

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No. 927 of 2017

1. Dr. Nilesh Kumar Jaiswal S/o. Late Shri B.L. Jaiswal, Aged About 34 Years R/o. Village And Post Ramnagar, Tahsil And District Surguja (Chhattisgarh)
2. Dr. Panmeshwar Kumar Rathia, S/o. Shri Mohan Singh Rathia, Aged About 27 Years R/o. Village Chainpur, Post Ghinara, Police Station & Tahsil Kartala, District Korba (Chhattisgarh)

---- Petitioner

Versus

1. State of Chhattisgarh Acting Through Principal Secretary, Department Of Health & Family Welfare, Mantralaya, Mahanadi Bhawan, New Raipur (Chhattisgarh)
2. Director of Medical Education, Old Nurses Hostel, D K S Bhawan Parisar, Raipur (Chhattisgarh).

---- Respondents

And

Writ Petition (C) No. 928 of 2017

1. Dr. Someshwar Kahara S/o. Shri Bhimsen Kahara, Aged About 28 Years R/o. Ratanpur, Tahsil Kota, District Bilaspur (Chhattisgarh)
2. Dr. Umesh Dewangan, S/o. Shri Teras Ram Dewangan, Aged About 27 Years R/o. Village Kera, Block And Tahsil Nawagarh, District Janjgir Champa (Chhattisgarh)
3. Dr. Rajendra Choudhary S/o Shri Mahaveer Choudhary Aged About 28 Years R/o Village Jognipali, Tahsil Saraipali, District Mahasamund (Chhattisgarh)
4. Dr. Abhinav Tirkey S/o Shri Edward Tirkey, Aged About 28 Years R/o New Colony, Patelpara, Ambikapur, District Surguja (Chhattisgarh)

---- Petitioner

Versus

1. State of Chhattisgarh Acting Through Principal Secretary, Department of Health & Family Welfare, Mantralaya, Mahanadi Bhawan, New Raipur (Chhattisgarh)
2. Director of Medical Education, Old Nurses Hostel, D K S Bhawan Parisar, Raipur (Chhattisgarh).

---- Respondents

For Petitioners	:	Shri K.A. Ansari, Senior Advocate assisted by Shri Devesh G. Kela, Advocate
For Respondent/State	:	Shri Prafull N. Bharat, Additional A.G.

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

Order on Board

Per Thottathil B. Radhakrishnan, Chief Justice

12.04.2017

1. The petitioners in these writ petitions are doctors with MBBS degree and working under the Directorate of Medical Education. They challenge the Chhattisgarh Chikitsa Snatkottar Pravesh Niyam, 2017 (for short, '2017 Rules') to the extent that it does not provide for 50% reservation of seats for Post Graduate Medical Courses for the in-service doctors, including in-service doctors working in the Medical Colleges.
2. We have heard learned Senior counsel for the Petitioners and the learned Additional Advocate General.
3. It appears that till 2016, the rules governing admission to the Post Graduate Medical Courses, contained a rule of reservation in favour of the in-service doctors including the in-service doctors in the Medical Colleges. That was a rule of reservation which provided for 50% of the seats being reserved for such candidates. Now, the State Government has done away with that provision.
4. While the learned Senior counsel for the petitioners argued that the present rules have been brought into force after finalization of the list of successful candidates from the State of Chhattisgarh following declaration of the results of NEET-PG 2017 Exams, the learned Additional Advocate General points out that the State Government had

no way other than to make the rules to run in conformity with the constitutional prescriptions as noticed and laid down as law by the Hon'ble Supreme Court through the judgment in **State of Uttar Pradesh and Others Vs. Dinesh Singh Chauhan, (2016) 9 SCC 749**.

5. In the afore-noted precedent, rule of reservation for Post Graduate Courses was found fault with as being in violation of the Central Laws and resultantly being *ultra vires* the Constitution and the governing statutes. It is the trite law that a rule of reservation is different from a rule which provides for incentives to a certain group of candidates either identified on need base or on the basis of other intelligible differentia on which such groups could be identified for the purpose of support through a mechanism of incentive by way of marks. On the teeth of the law laid by the Honb'le Supreme Court in **Dinesh Singh Chauhan (supra)** we cannot find fault with the Governmental action in having put their rules in conformity with the declaration of law which binds the State under Article 141 of the Constitution of India. For this reason, the mere fact that the 2017 Rules were made after the conclusion of the NEET selection process makes no difference.
6. For the aforesaid reasons, these writ petitions fail.
7. In the result, the writ petitions are dismissed in *limine*.

Sd/-
(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge