice of excellence at the altar of equalization --- when the Constitution mandates for every one equality before and equal protection of the law ---- may be fatal folly, self-defeating educational technology and anti-national if made a routine rule of State policy. A fair preference, a reasonable reservation, a just adjustment of the

> prior needs and real potential of the weak with the partial recognition of the presence of competitive merit ---such is the dynamics of social justice which animates the three egalitarian articles of the Constitution."

We agree wholly with these observations made by the learned Judge and we unreservedly condemn *wholesale reservation* made by some of the State Governments on the basis of 'domicile' or residence requirement within the State or on the basis of institutional preference for students who have passed the qualifying examination held by the university or the State excluding all students not satisfying this requirement, regardless of merit. We declare such wholesale reservation to be unconstitutional and void as being in violation of Article 14 of the Constitution.

21. But, then to what extent can reservation based on residence requirement within the state or on institutional preference for students passing the qualifying examination held by the university or the State be regarded as constitutionally permissible? It is not possible to provide a categorical answer to this question for, as pointed out by the policy statement of the Government of India, the extent of such reservation "would depend on several factors including opportunities for professional education in that particular area, the extent of competition, level of educational development of the area and other relevant factors". It may be that in a State where the level of educational development is woefully low, there are comparatively inadequate opportunities for training in the medical specialty and there is large scale social and economic

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backwardness, there may be justification for reservation of a higher percentage of seats in the medical colleges in the State and such higher percentage may not militate against "the equality mandate viewed in the perspective of social justice". So many variables depending on social and economic facts in the context of educational opportunities would enter into the determination of the question as to what in the case of any particular State, should be the limit of reservation based on residence requirement within the State or on institutional preference. But, in our opinion, such reservation should in no event exceed the outer limit of 70 percent of the total number of open seats after taking into account other kinds of reservations validly made. The Medical Education Review Committee has suggested that the outer limit should not exceed 75 per cent but we are of the view tht it would be fair and just to fix the outer limit at 70 per cent. We are laying down this outer limit of reservation in an attempt to reconcile the apparently conflicting claims of equality and excellence. We may make it clear that this outer limit fixed by us will be subject to any reduction or attenuation which may be made by the India Medical Council which is the statutory body of medical practitioners whose functional obligations include setting standards for medical education and providing for its regulation and coordination. We are of the opinion that this outer limit fixed by us must gradually over the years be progressively reduced but that is a task which would have to be performed by the Indian Medical Council. We would direct the Indian Medical Council to consider within a period of nine months from today whether the

> outer limit of 70 per cent fixed by us needs to be reduced and if the Indian Medical Council determines a shorter outer limit, it will be binding on the States and the Union Territories. We would also direct the Indian Medical Council to subject the outer limit so fixed to reconsideration at the end of every three years but in no event should the outer limit exceed 70 per cent fixed by us. The result is that in any event at least 30 per cent of the open seats shall be available for admission of students on all-India basis irrespective of the State or university from which they come and such admissions shall be granted purely on merit on the basis of either all-India entrance examination or entrance examination to be held by the State. Of course, we need not add that even where reservation on the basis of residence requirement or institutional preference is made in accordance with the directions given in this judgment, admissions from the source or sources indicated by such reservation shall be based only on merit, because the object must be to select the best and most meritorious students from within such source or sources."

However, the reservations to the MS/MD (postgraduate course) were dealt with by the Supreme Court in paras 22, 23 and 24 of the judgment, which are as under:-

> "22. So much for admission to the MBBS course, but different considerations must prevail when we come to consider the question of reservation based on residence requirement within the State or on institutional preference for admission to the post-graduate courses, such as, MD, MS and the like. There we cannot allow excellence to be compromised by any other

considerations because that would be detrimental to the interest of the nation. It was rightly pointed out by Krishna Iyer, J. in *Jagdish Saran case,* and we wholly endorse what he has said:

> "The basic medical needs of a region or the preferential push justified for a handicapped group cannot prevail in the same measure at the highest scales of specialty where the best skill or talent, must be handpicked by selecting according to capability. At the level of PhD, MD, or levels of higher proficiency, where international measure of talent is made, where losing one great scientist or technologist in-the-making is a national loss, the considerations we have expanded upon as important lose their potency. Here equality, measured by matching excellence, has more meaning and cannot be diluted much without grave risk."
>
> "If equality of opportunity for every person in the country is the constitutional guarantee, a candidate who gets more marks than another is entitled to preference for admission. Merit must be the test when choosing the best, according to this rule of equal chance for equal marks. This proposition has greater importance when we reach the higher levels of education like post-graduate courses. After all, top technological expertise in any vital field like medicine is a nation's human asset without which its advance and development will be stunted. The role of high grade skill or special talent may be less at the lesser levels of education, jobs and disciplines of social inconsequence, but

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more at the higher levels of sophisticated skills and strategic employment. To devalue merit at the summit is to temporize with the country's development in the vital areas of professional expertise. In science and technology and other specialized fields of developmental significance, to relax lazily or easily in regard to exacting standards of performance may be running a grave national risk because in advanced medicine and other critical departments of higher knowledge, crucial to material progress, the people of India should not be denied the best the nation's talent lying latent can produce. If the best potential in these fields is cold-shouldered for populist considerations garbed as reservations, the victims, in the long run, may be the people themselves. Of course, this unrelenting strictness in selecting the best may not be so imperative at other levels where a broad measure of efficiency may be good enough and what is needed is merely to week out the worthless."

"Secondly, and more importantly, it is difficult to denounce or renounce the merit criterion when the selection is for post-graduate or post-doctoral courses in specialized subjects. There is no substitute for sheer flair, for creative talent, for fine-tuned performance at the difficult heights of some disciplines where the best alone is likely to blossom as the best. To sympathise mawkishly with the weaker sections by selecting sub-standard candidates, is to punish society as a whole by denying the prospect of excellence say in hospital

> service. Even the poorest, when stricken by critical illness, needs the attention of super-skilled specialists, not humdrum second-rates. So, it is that relaxation on merit, by overruling equality and quality altogether, is a social risk where the stage is post-graduate or post-doctoral."

These passages from the judgment of Krishna Iyer, J. clearly and forcibly express the same view which we have independently reached on our own and indeed that view has been so ably expressed in these passages that we do not think we can usefully add anything to what has already been said there. We may point out that the Indian Medical Council has also emphasized that playing with merit, so far as admissions to post-graduate courses are concerned, for pampering local feeling, will boomerang. We may with advantage reproduce the recommendation of the Indian Medical Council on this point which may not be the last word in social wisdom but is certainly worth of consideration:

> "Students for post-graduate training should be selected strictly on merit judged on the basis of academic record in the under-graduate course. All selection for post-graduate studies should be conducted by the Universities."

The Medical Education Review Committee has also expressed the opinion that "all admissions to the post-graduate courses in any institution should be open to candidates on an all-India basis and there should be no restriction regarding domicile in the State/Union Territory in which the institution is located"; So also in the policy statement filed by the learned Attorney-General, the Government of India has categorically

expressed the view that:

> "So far as admission to the institutions of post-graduate colleges and special professional colleges is concerned, it should be entirely on the basis of all-India merit subject to constitutional reservations in favour of Scheduled Castes and Scheduled Tribes."

We are therefore of the view that so far as admissions to post-graduate courses, such as MS, MD and the like are concerned, it would be eminently desirable not to provide for any reservation based on residence requirement within the State or on institutional preference. But, having regard to broader considerations of equality of opportunity and institutional continuity in education which has its own importance and value, we would direct that though residence requirement within the State shall not be a ground for reservation in admissions to post-graduate courses, a certain percentage of seats may in the present circumstances, be reserved on the basis of institutional preference in the sense that a student who has passed MBBS course from a medical college or university, may be given preference for admission to the post-graduate course in the same medical college or university but such reservation on the basis of institutional preference should not in any event exceed 50 percent of the total number of open seats available for admission to the post-graduate course. This outer limit which we are fixing will also be subject to revision on the lower side by the India Medical Council in the same manner as directed by us in the case of admissions to the MBBS course. But, even in regard to admissions to the post-graduate course, we would direct

that so far as super specialties such as neuro-surgery and cardiology are concerned, there should be no reservation at all even on the basis of institutional preference and admissions should be granted purely on merit on all-India basis.

23. What we have said about in regard to admissions to the MBBS and post-graduate courses must apply equally in relation to admissions to the BDS and MDS courses. So far as admissions to the BDS and MDS courses are concerned, it will be the Indian Dental Council which is the statutory body of dental practitioners, which will have to carry out the directions given by us to the Indian Medical Council in regard to admissions to MBBS and post-graduate courses. The directions given by us to the Indian Medical Council may therefore be read as applicable mutatis mutandis to the Indian Dental Council so far as admissions to BDS and MDS courses are concerned.

24. The decisions reached by us in these writ petitions will bind the Union of India, the State Governments and Administrations of Union Territories because it lays down the law for the entire country and moreover we have reached this decision after giving notice to the Union of India and all the State Governments and Union Territories. We may point out that it is not necessary for us to give any further directions in these writ petitions in regard to the admissions of the petitioners in the writ petitions, because the academic term for which the admissions were sought has already expired and so far as

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> concerns the petitioners who have already been provisionally admitted, we have directed that the provisional admissions given to them shall not be disturbed but they shall be treated as final admissions. The writ petitions and the civil appeal will accordingly stand disposed of in the above terms. There will be no order as to costs in the writ petitions and the civil appeal."

The view expressed by the Supreme Court in the case of **Jagdish Saran v. Union of India,** (1980) 2 SCR 831 has been followed and held that for the admission to the postgraduate medical courses such as MS/MD, it would not be desirable to provide any reservation based on residential requirement of the State but institutional preference was preferred upto 50% of the total available seats.

In concluding para 24 of the judgment, the Union of India, the State Government and Administrations of Union Territories were made bound by the decision but it was lateron found in **Magan Mehrotra's case (supra)** that some States like Assam, Tamil Nadu, Goa and Karnataka were adopting the preference on account of residence, therefore, direction was given that they would follow the dicta in **Dr. Pradeep Jain's case (supra).** Similar is the position in **Nikhil Himthani's case (supra)** but the difficulty has arisen with the interpretation of para 29 of the judgment in **Saurabh Chaudri's case (supra)** on which a heavy reliance has been placed by the learned counsel for the petitioners in the 2nd petition.

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In **Saurabh Chaudri's case (supra),** in para 29, the question was whether the reservation on the basis of domicile is impermissible in terms of clause (1) of Article 15 of the Constitution of India. It does not specifically deal with the reservation for admission in the postgraduate medical courses on the basis of "domicile" rather it had approved the decision in the case of **Dr. D.P.Joshi v. State of Madhy**a Bharat, AIR 1955 SC 334. In the said case, a student, who was studying in the Mahatma Gandhi Memorial Medical College, Indore run by the State of Madhya Bharat, was the resident of Delhi and was in the third year class of MBBS course when he made a complaint that the said institution was discriminating him in the matter of fees between the students who are residents of Madhya Bharat and those who are not, as the students like the petitioner have to pay in addition to the tuition fee and charges payable by all the students, a sum of Rs.1,500/- per annum as capitation fee which was allegedly in contravention of articles 14 and 15(1) of the Constitution of India. He, thus, prayed that not only the said institution be prohibited from collecting capitation fee but also to refund him a sum of ₹3,000/- already collected. The said petition was dismissed by the Supreme Court.

Thus, the reference of the judgments of **Dr. D.P.Joshi's case (supra)** and the judgment in the case of **State of U.P. v. Pradip Tandon,** (1975) 1 SCC 267 in **Dr. Saurabh Chaudri's case (supra)** is not the answer to the question as to whether the reservation on the basis of residence/domicile has been made good in **Dr. Saurabh Chaudri's case (supra).** Had it been so, the five Judges in **Dr. Saurabh Chaudri's case**

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**(supra)** would have specifically or impliedly overruled the decision in **Dr. Pradeep Jain's case (supra),** in which it has been categorically held that the reservation in the postgraduate medical courses on the basis of residence is not permissible.

Thus, I hold that the reservation on basis of residence in the postgraduate medical courses, provided in the notification dated 25.02.2015 and the prospectus issued by the University, is illegal.

As regards the institutional preference, again the judgments in **Dr. Pradeep Jain's case (supra), MaganMehrotra's case (supra), Nikhil Himthani's case (supra)** and **Saurabh Chaudri's case (supra)** would be a guiding factor for this Court because in para 67(iv) of the judgment in **Saurabh Chaudri's case (supra)**, it has been held that the criterion for institutional preference has been working satisfactorily in most of the States for the last about two decades and would stay.

Thus, it is held that the reservation on the basis of institutional preference provided in the notifications dated 25.02.2015 and 25.03.2015 and in the prospectus issued by the University is legal and justified. It is also held that in view of the judgment in **Vishal Goyal's case (supra),** the admissions to the seats allotted to the State quota in postgraduate medical courses even in the private colleges on the basis of institutional preference would continue.

As regards the second question about 60% reservation for in-service PCMS doctors, it has been argued by learned counsel for the petitioners in the 1st petition that the allocation of 60% seats to the in-

service PCMS doctors, who compete in small numbers, is unfair and unreasonable. He has given a chart of the seats having been filled amongst the in-service PCMS doctors, which has already been reproduced in the earlier part of the judgment. He has primarily relied upon the judgment of the Supreme Court in **State of T.N.'s case (supra)** in which it has been held that the Government should constitute a High Powered Committee to give reservation to in-service PCMS doctors and it should not be more than 50% and argued that since the State of Punjab has failed to constitute any committee and collect data on the basis of each year admission, therefore, the reservation of 60% for the in-service PCMS doctors is illegal.

I find force in the argument raised by learned counsel for the petitioners in the 1st petition because when the matter is pertaining to the admission in the postgraduate courses in which 90 seats have been reserved for the in-service PCMS doctors and the data from the year 2010 to 2014 would show that even half of the seats have not been filled up, the State Government should have considered this matter objectively and constituted a Committee to consider the reservation which is not necessarily be 50% as there is an averment in para 15 of the 1st petition that in the other States, there is no reservation more than 50% for in-service PCMS doctors (for instance, U.P. 30%, Maharashtra 25%, Kerala 40%, Telengana 30%, West Bengal 40%, Odisha 50%, Rajsthan 50%, Gujarat 25%, Uttarakhand 50% and Haryana 50%).

In **State of T.N.'s case (supra),** the Supreme Court has held that *"in our view, the High Court was right in the view that it took, that no*

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*reservation beyond fifty per cent is ordinarily contemplated and this percentage is what the High Court allowed. In striking down the additional mark for in-service candidates serving in rural areas, the High Court followed the decision of this Court. We trust that the appellants shall appoint a highly qualified committee to determine from year to year what, in fact, is the percentagewise reservation requisite for in-service candidates having regard to the then prevailing situation, and that the percentrage of fifty per cent shall, if found appropriate, be reduced accordingly".*

Following the judgment of the Supreme Court in **State of T.N.'s case (supra)** and considering the averment made in para 15 of the 1st petition, reproduced here-in-above, which have not been controverted by way of reply despite opportunity, the second question is also decided in favour of the petitioners in the 1st petition to the effect that the State should immediately constitute a highly qualified committee to determine forthwith the percentage of reservation required for in-service PCMS doctors keeping in view the prevailing situation based upon the available data.

In view of the above, the 1st petition bearing CWP No.4324 of 2015 is hereby allowed and the 2nd petition bearing CWP No.4761 of 2015 is hereby dismissed.

**3rd petition**

In this petition, the petitioners have not only challenged the validity of Clause 27(1) of the notification dated 25.02.2015 whereby the State quota seats are to be filled from amongst the candidates having the resident status of Punjab but also Clause 27(V)(iv) to (viii) whereby micro

reservations have been given to other categories, which can be demonstrated by way of a chart, reproduced here-as-under:-

| Impugned Clauses | Category | Percentage of Reservation |
|---|---|---|
| 27(V)(iv) | Sports Person | `2% |
| 27(V)(v) | Children/Grand Children of Terrorism (1%) and Riot Effected Persons (1%) | 1% each. (2%) |
| 27(V)(vi) | Ward of Defence Personnel | `2% |
| 27(V)(vii) | Ward Job Punjab Police Personnel, Punjab Armed Police, Punjab Home Guard and Paramilitary Forces | `2% |
| 27(V)(viii) | Children/Grand Children of Freedom Fighters of Punjab | `1% |

Counsel for the petitioners has argued that 9% reservations, to which he has referred to as micro reservations, should not have been provided for the admission to the postgraduate medical courses because it is not in consonance with Article 15(5) of the Constitution of India and also contrary to Article 47 of the Constitution of India which imposes a duty upon the State for improvement of the public health. It is also submitted that the micro reservations for admission in the postgraduate medical courses has no reasonable nexus to achieve as the postgraduate medical courses are highly specialized and has the sole object to train the best medical minds to elevate the medical standards of the State. In support of his submission, he has relied upon various judgments of the Supreme Court in the cases of **Ashok Kumar Thakur v. Union of India and others,** (2008) 6 Supreme Court Cases 1, **Indra Sawhney etc. etc. v. Union of India and others, etc. etc.,** AIR 1993 Supreme Court 477 and **Dr. Preeti Srivastava v. State of Madhya Pradesh,** 1999(4) S.C.T. 133.

Learned counsel for the State has admitted that there is no

provision in Article 15 of the Constitution of India for micro reservations but it is sought to be argued that such kind of reservations can be provided in terms of Article 14 of the Constitution of India and has relied upon two judgments of the Supreme Court in the cases of **Kumari Chitra Ghosh and another v. Union of India (UOI) and others,** AIR 1970 SC 35 and **D.N.Chanchala and others v. The State of Mysore and others,** AIR 1971 SC 1762.

On a pertinent question put to the learned counsel for the State about the object to be achieved by the State in providing micro reservations, no reply is given and even no reply to the petition has also been filed.

Be that as it may, the question which is to be decided in this petition is as to whether the micro reservations in postgraduate medical courses is constitutionally justified?

Before I proceed further, it would be relevant to refer to Articles 14, 15 and 47 of the Constitution of India, which are reproduced as under:-

> "**14. Equality before law.—**The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.
>
> "**15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.**—(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.
>
> (2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard

to-

(a) access to shops, public restaurants, hotels and places of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

(5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30."

"47. **Duty of the State to raise the level of nutrition and the standard of living and to improve public health.**—The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for

medicinal purposes of intoxicating drinks and of drugs which are injurious to health."

Article 47 of the Constitution of India imposes a duty upon the State to raise the level of nutrition and to improve the public health as its primary duty. The improvement in the public health is connected with the students entering the postgraduate medical courses and specialized on the basis of their merit.

Article 15(5) enables a State for making any special provision of law for the advancement of any socially and educationally backward classes of citizens of for the Scheduled Castes or the Scheduled Tribes insofar as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions.

No constitutional provision enables the State to provide micro reservations even by way of enactment of law if it relates to admission to educational institutions but in **Kumari Chitra Ghosh's case (supra),** relied upon by the respondents, the appellants were the residents of Delhi. They passed their pre-medical examination of the Delhi University and obtained 62.5% marks. They applied for admission to the 1st year of the MBBS course at the Lady Hardinge Medical College, New Delhi but they were not admitted. Then they applied for admission in the Maulana Azad Medical College, which is a constituent of the University of Delhi. There was a reservation provided in the prospectus which is as follows:-

(a) Residents of Delhi.....

(b) (i) Sons/Daughters of Central Government

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Servants posted in Delhi at the time, of the admission.

(ii) Candidate whose father is dead and is wholly dependent on brother/sister who is a Central Government Servant posted in Delhi at the time of the admission.

(c) Sons/Daughters of residents of Union Territories specified below including displaced persons registered therein and sponsored by their respective Administration of Territory :-

(i) Himachal Pradesh (ii) Tripura (iii) Manipur (iv) Naga Hills (v) N.E.F.A. (vi) Andaman.

(d) Sons/Daughters of Central Government servants posted in Indian Missions abroad.

(e) Cultural Scholars.

(f) Colombo Plan Scholars.

(g) Thailand Scholars.

(h) Jammu & Kashmir State Scholars."

It was held by the Supreme Court that though Article 14 forbids class legislation but it does not forbid reasonable classification and in order to pass the test of permissible classification, two conditions must be fulfilled, (i) that the classification is founded on intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and, (ii) that differentia must have a rational relation to the object sought to be achieved. It was observed that first group of persons for whom seats have been reserved are the sons and daughters of residents of Union territories other than Delhi. These areas are well known to be comparatively backward and with the exception of Himachal Pradesh they do not have any Medical College of their own. It was necessary that persons

desirous of receiving medical education from these areas should be provided some facility for doing so. As regards the sons and daughters of Central Government servants posted in Indian Missions abroad, it was held that it is equally well known that due to exigencies of their service these persons are faced with lot of difficulties in the matter of education. Apart from the problems of language, it is not easy or always possible to get admission into institutions imparting medical education in foreign countries. The cultural, Colombo Plan and Thailand scholars are given admission in medical institutions in this country by reason of reciprocal arrangements of educational and cultural nature. Regarding Jammu & Kashmir scholars, the problems relating to them are of a peculiar nature and there do not exist adequate arrangements for medical education in the State itself for its residents. The classification in all these cases is based on intelligible differentia which distinguishes them from the group to which the appellants belong. It was further held that it is a question of policy and depends inter-alia on an overall assessment and survey of the requirements of residents of particular territories and other categories of Persons for whom it is essential to provide facilities for medical education.

In **D.N.Chanchala's case (supra),** Rules 4 and 5 of the Mysore Medical Colleges (Selection for Admission) Rules, 1970 were challenged. Rule 4 sets apart in all 60 seats for different categories of persons, namely, students from Union territories and States where there are no medical colleges, students from relatively less developed Commonwealth countries, cultural scholars and students under T.C.S. of the Colombo Plan and special

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Commonwealth Assistance Plan, students from Nepal. repatriates from Burma, Ceylon, Mozambique, children of Defence Personnel and Ex-Defence Personnel, students who have passed L.A.M.S. and L.U.M.S., lady students taking family planning programme, children of political sufferers, and lastly, students from Goa. Rule 5 provides that out of the number of seats available for allotment, after deducting the number of seats set apart under rule 4, 15% shall be reserved for persons belonging to the Scheduled Castes, 3% shall be reserved for persons belonging to the Scheduled Tribes and 30% shall be reserved for persons belonging to socially and educationally backward classes.

Rules 4 and 5 were challenged on the ground that the reservation for the various categories of persons far more excessive than permitted was violative of Article 15(4) of the Constitution of India. It was held that the reservation in Rule 4 is not a reservation but laying down sources for selection necessitated by certain overriding considerations, such as obligations towards those who serve the interest of the country's security, certain reciprocal obligations and the like and the reservation under Rule 5 could not have been shown as unreasonable and excessive. The observations of the Supreme Court in this regard are as follows:-

> "The power to lay down sources from which selection would be made was expressly conceded to the Government in Chitra Ghosh v. Union of India, (3) this Court observing in that connection at pp. 418 and 419 of the report that since it was the Government which bore the financial burden of running the medical college, it could lay down the criteria for eligibility and that from

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the very nature of things it was not possible to throw the admission open to students from all over the country. Consequently, the Government could not be denied the right to decide from what sources admissions would be made. The Court at the same time emphasised that if the sources were properly classified, whether on territorial, geographical or other reasonable basis, the Court would refuse to interfere with the manner and method of making the classification. The classification there made were in relation to candidates from Union territories other than Delhi, children of Central Government servants posted in Indian missions abroad, candidates under the Colombo Plan and other international arrangements, scholars from Jammu & Kashmir, etc. These classifications were found justifiable on one ground or the other and as based on intelligible differentia which distinguished candidates falling within them from the rest. The Mysore High Court, in Subhashini v. State (1) similarly recognized that there could be valid reservations, apart from those permissible under Art. 15 (4), that such reservations did not necessarily infringe the equality protection under Art. 14 and held that classification based on a lawful State policy was-not violative of that Article. It upheld on this principle the reservation for children of Defence Personnel, Ex-Defence personnel as being clearly in national interest."

"Once the power to lay down classifications or categories of persons from whom admission is to be given is granted, the only question which would remain for consideration would be whether such categorization has an intelligible criteria and whether it has a reasonable

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relation with the object for which the Rules for admission are made. Rules for admission are inevitable so long as the demand of every candidate seeking admission cannot be complied with in view of the paucity of institutions imparting training in such subjects as medicine. The definition of a 'political sufferer' being a detailed one and in certain terms, it would be easily possible to distinguish children of such political sufferers from the rest as possessing the criteria laid down by the definition. The object of the rules for admission can obviously be to secure a fair and equitable distribution of seats amongst those seeking admission and who are eligible under the University Regulations. Such distribution can be on the principle that admission should be available to the best and the most meritorious. But an equally fair and equitable principle would also be that which secures admission in a just proportion to those who are handicapped and who, but for the preferential treatment given to them, would not stand a chance against those who are not so handicapped and are, therefore, in a superior position. The principle underlying Art. 15 (4) is that a preferential treatment can validly be given because the socially and educationally backward classes need it, so that in course of time they stand in equal position with the more advanced sections of the society. It would not in any way be improper if that principle were also to be applied to those who are handicapped but do not fall under Art. 15(4). It is on such a principle that reservation for children of Defence personnel and Ex-Defence personnel appears to have been upheld. The criteria for such reservation is that those serving in the Defence forces or those who had so served are and were at a

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> disadvantage in giving ,education to their children since they had to live, while discharging their duties, in difficult places where normal facilities available elsewhere are and were not available. In our view it is not unreasonable to extend that principle to the children of political sufferers who in consequence of their participation in the emancipation struggle became unsettled in life; in some cases economically ruined, and were therefore, not in a position to make available to their children that class of education which would place them in fair competition with the children of those who did not suffer from that disadvantage. If that be so, it must follow that the definition of 'political sufferer' not only makes the children of such sufferers distinguishable from the rest but such a classification has a reasonable nexus with the object of the rules which can be nothing else than a fair and just distribution of seats. In our view, neither of the two contentions raised by counsel for the petitioner can be accepted, with the result that the writ petition fails and is dismissed."

It is argued by learned counsel for the petitioners that the State can legislate for providing reservation for the advancement of any socially and educationally backward classes of citizens but after passing the MBBS course, the said class would not remain educationally backward for the purpose of giving reservation in the postgraduate medical courses. In this regard, he has not only referred to the judgment of the Supreme Court in **Ashok Kumar Thaku's case (supra)** but also referred to the decision of the Supreme Court in **Indra Sawhney's case (supra)** in which both the judgments in the cases of **Kumari Chitra Ghosh's case (supra)** and

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**D.N.Chanchala's case (supra)** have been discussed.

After hearing learned counsel for the parties, I am of the considered opinion that the micro reservations envisaged under Clause 27 (V)(iv) to (viii) of the notification dated 25.02.2015 which forms part of the prospectus issued by the University is unreasonable and arbitrary much-less unconstitutional insofar as it relates to the admission to the postgraduate medical courses. Both the cases of **Kumari Chitra Ghosh's case (supra)** and **D.N.Chanchala's case (supra),** heavily relied upon by the learned counsel for the State, pertain to the admission to the undergraduate course of MBBS, whereas in the present case, the micro reservations have been provided by the State in the postgraduate medical courses. It has been held in **Indra Sawhney's case (supra)** that reservation to a backward class or scheduled caste or scheduled tribes is a constitutional guarantee but preferential treatment to a class other than that can be given only if it is reasonable and has a correlation with the nexus it seeks to achieve. The relevant part of the judgment in **Indra Sawhney's case (supra)** is as follows:-

> "676. More important that determination of backward class is the proportion in which reservation can be done as it is not only a social or economic problem or the question of empowering but a constitutional and legal issue which calls for serious deliberation. Although political statesmanship of the framers of the Constitution intended to confine it to 'minority of seats' the judicial pragmatism raised it 'broadly and generally' to less than 50% in Balaji and not beyond that in T. Devadason v. Union of India . Effect of these two decisions was that

the reserved and non-reserved seats both for purposes of admission in educational institution under Article 15(4) and for appointment and posts in Article 16(4) were divided in half and half. But once the reservation climate spread in the country's environment it took over the political set up of different States to provide for reservation for different groups for different reasons. And legal justification for such reservation was provided for by the courts, either on the touchstone of Article 14 being a reasonable classification or under Article 16(1) as preferential treatment for disadvantaged groups. If in Chitra Ghosh the provision for government nominees in medical colleges was upheld, 'as the government which bears the financial burden of running medical colleges' could not be, 'denied the right to decide from what sources the admission will be made' then Chanchala did not find it unreasonable to extend the principle of preferential treatment, of socially and educationally backward in Article 15(4), to children of political sufferers as 'it would not in any way be improper if that principle were to be applied to those who are handicapped but do not fall under Article 15(4)'. The reservation in favour of wards of defence personnel was upheld as a reasonable classification in Subhashini as the reservation was in national interest. Result of such extensions and justification was multiplication of categories and withdrawal of more and more seats and posts from open competition. And when observations were made in Thomas that 50% was, 'a rule of caution' and, 'percentage of reservation in proportion to population did not violate Article 16(4)', a virtual go by was given by various states to the balancing equality

created by courts and reservations were made much beyond 50% and the High Courts had no option but to uphold them. Thus the combined effect of these principles, developed by Balaji and Davadason, on the one hand and Chitra Ghosh, Chanchala and Thomas on the other was that reservation up to 50% under Articles 15(4) and 16(4) and up to, 'reasonable extent' under Article 16(1). Under one it became SC/ST and BC and under the other wards of Military and Defence personnel, Jagdish Rai v. State of Haryana , Political, sufferers, sportsman, Children of MISA and DSIR detenue etc. Is this sound either constitutionally or legally or socially?"

"678. Originally this Article as introduced in the Constituent Assembly was Article 10 and its Sub-article (3) identical to Sub-article (4) of Article 16 provided for reservation, 'in favour of any class of citizens'. It was the Drafting Committee which qualified the expression, 'class of citizens' by adding the word 'backward' before it. Effect of this addition was that clause got narrowed and the reservation could be made only for those class of citizens who could be grouped as backward. Putting it the other way the framers of the Constitution decided against expansive reservation which under original proposal could have extended to any class of citizens. What was thus consciously and deliberately given up by exercising the option in favour of only those class of citizens who could be identified as backward then reservation in favour of any other class of citizens cannot legitimately and legally be accepted as valid. Extending it to other class of citizens under cover of reasonable classification would be constitutional distortion. What

should be deemed to be prohibited in the light of historical background cannot be brought back from the backdoor on principle developed by the American courts under Equal Protection Clause as they had to rise to the occasion due to absence of a provision like Article 16(4), and the fractured interpretation put in the Slaughter house cases, which eroded the very foundation of Equal Protective clause 'mainly intended for the benefit of Negro freedom'."

"In our constitutional scheme the classification in matters of employment or appointment in the services has been done constitutionally. From the entire class of all citizens any backward class has been classified for beneficial or benign treatment. The legislature or executive therefore cannot transgress it. Since the Constitution treats all citizens alike for purposes of employment except those who fall under Article 16(4) any further classification of grouping for reservation would be constitutionally invalid. No legislative exercise can transcendent the constitutional barrier. For valid classification legislature or executive measures must be co-related with legislative purpose or objective. Once the Constitution itself unfolded the purpose of achieving the goal of equality by permitting reservation for backward classes, only, any further reservation being beyond constitutional purpose would be impermissible and per se invalid."

"683. All the same the legislative anxiety of affirmative action by preferential treatment to disadvantaged group lagging behind may not be doubted. Difference between

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reservation and preferential treatment is that in one a group or class or collectivity is separately provided for and the competition is amongst them only. Whereas in preferential treatment the collectivity is part of the same group but it is permitted some weightage due to social, economic or any justifiable reason. For purposes of achieving equality by result Article 16 creates two compartments, one general and the other reserved and then both are paired together. But preference is available in the same compartment. Validity of one depends on constitutional sanction whereas the second has to stand on test of reasonableness. For instance the reservation of backward class cannot be assailed as being violative of constitutional guarantee whereas preferential treatment can be upheld only if it is reasonable with the nexus it seeks to achieve. Article 16 unlike Article 14 is a positive right of equal opportunity. Therefore, any preferential treatment shall have to be tested in the light of the constitutional objective the Article seeks to achieve. That is what is its natural, operation and effect. Reservation made for backward class of citizens achieves the constitutional goal of achieving equality of opportunity of all. Same cannot be said for others. Any reservation for any other class would be, as already explained, contrary to constitutional objective thus invalid. Wards of military personnel or political sufferers or any other class cannot be extended the benefit of benign discrimination as that would be violative of equality of opportunity. In absence of any objective or purpose discernible from the Constitution the State action would be liable to be struck down for absence of necessary co-relation between constitutional purpose and

> its means. Nexus such as national purpose or principle contained in Article 15(4) would not justify such action. Even preferential treatment by way of weightage may be permissible in very limited cases and any such measure would be liable to strict judicial scrutiny. Principle of Article 14 of reasonable classification may be relevant only to limited extent as to whether it is backed by reason and is justified but since it has to be tested further on touchstone on Article 16(1) the reasonable classification must be so tailored as not to contravene the right to equal opportunity."

Though **Indra Sawhney's case (supra)** was in relation to the reservation in the matter of employment but the principle enshrined therein with regard to Article 14 of the Constitution of India is that the principle of reasonable classification would be relevant only to a limited extent as it has to be backed by reasons.

The micro reservations which includes 2% reservation for the sports-persons or to the children of other categories mentioned in the notification dated 25.02.2015 has no reasonable nexus to be achieved and, thus, cannot be presumed to be a reasonable classification. Further, a student who had already passed the MBBS course cannot be considered educationally backward so as to give a special treatment by way of micro reservation.

Thus, it is held that the micro reservation provided under Clause 27(V)(iv) to (viii) of the notification dated 25.02.2015 is arbitrary, unreasonable and hereby quashed.

In view of the above, the 3rd petition bearing CWP No.4708 of

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2015 is hereby allowed.

**4th petition**

In this petition, the petitioner has averred that she has passed her MBBS Degree from Gian Sagar Medical College, Rajpura, affiliated to the University. She has applied for admission to the postgraduate medical course under the 40% State quota for fresh graduates.

Her grievance is against the seat matrix for admission to the postgraduate medical courses in the Medical Colleges of Punjab, published on 20.03.2015 on the website of the Department of Medical Education and Research, Punjab, which is not in consonance with the notification dated 25.02.2015. She has secured 977.1955 marks out of 1500 and her State quota rank was 788. As per her calculation, there are 153 seats available in the 50% State quota, out of which 90 seats would fall in the 60% State quota for in-service PCMS doctors and 63 are to filled from open/direct candidates. She has alleged that the reserved seats have not been proportionately distributed between 60% in-service PCMS doctors and the 40% non-service candidates and has made the following averments:-

> "i) As per clause 27(V) sub clauses (iv) to (viii), the reservations in favour of sports person, children/grand children of terrorism and riots affected persons, wards of Defence Personnel, wards of Punjab Police Personnel, Punjab Armed Police, Paramilitary Forces and Children/grand children of freedom fighters of Punjab are to the extent of 9%. However, in the seat matrix, out of 63 seats allocated in government colleges to 40% quota as many as 14 seats have been reserved for these micro categories. This makes the reservation as high as

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22% and is hence legally unsustainable. In sharp contrast to this, in the 60% PCMS quota seats the micro categories get only 3 seats out of 90 seats whereas they should have been given 8 seats i.e. 9% of 90. Even out of the entire 153 seats in the State quota, the seats for micro reservations are more than the prescribed 9%. They get 17 seats against permissible 14.6 seats.

