

THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT

WRIT PETITION No. 28459 of 2016

ORDER:

Vide the present petition, the petitioner seeks Mandamus declaring the action of respondents No.1 to 3 in not considering the petitioner's representation dated 20.08.2016 requesting to add 30% weightage marks towards in-service to the petitioner in compliance of the judgment of the Hon'ble Supreme Court of India and as per Regulation No.9 of the Postgraduate Medical Education Regulations, 2000 (as amended) for the ongoing admission into Super Specialty courses (PG 2) in respect of Urology/Genito Urinary Surgery courses for the academic year 2016-17, as illegal and arbitrary and consequently direct respondents No.1 to 3 to add 30% weightage marks to the petitioner in view of the judgment of the Supreme Court delivered on 16.8.2016 in **State of U.P. and others Vs. Dr Dinesh Singh Chauhan**^[1].

2. The petitioner herein is a Doctor. He completed his MBBS from Kakatiya Medical College and post graduation in medicine from Dr. NTR University of Health Sciences, in the year 1989 and 1996 respectively. The petitioner has been in Government service since 1996, having rendered services at tribal primary health centers as Civil Assistant Surgeon, Assistant Professor and Associate Professor in teaching hospitals and is well recognized and respected

for his service. A notification dated 06.07.2016 issued by respondent No.4 inviting application for eligible candidates to appear for entrance test (online) for the admission into Super Specialty (PG 2) courses available in the colleges in A.P., and Telangana for the academic year 2016-17. As per the entrance notification dated 06.07.2016 and also the letter released by respondent No.2, common entrance test would be conducted for Super Specialty Courses (PG 2) by respondent No.4 for the States of Telangana and Andhra Pradesh, and no separate entrance test will be conducted by respondent No.2, but the counseling will be held for these courses separately by respondents No.2 and 4 for the colleges in the States of Telangana and Andhra Pradesh. Copies of notification dated 06.07.2016 issued by respondent No.4, letter issued by respondent No.2 and the prospectus for the Super Specialty Medical Courses for the academic year 2016-17 are herewith filed as Annexure P3 to P5.

3. In pursuance of the above notification, the petitioner submitted an application and appeared for the entrance examination held on 31.07.2016 for pursuing Super Specialty Course Urology/Genetico Urinary Surgery and obtained 19th rank in the combined merit list released on 10.8.2016 for both the states equivalent to 8th rank for the State of Telangana. A copy of Hall ticket of the petitioner

and the merit list of candidates are herewith filed as Annexure P6 & P7.

4. Mr V.M.M.Chari, learned counsel appearing on behalf of the petitioner submits that as per the prospectus of respondent No.4 at Serial No.2 with regard to the number of seats available in the medical colleges for the year 2016-17, names of only three medical colleges in the State of Telangana were mentioned viz., Osmania Medical College, Hyderabad, Gandhi Medical College, Secunderabad and Mamata Medical College, Khammam. Wherein Osmania Medical College has 4 seats for Urology/Genetico Urinary Surgery, Gandhi Medical College has 2 seats and no seats for Mamata College. While ignoring two other colleges namely Chalmeda Anand Rao Institute of Medical Sciences, Karimnagar and Kamineni Institute of Medical Sciences, Narketpalli, Nalgonda, which have had permission dated 10.06.2016 and 15.06.2016 under Section 10 of Indian Medical Council Act, 1956 from the Medical Council of India (MCI) with annual intake of one seat each for offering Urology/Genetico Urinary Surgery super specialty course. A copy of extract from the website of MCI detailing sanction of seats to the above two colleges for the year 2016-17 is placed on record.

5. Learned counsel further submitted that immediately the petitioner approached this Court and filed WP No.27891 of 2016 with a relief to include the above two colleges in the counselling/admission notification so that the petitioner would be entitled to seek admission. The said writ petition came up for admission before this Court on 19.8.2016 and this court adjourned the matter to 23.8.2016 at the request of learned counsel appearing for respondent No.2 enabling to file counter affidavit.

6. Learned counsel further submitted that as the petitioner is in-service with the Government hospitals for the past 20 years and would be clearly entitled for weightage of 30% marks as per MCI Postgraduate admission regulations and also as per judgment of **Dinesh Singh Chauhan** (1 supra). Accordingly, the petitioner herein immediately approached respondent Nos.1 and 2 and submitted a representation while requesting to consider the same in super specialty course for the Academic Year 2016-17. But the officials of the respondents have orally informed the petitioner that there is no such information to their office, therefore the same cannot be considered. A copy of representation of the petitioner is filed as Annexure P12.

