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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 363 of 2017**

Dr. Tarendra Kumar, aged about 32 years, Son of Shri M.L.Dewangan,
Working with ESIC Dispensary, Rajanandgaon, District Rajnandgaon,
Chhattisgarh R/o House No. 8, Ward No. 41, Kalibadi, District Durg,
Chhattisgarh.

---- **Petitioner****Versus**

1. State of Chhattisgarh, Through Secretary, Department of Law and Legislative Affairs, Mahanadi Bhawan, New Raipur, District Raipur, Chhattisgarh.
2. The Secretary, Department of Higher Education, Mahanadi Bhawan, New Raipur, District Raipur, Chhattisgarh.
3. The Secretary, Department of Labour, Mahanadi Bhawan, New Raipur, District Raipur, Chhattisgarh.
4. The Director, Directorate of Medical Education, New Raipur, Chhattisgarh.

---- **Respondents**

For Petitioner	: Shri Rahul Tamaskar, Advocate.
For Respondent/State	: Shri J.K.Gilda, Advocate General with Shri A.S.Kachhwaha, Additional Advocate General.

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri P. Sam Koshy, J.

Order on Board**Per Thottathil B. Radhakrishnan, Chief Justice****27/03/2017**

1. We have heard the learned counsel for the Petitioner and the learned Advocate General for the State/Respondents, quite in extensio.

2. The challenge levied through this writ petition is against Rule 2(l) of the Chhattisgarh Chikitsa Snatakottar Pravesh Niyam, 2016 (hereinafter referred to as 'the 2016 Rules').
3. Before proceeding further, we may note that the competence to make the said delegated legislation is not under challenge. The field of occupied by the legislative power in question is also not under challenge. The rule is not impeached as made in infraction of Chhattisgarh Chikitsa Mahavidyalayon Ke Snatakottar Pathyakramon Main Pravesh Adhiniyam, 2002 (hereafter referred to as 'the 2002 Act').
4. The sum and substance of the challenge of the Petitioner is that the definition of "in-service candidate" in Rule 2(l) of the 2016 Rules results in hostile discrimination as a consequence of exclusion of doctors working in Government service, but not serving either under the Directorate of Medical Education or Directorate of Health Services. Admittedly, the Petitioner does not serve under the Directorate of Medical Education or under the Directorate of Health Services. It is stated that he is serving under the Labour Department. Therefore, he does not fall into the group of in-service candidates to whom the benefit of those rules apply, going by a plain reading of Rule 2(l) of the 2016 Rules, which reads as follows:

"2(l) **"In-Service Candidate"** means an employee serving under the Directorate of Medical Education and Directorate of Health Services (on regular/ adhoc/ contractual basis), who have completed 3 years of Government service as on 31st day of January of Examination Year;"

5. Before proceeding further we may notice that the benefit of additional marks, points or rating, arising out of the fact that any person is an in-service candidate as defined in 2016 Rules accrues to those who have completed three years of such service as on 31st January of the

examination year. The year in question is 2016. The 2016 Rules came into force *w.e.f* 11.02.2016. The challenge levied through this writ petition is made by institution of this writ petition on 10.02.2017 *i.e.* after the Petitioner had participated in the National Eligibility-cum-Entrance Test for Post Graduate courses (hereinafter called 'the NEET-PG'). Obviously, therefore, even at the outset, we can notice that this is a case where the Petitioner has levied the challenge to the impugned Rule much after the process of selection was over. Faced with this situation, the learned counsel for the Petitioner argued that the cause of action to challenge the Rule would come only when the Petitioner has been declared eligible through the NEET-PG. We are unable to accept this argument. The eligibility to sit for NEET-PG is in terms of the Prospectus prescribed for such purpose by the National Board of Examination. The entitlement to benefits of the 2016 Rules is something which a candidate can look forward to, provided that person aspires for any benefit accruing by reason of those rules. The eligibility of the Petitioner before us, if at all any, to get the support of the 2016 Rules and thereby augment his status in the merit list following the NEET-PG is a matter about which the Petitioner has to be imputed with knowledge, by reason of the publication of the 2016 Rules in February, 2016 and the eligibility condition for the in-service candidates to claim the benefit of the 2016 Rules had accrued by 31st January, 2016. In this view of the matter, there is no gain saying for the Petitioner to contend that he had a right to sue in relation to the 2016 Rules if and when the selection process reaches the concluding stage and only if the Petitioner has a fair chance of getting into the course of his choice with the support of the 2016 Rules.

6. The Directorate of Medical Education deals with the field of medical education in the State. The Directorate of Health Services is also a State-

wide service which deals with the efficiency and efficacy of the health service scenario. There may be isolated posts in Government. They may cater to either localized problems or issues relating to certain departments. It is a matter among the incidents and accidents of service, that a person may get appointment in such a post. To join in such a post is a matter of one's own volition. It is for that person to make a choice whether to be there or not. But having made it, it is not open to plead that though working in such a post, the treatment that the said person is entitled to, should be at par with those who have been identified as serving under the Directorate of Medical Education or Directorate of Health Services. We can easily visualise the object sought to be achieved by providing support to the in-service candidates in the matter of admission to post graduate courses. The State's intention is obviously to augment the quality of medical support that would be extended through the Directorate of Health Services and the Directorate of Medical Education. The non-inclusion of the posts other than those falling under the Directorate of Health Services and the Directorate of Medical Education is referable to an intelligible differentia. Such exclusion of the post held by the Petitioner from the basket of posts that would fall within the definition of "in-service candidate" in the Rule 2(l) of the 2016 Rules does not amount to hostile discrimination.

7. Of abundant importance is the fact that the matter in issue, as is relatable to the legislative crafting of the definition of "in-service candidate" for the purpose of the Rules, is fundamentally a matter in the realm of policy making. Such a decision will not be visited through judicial review, unless it is shown to be capricious and palpably perverse that the vice of arbitrariness is writ large on its face, making it liable to be annulled as being an arbitrary decision, and therefore void and inoperative on the

face of Article 14 of the Constitution. We see no such situation in the case in hand.

8. For the aforesaid reasons, the challenge levied against the 2016 Rules fails.
9. In the result, the writ petition is dismissed. No costs.

Sd/-

(Thottathil B. Radhakrishnan)
CHIEF JUSTICE

Sd/-

(P. Sam Koshy)
JUDGE