ii) As per clause 27(I), in the 40% state quota seats, reservation has been provided to the extent of 50% by way of Institutional Preference i.e. Who have passed their Qualifying Examination i.e. MBBS or BDS from institutions affiliated to Baba Farid University of Health Sciences except CMC Ludhiana. However, as per seat matrix only 16 out of 63 seats in government colleges have been kept for Institutional Preference as against the required 32 seats.

iii) Institutional Preference has been treated as a separate reserve category (thereby taking the reservation to 75%) whereas it is only a different channel of entry just like the PCMS. Instead of providing for reservation under the Institutional Preference, the authorities have wrongly made this itself as a separate Reserve Category.

xxx xxx xxx"

"That from the perusal of the seat matrix it is apparent that most of the important specialties have been kept either in the 60% PCMS quota or have been given to Micro reservations. For example, out of 7 state seats of Radio-diagnosis, 4 seats have been given to PCMS and 3 to 40% quota out of which 1 seat has been given to Sportsmen and 1 to Terrorist Affected. There is only 1 seat of Radio diagnosis left for General, SC and BC candidates combined in 40% quota and that too in IP

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quota. Another glaring example is that of surgery. Out of 18 states quota seats in Government colleges 10 are earmarked for 60% quota wherein 6 are open, 3 for SCs, 1 for defence and 1 for handicapped. The 40% quota get 8 seats out of which 3 are reserved for SCs, 1 for backward class, 2 for micro reservations and only 1 seat is left for general category. Similarly, in Opthalmology out of 8 seats only 3 seats are for 40% quota out of which 2 seats are given to wards of Defence personnel who have a reservation of 2% only. Sportsmen have been specially favoured as they got 3 seats out of 63 in 40% quota against reservation of 2% and all are in important clinical subjects i.e. Medicine, Radio diagnosis and Surgery. The seat matrix gives huge unfair advantage to certain categories and thus clearly goes against the very spirit of merit in higher courses of medical education and is unsustainable in law.

After notice, the respondents filed replies on 26.03.2015 and on 07.04.2015. It is argued that the seats are allocated as per the roster registers which are maintained categories wise/institution wise/subject wise since the year 1993 in the Government Medical College, Patiala and Amritsar and since the year 1998 in Guru Gobind Singh Medical College, Faridkot as per 100 point roster. It is further averred that the seats for the micro reservation has not exceeded its limit of 9% and in order to explain the same, a table of distribution of seats is also attached with the reply as Annexure R-2.

Counsel for the petitioner, while relying upon a judgment of the Supreme Court in the case of **R.S.Garg v. State of U.P. and others,**

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2006(3) S.C.T. 682, has argued that the Roster cannot exceed the quota, whereas counsel for the respondents has relied upon a judgment of the Supreme Court in the case of **R.K.Sabharwal and others v. State of Punjab and others,** AIR 1995 SC 1371 to contend that the roster register is maintained from year to year for the purposes of ensuring that the scheduled castes, scheduled tribes and the backward class candidates would get their percentage of reserved seats.

Counsel for the petitioner has also tried to explain that in various specialties such as clinical fields like Radio diagnosis, Orthopedics, Medicine, Surgery, Skin and Pediatrics, the demand is more, whereas in the non-clinical fields such as Anatomy, Physiology, Pathalogy etc. the demand is low. It is sought to be argued that in the 2% reservations of the sports persons category, the seats of clinical category of Radio-diagnosis and Surgery have been given to them which similarly follows in the other micro reserved categories.

After hearing learned counsel for the parties in this regard and the fact that I have allowed the 3rd petition and quashed Clause 27(V)(iv) to (viii) of the notification dated 25.02.215 in respect of 9% micro reservations, the seat matrix, in any case, has to be re-arranged, therefore, the present petition, at this stage, has become infructuous and dismissed as such.

**5th petition**

The 5th petition is directed against the validity of Clause 29 of the notification dated 25.02.2015 as per which, after exhausting all the

reserved category candidates in 60% State quota for in-service PCMS doctors, the vacant seats would directly be transferred to the same category under the 40% State quota for fresh graduates without giving it firstly to the general category of the 60% State quota for in-service PCMS doctors.

The petitioners are in-service PCMS doctors serving in the State of Punjab and completed 4/6 years of rural services and became eligible for 60% State quota seats for in-service PCMS doctors. The grievance of the petitioners is in respect of Clause 29 of the prospectus issued by the University, which reads as follows:-

> **"29. Conversion of seats under All India/60%/40% Quota Unfilled seats:**
>
> All India Quota – The vacant seats transferred from All India quota, will be transferred to same category of candidates of 40% state quota.
>
> After exhausting all the eligible reserve category candidates in 60% quota, the vacant seats shall be transferred to same category candidates of 40% quota and after exhausting all reserve category candidates in 40% quota seats will be transferred to General Category candidates of 40% quota.
>
> In case of non-availability of general category candidates in 60% quota the vacant seat(s) shall be offered to the eligible general category candidates in 40% quota."

Counsel for the petitioners has submitted that 60% State quota for in-service PCMS doctors is not reservation under Article 15(4) of the Constitution of India rather it is a class legislation with an objective to give benefit of 60% postgraduate medical courses seats to the in-service regular doctors of the State after serving in the rural area so that the Government

medical services can be strengthened specially in rural areas. It is submitted that the provisions of 60% State quota for in-service PCMS doctors is a constitutionally separate source and is not by way of reservation and in-service candidates and non-service or general category candidates are two separate classes based on intelligible differentia. In this regard, he has relied upon two judgments of the Supreme Court in the cases of **K. Duraisamy v. State of T.N.,** (2001) 2 SCC 538 and **State of M.P. and others v. Gopal D. Tirthani and others,** (2003) 7 Supreme Court Cases 83.

On the other hand, counsel for the respondents has submitted that Clause 29 has been incorporated in view the decision of this Court in the case of **Dr. Vikrant Jarewal and others v. State of Punjab and others,** CWP No.6123 of 2014, decided on 04.09.2014.

Since the respondents has relied upon a decision of this Court in **Dr. Vikrant Jarewal's case (supra)**, I would firstly deal with this case. In the said case, the petitioners were aggrieved against the manner in which the reserve category unfilled seats in 60% in-service quota were to be transferred to the general category of 60% in-service quota, rather it was their case that it should be transferred to the reserved category of non-service 40% quota and not to the general category. Clause 27 of the prospectus in that case was noticed, which is as under:-

> "**27. Conversion of seats under All Inida/60%/40% quota unfilled seats:**
>
> All India Quota – The vacant seats transferred from All

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India quota, will be transferred to General Category candidates of 40% state quota.

After exhausting all the eligible reserve category candidates in 60% quota, the vacant seats will be transferred to General Category candidates of 60% quota.

In case of non-availability of candidates in 60% quota the vacant seats (s) will be offered to the eligible general category candidates in 40% quota.

After exhausting all reserve category candidates in 40% quota vacant seats will be transferred to General Category candidates of 40% quota."

In the aforesaid clause, it was provided that after exhausting all the eligible reserve category candidates in 60% quota, the vacant seats would be transferred to General Category candidates of 60% quota and in case of non-availability of candidates in 60% quota, the vacant seats would be offered to the eligible general category candidates in 40% quota.