7. Learned counsel appearing on behalf of the

petitioner argued that the petitioner had worked for two years in tribal area and three years in rural area since 1996. Thus, he is entitled to 30% weightage in getting admission in PG course as prayed. To buttress his argument, learned counsel has relied upon a case reported in **Sandeep, S/o Sadashiva Rao Kansurkar and others vs. Union of India and others**^[2].

8. Mr A. Prabhakar Rao, learned counsel appearing on behalf of the respondents submits that Clause 9 of notification dated 15.2.2012 issued by Medical Council of India is applicable only on selection of Postgraduate student, as amended vide notification No.MCI-18(1)/2010-Med./49070 dated 21.12.2010. It is specifically stated in the said Clause that as an incentive at the rate of 10% of the marks obtained for each year of service in rural area, tribal area and remote and/or difficult areas up to the maximum 30% of marks obtained in National Eligibility-cum-Entrance Test would be given to those candidates. He submits that the said regulation is firstly applicable on selection for the courses of postgraduate; secondly it is applicable to a candidate who will appear in National Eligibility-cum-Entrance Test; whereas, the petitioner did not appear in NEET, thus clause 9 noted above, is not applicable.

9. Mr. A. Prabhakar Rao further submitted that **Dinesh Singh Chauhan** case (1 supra) is also not applicable in case of petitioner for the reason that the said judgment was passed in a petition filed by the petitioner seeking admission in Post Graduation course whereas the petitioner seeks admission into Super Specialty course (PG 2). To this effect, learned counsel has relied upon a case reported in **Dr Pradeep Jain and others Vs Union of India and others**^[3] wherein the Supreme Court has observed that excellence cannot be allowed to be compromised by any other considerations because that would be detrimental to the interest of the nation. It is further held that even in regard to admissions to the Post Graduation courses, so far as Super Specialty, such as, Neurosurgeon and cardiology are concerned, there should be no “**Reservation**” at all, even on the basis of institutional preference, and admission should be granted purely on merit on community basis.

10. Heard learned counsel for the parties.

11. The issue for consideration before this Court is – ***whether any weightage can be given to in-service medical officers on the basis that they served in rural, tribal, remote or difficult areas for getting admission in Super Specialty Courses?***

12. In the case of **Dr. Dinesh Singh Chauhan** (1 supra), the issue before the Hon'ble Supreme Court was that whether Constitutional reservation or Social reservation can be given for admission into Postgraduate courses in medical stream. The Supreme Court has dealt with the said case for the purpose of admission in the Postgraduate courses, whereas in the present petition, the petitioner seeks weightage for the service rendered in rural and tribal areas.

13. It is pertinent to mention here that vide Presidential Order dated 03.07.1974, the President of India in exercise of powers conferred under Clause (1) & (2) of Article 371-D of the Constitution of India adorned special status to the State of Andhra Pradesh. The said Presidential Order came into force on 01.07.1974.

14. As per the said Ordinance, a candidate for admission to any course of study shall be regarded as a local candidate; thus, the candidates of the State of Telangana and the State of Andhra Pradesh need not appear in National Eligibility-cum-Entrance Test (NEET) Examination. Therefore, all the Universities in these States conduct their own exam and accordingly give admission, may it be for MBBS, Postgraduate or Super

Specialty courses. Accordingly, their exams are at par with NEET. Therefore, candidates of these two states need not appear in NEET to get admission in any of the course, in any University, in the states.

15. In the case of **Dr. Dinesh Singh Chauhan (1 supra)**, the Supreme Court held as under:

“37. We must hold that the High Court was justified in quashing the State Government Order providing for reservation to in-service candidates, being violative of Regulation 9 as in force. However, we modify the operative direction given by the High Court and instead direct that admission process for Academic Year 2016-17 onwards to the Post Graduate Degree Course in the State should proceed as per Regulation 9 including by giving incentive marks to eligible in-service candidates in terms of proviso to Clause IV of Regulation 9 (equivalent to third proviso to Regulation 9(2) of the Old Regulations reproduced in the interim order dated 12th May 2016). We, accordingly, mould the operative order of the High Court to bring it in conformity with the direction contained in the interim order dated 12th May, 2016, but to be made applicable to Academic Year 2016-17 onwards on the basis of Regulation 9 as in force. We are conscious of the fact that this arrangement is likely to affect some of the direct candidates, if not a large number of candidates who applications were already processed by the competent Authority for concerned Post Graduate Degree Course for Academic Year 2016-17. However, their admissions cannot be validated in breach of or disregarding the mandate of Regulation 9, as in force. The appeals against the judgment of the High Court of Judicature at Allahabad dated 7th April, 2016 are disposed of accordingly.

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39. In so far as Writ Petition No.372/2016 even that should fail as we have held Regulation 9 to be a complete Code and a provision for determining inter-se merit of the candidates including by giving weightage of marks as incentive to eligible in-service candidates who have worked

in notified remote or difficult areas in the State, which is just, reasonable and necessary in larger public interest.

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41. Accordingly, the appeals as well as Writ Petition are disposed of in the above terms and for the same reasons the accompanying applications are also disposed of. No order as to costs.”

16. It is pertinent to mention here that the case of **Dinesh Singh Chauhan (1 supra)** arose before the Hon’ble Supreme Court from the judgment dated 07.04.2016 rendered by the High Court of Allahabad wherein it is held that admissions of Postgraduate degree courses be proceeded strictly on merits amongst candidates who have obtained requisite minimum marks in the common entrance examination in question. As per Regulation 9, at best, the in-service candidates who have worked in remote and tribal areas in the State, as notified by the State Government/competent authority from time to time alone would be eligible for weightage of marks at the rate of 10% of marks obtained for each year of service upto a maximum of 30% of marks obtained in the NEET Examination.

17. In the above cited case, the petitioner therein sought 50% of the seats in P.G. Diploma Course reserved for medical officers in Government Service, who had served atleast 3 years in remote and tribal area. After

acquiring the P.G.Diploma, the medical officers shall serve for 2 more years in remote/tribal areas. The State Government gave the reservation for in-service candidates as noted above. The same was challenged before the High Court of Allahabad. The petitioner therein claimed to be members of Provincial Medical Health Services in the State of Uttar Pradesh. According to them, they were entitled to consideration of admission in P.G. Course against 30% quota for in-service candidates. The plea was opposed on the ground that 30% quota was reserved only for in-service candidates who have worked in remote and difficult areas and not for in-service medical officers generally. While considering this issue, the High Court in context of Regulation 9 noticed that there was no provision in the Indian Medical Council Act, 1956 and the regulations framed therein known as MCI Postgraduate Medical Council Regulations, 2001, stipulating reservations for in-service candidates is 30% seats for Postgraduate courses however was only to give weightage of marks for in-service candidates who have worked in Community Health Centres / Primary Health Centres in notified difficult areas of the State. On the other hand, reservation has been limited to Post Graduate 'Diploma' Courses by the said Regulations. The High Court, therefore, called upon the Medical Council of India to clarify its stand in this behalf. The Medical Council of India stated before the High Court of Allahabad that no

reservation for in-service candidates was permissible in respect of Post Graduate 'Degree' Courses; unlike for the Post Graduate 'Diploma' Courses, in terms of Regulations framed in that behalf. Further, the State Government could not have framed any statutory Rules much less provided different dispensation by an executive fiat. Accordingly, the High Court was pleased to hold that the State Government has had no authority to frame any Rules or issue any executive order to provide for reservation in the Post Graduate 'Degree' Courses, contrary to the statutory Regulations framed under the Medical Council of India Act, 1956. The High Court whilst advertent to the decisions of this Court including the recent judgment in the case of **Sudhir N. and others Versus State of Kerala and others** ^[4] held that Regulation 9 is a complete Code and the admission process must strictly adhere to the norms stipulated therein. It, thus, proceeded to quash the Government Notification dated 28th February, 2014 and directed that admissions to Post Graduate 'Degree' Courses be proceeded strictly on merits amongst the candidates who have obtained requisite minimum marks in the common entrance examination in question. It also held that as per Regulation 9, at best, the in-service candidates who have worked in remote and difficult areas in the State, as notified by the State Government/Competent Authority from time to time, alone would be eligible for weightage of marks as incentive at

the rate of 10% of the marks obtained for each year of service in such areas upto the maximum of 30% marks obtained in National Eligibility-cum-Entrance Test.

18. The Hon'ble Supreme Court in the case of **Dinesh Singh Chauhan (1 supra)** held that the High Court was justified in quashing the State Government order providing for reservation to in-service candidates being violative of Regulation 9 as in force. However, the Supreme Court modified the operative directions given by the High Court and instead direct that admission process for Academic Year 2016-17 onwards to the Post Graduate Degree Course in the State should proceed as per Regulation 9 including by giving incentive marks to eligible in-service candidates in terms of proviso to Clause IV of Regulation 9 (equivalent to third proviso to Regulation 9(2) of the Old Regulations reproduced in the interim order dated 12th May 2016). Accordingly, the Supreme Court moulded the operative order of the High Court to bring it in conformity with the direction contained in the interim order dated 12th May, 2016 but to be made applicable to Academic Year 2016-17 onwards on the basis of Regulation 9 as in force.

19. As per the mandate of the Allahabad High Court, as confirmed by the Hon'ble Supreme Court, in any higher studies, say, Postgraduate or Super Specialty Courses,

there cannot be any Constitutional and Social reservation. The reservation in such institutions amounts to compromising the talent which is not in the interest of the country, however the Court held that the candidates who served in rural, tribal, difficult or backward areas, to facilitate their higher study, weightage can be given as permissible under Clause IV of Regulation 9.

20. The Hon'ble Supreme Court in **Dr. Sandeep (2 supra)**, held as under:

34. At this juncture, we may also refer to the Constitution Bench decision in **Faculty Association of All India Institute of Medical Sciences v. Union of India**. In the said case issue arose about the applicability of reservation in respect of Speciality and Super Speciality faculty posts in All-India Institute of Medical Sciences. The matter was referred to a larger Bench by the three-Judge Bench in view of the decisions rendered in **Jagadish Saran (supra)**, **Dr. Pradeep Jain (supra)** and **Indra Sawhney v. Union of India**. The Constitution Bench after noting various contentions ruled that:-

“22. Although the matter has been argued at some length, the main issue raised regarding reservation at the superspeciality level has already been considered in **Indra Sawhney** case by a nine-Judge Bench of this Court. Having regard to such decision, we are not inclined to take any view other than the view expressed by the nine-Judge Bench on the issue. Apart from the decisions rendered by this Court in **Jagadish Saran** case and **Pradeep Jain** case, the issue also fell for consideration in **Preeti Srivastava** case which was also decided by a Bench of five Judges. While in **Jagadish Saran** case and in **Pradeep Jain** case it was categorically held that there could be no compromise with merit at the Super Speciality stage, the same sentiments were also expressed in **Preeti Srivastava** case as well.

23. In Preeti Srivastava case, the Constitution Bench had an occasion to consider Regulation 27 of the Post Graduate Institute of Medical Education and Research, Chandigarh Regulations, 1967, whereby 20% of seats in every course of study in the institute was to be reserved for candidates belonging to the Scheduled Castes, Scheduled Tribes or other categories of persons, in accordance with the general rules of the Central Government promulgated from time to time. The Constitution Bench came to the conclusion that Regulation 27 could not have any application at the highest level of superspeciality as this would defeat the very object of imparting the best possible training to selected meritorious candidates, who could contribute to the advancement of knowledge in the field of medical research and its applications. Their Lordships ultimately went on to hold that there could not be any type of relaxation at the superspeciality level.”

35. Be it noted, the Court laid immense emphasis on paragraph 836 of Indra Sawhney (supra) wherein the nine-Judge Bench has observed:-

“...that there were certain services and posts where either on account of the nature of duties attached to them or the level in the hierarchy at which they stood, merit alone counts. In such situations, it cannot be advised to provide for reservations. In the paragraph following, the position was made even more clear when Their Lordships observed that they were of the opinion that in certain services in respect of certain posts, application of rule of reservation may not be advisable in regard to various technical posts including posts in superspeciality in medicine, engineering and other scientific and technical posts.”

36. Thereafter, the Court proceeded to state further:-

“We cannot take a different view, even though it has been suggested that such an observation was not binding, being obiter in nature. We cannot ascribe to such a view since the very concept of reservation implies mediocrity and we will have to take note of the caution indicated in Indra Sawhney case. While reiterating the views expressed by the nine-Judge Bench in Indra Sawhney case, we dispose of the two civil appeals in the light of the said views, which

were also expressed in Jagadish Saran case, Pradeep Jain case, Preeti Srivastava case. We impress upon the Central and State Governments to take appropriate steps in accordance with the views expressed in Indra Sawhney case and in this case, as also the other decisions referred to above, keeping in mind the provisions of Article 335 of the Constitution.”