It was held that it should be on the other hand that unfilled seats in the All India Quota meant for SC candidates and in the 60% in service quota is liable to be transferred only for the benefit of the reserved category of the 40% non-service quota.

However, in **K. Duraisamy's case (supra),** it was held that the Government possesses the right and authority to decide from what sources the admissions in educational institutions or to particular disciplines and courses therein have to be made and that too in what proportion and such

allocation of seats in the form of fixation of quota is not to be equated with the usual from of communal reservation and, therefore, the constitutional and legal considerations relevant to communal reservations are out of place while deciding the case based on such allocation of seats and such exclusive allocation and stipulation of a definite quota or number of seats between in-service and non-service or private candidates provided two separate channels of entry and a candidate belonging to one exclusive quota cannot claim to steal a march into another exclusive quota by advancing a claim based on merit and the mere use of the word “reservation” per se is not decisive of the nature of allocation. Whether it is a reservation or an allocation of seats for the purpose of providing two separate and exclusive sources of entry would depend on the purpose and object with which the expression has been used and that would be determinative of the meaning, content and purport of the expression.

In **State of M.P.'s case (supra),** it was held that allocation of seats for in-service is not violative of Article 14 of the Constitution of India rather it constitutes a separate source or channel of admission and it is not by way of reservation. The in-service candidates and non-service or general category candidates are two separate classes based on intelligible differentia, having a rational relation with the object sought to be achieved viz. after completion of the course posting of the in-service candidates in rural areas by the State Government.

In the case of **Baba Farid University of Health Sciences v. Dr. Heena Bharti and others,** LPA No.1368 of 2013, decided on

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14.08.2013, a controversy arose because of non-availability of eligible candidates in the 60% in-service quota seats. As per the admitted facts of that case, 89 seats came to the share of in-service quota, out of which only 40 candidates took admission and 49 seats were lying vacant and under the reserve category of sports persons, 2 seats were earmarked as per the distribution of seats; 1 seat of MD Medicine at Government Medical College, Patiala and 1 seat of MD Radio-Diagnosis at Government Medical College, Amritsar and there was one another seat of MD Orthopedics at Government Medical College, Amritsar, earmarked for the sports persons under the 40% open quota and, thus, there were total three seats reserved for the sports persons. Since there was non-availability of sports persons in 60% in-service quota, the candidates from 40% non-service quota claimed those unconsumed seats.

The Division Bench clarified that the quota of unfilled reserved category seats would be which were filled through general category candidates in the 60% quota and then would be made available to the candidates belonging to that very category (reserve) in the 40% quota and thereafter, if after exhausting of the reserved category candidates in the 40% quota, if the seat(s) still remain vacant, they would be transferred to the general category candidates of 40% quota.

This simplifies the job of this Court because it has been provided in Clause 29 of the prospectus issued by the University that after exhausting all the eligible reserve category candidates in 60% in-service quota, the vacant seats shall be transferred to same category candidates of

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40% non-service quota which means that if there is a reserved seat, may be in sports person category, remains vacant in the 60% in-service quota, then according to Clause 29, it would go to the sports persons category of 40% non-service quota and after exhausting reserve category of 40% non-service quota, it would be transferred to the general category of 40% non-service quota which means that the unconsumed reserve category seat in 60% in-service quota would not go to the general category of 60% in-service quota and would straightway go to the reserve category of 40% non-service quota.

This provision is apparently unreasonable and arbitrary because of the fact that 60% in-service quota is a source of admission and not reservation, therefore, relying upon the judgments of the Supreme Court in **K. Duraisamy's case (supra), State of M.P.'s case (supra)** and the judgment of this Court in **Baba Farid University of Health Sciences' case (supra)**, the clause 29 of the prospectus is hereby struck down as illegal and it is held that after exhausting eligible reserve category candidates in 60% in-service quota, any vacant seat in the reserve category would be transferred to general category of 60% in-service quota and if it not consumed even in the general category of 60% in-service quota, then it would go to the reserve category of 40% non-service quota and if it is not consumed there also, then it would go to the general category of 40% non-service quota.

Thus, the 5th petition is hereby allowed accordingly.

**6th petition**

In this petition, the petitioner is presently posted as Rural

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Medical Officer, Subsidiary Health Centre, Balkalan, Block Verka, District Amritsar since 01.06.2006 and has worked in the rural area for about 8 years and 10 months. She is aggrieved that the University has initiated the process of filling up seats for the postgraduate medical courses without granting weightage to the candidates like the petitioner in accordance with the Post Graduate Medical Education (Amendment) Regulations, 2012 Part-I (hereinafter referred to as the "Regulations-2012").

While referring to the notification dated 15.02.2012 issued by the Medical Council of India, counsel for the petitioner has submitted that while making the Regulations-2012, Clause 9 has been amended vide notification No.MCL18(1)2010-Med/49070 dated 21.12.2010 and the following has been added after sub-clause IV:-

> "Provided that in determining the merit of candidates who are in service of Government/Public 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."

It is submitted that though the respondent-University has issued the prospectus for the Session-2015 for filling up the seats for the

postgraduate medical courses but the incentives in accordance with Clause 9 of the Regulations-2012 have not been made part of the prospectus, therefore, the prayer has been made that said weightage of 10% to 30% be given to the petitioner in accordance with Clause 9 of the Regulations-2012 in the 40% State quota for fresh graduates in which she had applied.

Counsel for the petitioner has argued that in LPA No.1043 of 2013 titled as "**Dr. Manu Gupta v. State of Punjab and others"**, decided on 25.07.2013, though it has been held that the RMOs cannot be equated with the in-service PCMS doctors, but it was clarified that it would not preclude the RMOs from being considered for the current year in the open quota as per their merit giving due weightage of their rural service as in the prospectus. It is, thus, submitted that since there is already Clause 9 of the Regulations-2012 which provides for weightage in the marks obtained @ 10% for each year of service in remote/difficult areas upto maximum of 30%, the same should have been made part of the prospectus and has submitted that the action of the respondents in this regard is arbitrary, unreasonable and discriminatory.

Counsel for the respondents has argued that in the case of **Satyabrata Sahoo and Ors. v. State of Orissa and Ors.,** AIR 2012 (SC) 2977, the validity of Clause 11.2 of the Prospectus for selection of candidates for Post-Graduate (Medical) Courses in the Government Medical Colleges of Orissa was challenged. The appellants therein appeared in the entrance examination as `direct candidates' (Open Category) and qualified purely on merit for admission to Post Graduate (Medical) Courses 2012 in

the Government Medical Colleges in Orissa. As per the prospectus, there were 87 seats for the in-service doctors and 86 for the direct category, totaling 173 seats. The appellants therein, who fall under the category of `direct candidates', were aggrieved by Clause 11.2 of the Prospectus which stipulated an additional weightage for the candidates who are in employment of the Government of Orissa/Government of Orissa undertaking/Government of India Public Undertaking located in Orissa and had worked in rural/tribal/backward areas while applying through the category of direct candidates. Additional weightage of 10% of marks secured in the P.G. Entrance Examination per year of completion of service in rural/tribal/backward areas, subject to the maximum of 30% of marks secured in the entrance examination, was to be given to those candidates who apply through direct category.