37. We have referred to the aforesaid judgments in extenso as learned counsel appearing for the petitioners have laid immense emphasis that there cannot be reservation of any kind in respect of post-graduate or super speciality courses regard being had to the law laid down by many a judgment of this Court. It is urged that the State of Andhra Pradesh and Telangana cannot apply the domicile test only to admit its own students and that too also in respect of 15% quota meant for non-local candidates. We have already analysed the factual score and the legal position. The undivided State of Andhra Pradesh enjoys a special privilege granted to it under Article 371-D of the Constitution and the Presidential Order. The judgments of the larger Bench do not refer to the said Article nor do they refer to the Presidential Order, for the said issue did not arise in the said cases. A scheme has been laid down in the case of Dr. Pradeep Jain (supra) and the concept of percentage had undergone certain changes. In Reita Nirankari (supra), the same three-Judge Bench clarified the position which we have already reproduced hereinbefore. However, in C. Surekha (supra), the Court had expressed its view about the amendment of the Presidential Order regard being had to the passage of time and the advancement in the State of Andhra Pradesh. It has been vehemently urged by Mr. Marlapalle that despite 27 years having been elapsed, the situation remains the same. We take note of the said submission and we are also inclined to echo the observation that was made in the case of Fazal Ghafoor (supra) wherein it has been stated thus:-

“In Dr Pradeep Jain case this Court has observed that in Super Specialities there should really be no reservation. This is so in the general interest of the country and for improving the standard of higher education and thereby improving the quality of available medical services to the people of India. We hope and trust that the Government of India and the State Governments shall seriously consider this aspect of the matter without delay and appropriate

guidelines shall be evolved by the Indian Medical Council so as to keep the Super Specialities in medical education unreserved, open and free.”

38. The fond hope has remained in the sphere of hope though there has been a progressive change. The said privilege remains unchanged, as if to compete with eternity. Therefore, we echo the same feeling and reiterate the aspirations of others so that authorities can objectively assess and approach the situation so that the national interest can become paramount. We do not intend to add anything in this regard.

39. Consequently, the writ petition as far as it pertains to the State of Andhra Pradesh and Telangana, is dismissed. As regards State of Tamil Nadu, the matter be listed on November 4, 2015 for hearing.

19. In Dr. Pradeep Jain (supra), a three-Judge Bench was dealing with admissions to medical colleges, both at the undergraduate and at the post-graduate levels. The question that arose for consideration was whether regard being had to the constitutional values, admission to medical colleges 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 residents within the State for a specified number of years or can any reservation in admissions be made for them so as to give the precedence over those who do not possess domicile or residential qualification within the State, irrespective of merit. After referring to various aspects in the Constitution and authorities rendered in N. Vasundara v. State of Mysore, Jagdish Saran v. Union of India and various other authorities the three-Judge Bench came to hold thus:-

“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 per cent 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 Indian 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 specialities 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.”

20. After the said judgment was delivered, the said three-Judge Bench passed a clarificatory order in *Reita Nirankari* (supra) wherein the Court considered three aspects one of which is relevant for the present case. We reproduce the same:-

“We may make it clear that the judgment will not apply to the States of Andhra Pradesh and Jammu and Kashmir because at the time of 3 hearing of the main writ petitions, it was pointed out to us by the learned advocates appearing on behalf of those States that there were special constitutional provisions in regard to them which would need independent consideration by this Court.”

21. In view of the above facts and law settled in various cases as discussed above, the dictum of the High Court and the Supreme Court that for admission into Postgraduate courses and Superspeciality courses, there cannot be any reservation for any category. However, in case of **Dr. Dinesh Singh Chauhan (1 supra)** it is held

that Regulation 9 to be a complete Code and a provision for determining inter-se merit of the candidates by giving weightage of marks as incentive to eligible in-service candidates who have worked in notified remote or difficult areas in the State is reasonable and necessary in larger public interest.

22. Therefore, two opinions emerged from the cases discussed above. One, that it cannot be advisable to provide reservation for any category in any of the courses including Superspecialty courses; and two, as per Regulation 9 of the Postgraduate Medical Education Regulation, 2000 (as amended), is admissible for in-service candidates who had served in rural, tribal, remote or difficult areas.