It was decided therein that the said weightage is available only to the in-service category, to which 50% seats for PG admission has already been earmarked, and they cannot be allowed to encroach upon the direct category i.e. open category. It was held that *"we are of the view that such encroachment of 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".* The other relevant observations made in the aforesaid judgment are as under:-

> "23. We have referred to the above mentioned judgments only to indicate the fact that this Court in various judgments has acknowledged the fact that weightage could be given for doctors who have rendered service in

rural/tribal areas but that weightage is available only in in-service category, to which 50% seats for PG admission has already been earmarked. The question is whether, on the strength of that weightage, can they encroach upon the open category, i.e direct admission category. We are of the view that 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."

"25. We also find another fallacy in Clause 11.2 read with Clause 6.2.1 of the prospectus. Clause 6.2.1 of the prospectus says in-service candidate is one who at the time of application is in the employment in Government of Odisha and has completed a length of 5 years of service which include all categories of employment like contractual/temporary/ad-hoc/regular by 31st December 2011. Therefore, a doctor who is doing rural service on contract or on temporary basis or on ad hoc basis by 31st December 2011 will also get the benefit. At the same time, the candidates who pass out MBBS either in regular service or in contractual / temporary/ ad hoc in a private hospital even though serving in a remote/tribal areas would not get that benefit even though those doctors are also rendering the same service. Every doctor who goes out of medical college after MBBS would not get an opportunity to serve in a rural/ tribal area by way of contractual/temporary/ad-hoc or regular service offered by the State of Odisha or a public sector. Few may fall in that category for various reasons and they get an advantage and those who get that advantage of course can, claim weightage when they are being considered in

the in- service category.

26. We notice that the seats earmarked for the open category by way of merit are few in number and encroachment by the in-service candidates into that open category would violate clause 9(1)(a) of the MCI regulations, which says students for PG medical courses shall be selected strictly on the basis of the inter se academic merit i.e. on the basis of the merit determined by the competent test. Direct category or open category is a homogeneous class which consists of all categories of candidates who are fresh from college, who have rendered service after MBBS in Government or private hospitals in remote and difficult areas like hilly areas, tribal and rural areas and so on. All of them have to complete on merit being in the direct candidate category, subject to rules of reservation and eligibility. But there can be no encroachment from one category to another. Candidates of in-service category cannot encroach upon the open category, so also vice-versa.

27. We find, except State of Odisha and, to some extent, State of Tamil Nadu, none of the other States in India, has incorporated such a clause in any of their prospectus for admission to the graduate medical courses and students who fall under the open -category in those States are, therefore, not affected by such weightage."

"35. We are, therefore, inclined to allow this appeal and set aside the judgment of the Division Bench as well as learned Single Judge by quashing the proviso to clause 9 (2)(d) of the MCI regulations to the extent indicated above as well as clause 11.2 of the prospectus issued for admission to the Post Graduate Medical Examination 2012 in the State of Odisha. The State of Odisha, the

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> Medical Council of India and respondents 1 to 4 are directed to take urgent steps to re-arrange the merit list and to fill up the seats of the direct category, excluding in-service candidates who got admission in the open category on the strength of weightage, within a period of one week from today and give admission to the open category candidates strictly on the basis of merit."

Moreover, in the case of **Christian Medical College, Vellore and others v. Union of India and others,** (2014) 2 Supreme Court Cases 305, in para 179, the said notification has been specifically quashed by the Supreme Court. The relevant portion of the para 179 of the aforesaid judgment is as follows:-

> "The Transferred Cases and the Writ Petitions are, therefore, allowed and the impugned Notifications Nos. MCI-31(1)/2010-MED/49068, and MCI.18(1)/2010-MED/49070, both dated 21st December, 2010, published by the Medical Council of India along with Notification Nos. DE-22-2012 dated 31st May, 2012, published by the Dental Council of India and the amended Regulations sought to be implemented thereunder along with Notification Nos. DE-22-2012 dated 31st May, 2012, published by the Dental Council of India, are hereby quashed."

Counsel for the respondents has further argued that the word "may" has been used in Clause 9 of the Regulations-2012 i.e. "*in determining the merit of candidates who are in service of Government/ Public authority, weightage in the marks may be given by the Government/Competent Authority*" which cannot be read as "shall" and in

this regard, he has relied upon a judgment of the Himachal High Court in the case of **Dr. Rajesh Sharma and naother v. State of H.P. and others,** CWP No.3135 of 2013, decided on 28.06.2013, in which the following observations have been made:-

> "8. The next contention urged by learned counsel for the petitioners is that the Regulations are mandatory and in this eventuality they apply by their own force. According to learned counsel, the word `may' in the proviso should and ought to be read as `shall' and therefore, by applying this criteria gradation in terms of award of marks as contemplated for candidates/doctors having served in difficult areas, ought to be granted. Learned counsel places reliance on a number of judgments to urge that `may' should be read as `shall'. We are unable to accept this contention for two reasons.
>
> One the State provides in service reservation and preference to those candidates/doctors who have served in rural areas by grading different years and relaxing the number of years of service according to topographical conditions. It is in this context that the Regulations have to be interpreted because of its application on All India basis with discretion vested in the States to consider its own peculiar local conditions to provide preferential treatment."
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> xxx xxx xxx xxx
>
> 9. Second, we find that the word `shall' has been used in the Regulations at a number of places and `may' in proviso to clause 9. If it was the intention to make this proviso mandatory the word `shall' would have been used. Also discretion in the range of 10% to 30% has been granted with the State to be awarded for having

served in the difficult area(s). This would be dependent upon each individual State and its topographical conditions, need and requirement to be implemented by them individually. Prescription of different period of service already stands incorporated as noted (supra).

10. Lastly, we have no doubt in our mind that the judgment in **Satyabrata Sahoo's case,** clearly lays down that implementation of the clause would depend upon its adoption. Merely because it has been stated in the Information Brochure that the test/competition would be restricted to those who appeared in the National Eligibility-cum-Entrance Test would not make the provisions of this proviso mandatory."

There is another angle to find the prayer of the petitioner to be unreasonable and non-workable. In the State-wise result of the AIPGMEE-2015, the candidates at Sr No.174, namely, Mohit Goyal has secured 1156.9839 marks out of 1500 and the candidate at Sr. No.317, namely, Pardeep Kaur has secured 1156.0003 marks, meaning thereby between 1156.9839 to 1156.0003 marks, there are 143 candidates from Sr. No.174 to Sr. No.317, whereas the petitioner Tanu Arora is at Sr. No.1080 by securing 976.2262 marks and if Clause 9 of Regulations-2012 is applied, as prayed for, she has to be given 30% weightage of about 325 marks, which would increase her marks from 976 to 1301 which may bring her on the top of the 40% non-service State quota list.

Thus, in view of the aforesaid facts and circumstances, the petitioner cannot claim the application of Clause 9 of Regulation-2012 as a matter of right, as held by the Himachal Pradesh High Court in **Dr. Rajesh**

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**Sharma's case (supra)** as the word used in the provision is “may” and the said provision cannot be applied in the 40% non-service State quota as the weightage has already been given for the rural services in the in-service PCMS doctors in which the petitioner cannot apply because of the decision of this Court in **Dr. Manu Gupta's case (supra).**

Thus, the prayer made by the petitioner is hereby declined and the 6th writ petition is dismissed as such.

April 13, 2015 (**Rakesh Kumar Jain)**
vinod* **Judge**