23. The petitioner came into Government service in the year 1996 and has completed 20 years service. Out of the 20 years, the petitioner served for 5 years in rural, tribal or difficult areas.

24. During arguments, the counsel for the petitioner argued that rendering service in rural, tribal, remote or difficult areas is not mandatory, however, it is as per the administrative exigency. Thus, an in-service medical officer has no choice except to serve in those areas if he

is posted there.

25. It is pertinent to mention here that in G.O.Ms.No.107, Health, Medical & Family Welfare (E1) Department, dated 18.07.2013, stipulated that Compulsory Government Service shall be undergone after successful completion of Medical Post Graduation/Diploma/DNB course/Super Specialty Degree courses and Dental courses (except service quota candidates) including all Government & Private colleges and Minority colleges; and the Doctor should normally complete the Compulsory Government Service posting within a period of 12 months itself from the date fixed in the posting orders. Further, it is also stated that the candidates who have done one year of Compulsory Government Service under bonded obligation with the Government after MBBS will not have to do the Compulsory Government Service again after completion of PG degree/diploma/Super Specialty courses. However, those who could not complete or have not done Compulsory Government Service posting for one year after MBBS/BDS for any reason will have to do the Compulsory Government Service after PG/Super Specialty Course for remaining part of one year obligatory service. Thus, the cumulative effect of Compulsory Government Service under bonded obligation shall be one year only. By this G.O.Ms.No.107, dated 18.07.2013,

rendering service in rural, tribal or difficult areas has been made mandatory, however, earlier it was not.

26. The term rural/tribal/remote or difficult area is self-explanatory. Ordinarily, such areas are un-developed, far from city, dwellings are un-sophisticated, lack in basic amenities, don't have timely transport facilities as we find in towns and cities. To put in one word, life in those places is not smooth as we are accustomed to these days. This Court cannot be oblivious to the fact that, barring very few officers, officers who have 'good public relations' do not volunteer or go to such rural/remote/tribal or difficult areas, and it is generally those who have no say in the system serve in such rural/remote/tribal or difficult areas, as they have no option.

27. It is pertinent to note that the intent, as can be deciphered from the aforesaid G.O.No.107, dated 18.07.2013, appears to be that the rural/remote/tribal service rendered by medical officers under the Compulsory Government Service formulation, will enhance professional precision, ignite independent thinking and decision making in non-sophisticated atmosphere i.e., rural/remote areas, and such an aptitude and professional acumen is very much essential for medical officers, as the same is useful to the patients in

rural setting. When that is the larger perspective and ideology behind the rural/remote/difficult area posting under the Compulsory Government Service formulation, certainly the in-service medical officers like the petitioner who have rendered rural/tribal service for almost 5 years and who are duty bound to serve in such rural or difficult areas as per administrative exigencies, are entitled to weightage of marks as incentive. If such officers who rendered service in rural or difficult areas are not encouraged by giving weightage of marks, it will lead to frustration and de-motivation in those officers.

28. In all the judgments discussed above, it is held that there cannot be reservation for any category including in-service officers, but held that weightage is applicable as per sub-clause (4) of Clause 9 of MCI Notification dated 15.02.2012. Nowhere it is said that weightage is not applicable in Super Specialty Courses. In view of the above discussion and the ratio laid down in **Dr. Dinesh Singh Chauhan (1 supra) and Dr. Sandeep (2 supra)**, I am of the considered view that those in-service medical officers who served in rural/tribal/remote or difficult areas are entitled to weightage of marks at the rate of 10% per year for each year of service rendered in rural/remote/tribal or difficult area, subject to a maximum weightage of 30%. Therefore, I am of the considered opinion that the weightage is applicable in Super Specialty

Courses also.

29. Accordingly, the writ petition is allowed with no order as to costs. Miscellaneous petitions, if any pending, shall stand closed.

SURESH KUMAR KAIT, J

29th August, 2016

Note: Registry shall communicate this order to the respondents, forthwith.

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THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT

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[\[1\]](#) Civil Appeal No.8047 of 2016 (Supreme Court)
[\[2\]](#) (2016) 2 SCC 328
[\[3\]](#) (1984) 3 SCC 654
[\[4\]](#) (2015) 6 SCC 685