

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

CWP No.7026 of 2017(O&M)(O&M)

Date of Decision: April 26, 2017

Rajesh Kumar and another

---Petitioners

Versus

State of Punjab and others

---Respondents

**Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Harinder Singh Sidhu**

Present: Mr.H.C.Arora, Advocate
Mr.H.S.Brar, Advocate and
Mr.Verinder Pal Sharma, Advocate
for the petitioners.

Mr.Harsimran Singh Sethi, Addl. A.G.,Punjab.

Mr.Manish Dadwal, Advocate for
the respondent – University.

Mr.M.S.Longia, Advocate for
Medical Council of India.

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HARINDER SINGH SIDHU, J.

1. This judgment shall dispose of three writ petitions, namely CWP Nos.7026, 7089 and 7418 of 2017, as common questions are involved therein.
2. The facts are being taken from CWP No.7026 of 2017.
3. This Civil Writ Petition has been filed praying for quashing of Clause 17 of the notification dated 29.03.2017 (Annexure P-7) to the extent that for admission to post graduate degree course incentive of 30% of total marks obtained in the National Eligibility cum Entrance Test (Post Graduate) for short 'NEET PG-2017' for service in difficult/ very difficult areas is restricted only to the in-service PCMS/PCMS(Dental) Doctors. Further

challenge is to the non grant of the said incentive for admission to Post Graduate Courses in private institutions.

4. The petitioners are presently working as Government Medical Officers. Petitioner No.1-Dr. Ramesh Kumar initially joined on contract basis on 19.08.2006 with Zila Parishad, Patiala as Medical Service Provider at Subsidiary Health Centre, Mallewal, Block Nabha, District Patiala. Subsequently, his designation was changed to Rural Medical Officer. He was regularized w.e.f. 01.05.2011. Petitioner No.2 - Dr. Amanpreet Singh was appointed as Rural Medical Officer on regular basis on 24.12.2011. Presently he is posted as Rural Medical Officer at Subsidiary Health Centre, Village Badali, District Mohali.

5. Both the Petitioners appeared in the NEET PG-2017 examination, the result whereof was declared on 13.01.2017. Petitioner No.1 has scored 727.9048 marks out of 1500 marks. Petitioner No.2 has scored 725.7721 marks. Both these petitioners are employed in rural areas.

6. The State of Punjab issued notification dated 14.10.2016 (Annexure P-2) for admission to postgraduate degree/diploma courses in the Health Sciences Educational Institutions (Medical/Dental) in the State of Punjab for the year, 2017. As per clause 17 of that notification, 60% of the seats in the State quota were reserved to be filled from PCMS (Medical)/Dental in-service doctors and 40% seats were left open for admission to eligible medical/dental graduates. The petitioners filed Civil Writ Petition No.2542 of 2017 'Dr. Rajesh Kumar and another Vs. State of Punjab and others' challenging the aforesaid provision of Clause 17 of the notification. During the pendency of the writ petition, the respondent-State

of Punjab issued notification dated 29.03.2017 (Annexure P-7).

Consequently, CWP No.2542 of 2017 was withdrawn with liberty to petitioners to assail the new notification, where after the present writ petition has been filed impugning Clause 17 and 18 of this notification. The relevant Clauses 17 and 18 of this notification are reproduced as under:

“17. Distribution of Seats in Govt. Institutions (Govt. Medical / Dental College, Amritsar & Patiala, GGS Medical College, Faridkot.)

I. In the Govt. Institutions, 50% of the total seats shall be filled by the Government of India at All India level, and remaining 50% seats shall be filled at the State level as State Quota seats.

II. 50% seats of the State Quota seats shall be reserved by way of Institutional Preference, for candidates who have passed their qualifying examination from Baba Farid University of Health Sciences, Faridkot/Guru Nanak Dev University, Amritsar/Punjabi University, Patiala.

III. In-service doctors (PCMS/PCMS Dental) shall be granted an incentive of 30% of total marks obtained in NEET PG 2017.

IV. Eligibility criteria:-

For in-service Regular PCMS/PCMS (Dental) doctors:-

(a) The Eligibility requirements for grant of incentive shall be as under:

- i Regular PCMS/PCMS (Dental) employee*
- ii. Has completed 4 full years (48 months) service in very difficult (category-D) area or 6 full years (72 months) service in difficult (Category C) area or an appropriate combination of both. In case of candidates who have completed 5 full years (60 months) of service (as on 01.01.2012), they should have completed 2 full years (24 months) of service in most difficult areas. Very difficult (Category D)/ Difficult (Category C)/Most*

Difficult/Difficult area, as the case may be, shall be as defined by Department of Health & Family Welfare, Government of Punjab.

iii. RMOs once they are selected in PCMS/PCMS (Dental), will be given benefits of rural service rendered by them as RMOs 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 31st March, 2017.

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

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

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

f) All in service doctors shall have to submit a bond of Rs.50 lakhs to serve the Punjab Government for a period of 10 years after completion of Post Graduate degree course and a bond of Rs.25 lakhs to serve the Punjab government for a period of 6 years after completion of Post Graduate diploma course. If the candidate fails to do so he/she shall have to deposit the bond money with the Government.

For State Quota candidates (except in-service PCMS/PCMS (Dental) candidates):-

- a) Any candidate in State Govt. employment (other than PCMS/PCMS Dental shall produce No Objection Certificate from his/her employers along with the application for the counseling and shall not be given any incentive of marks for service rendered.
- b) Candidates selected in State Quota shall get fixed emoluments/stipends as determined by the Punjab Government from time to time for the complete course, 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 two 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 years of passing of the postgraduate examination.
- ii. The candidate will inform the Government of Punjab that he/she has passed the Postgraduate examination.
- iii. Failure to serve the Government of Punjab for a period of two years will lead to deposition/ recovery of bond money to the Government of Punjab i.e. Rs.15.00 Lakh.

For All India quota candidates

All India quota candidates shall submit a bond of Rs.10 Lakhs to serve the State of Punjab for one year after completion of Post Graduate course. All other conditions shall remain the same, as for State Quota candidates.

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18. I. Distribution of seats in Private Institutions:-

Govt. Quota Seats-	50%
Management/Minority Quota Seats	50%

(including 15% NRI Quota)

II. Reservation in Private Institutions:-

- a) The Governor of Punjab is further pleased to

reserve, by way of institutional preference upto 50% available seats for candidates who have passed their qualifying examination from Baba Farid University of Health Sciences, Faridkot/Guru Nanak Dev University, Amritsar, Punjabi University, Patiala.

b) The reservation shall be as follows:

- | | |
|------------------------------------|------------|
| <i>i. Scheduled Caste</i> | <i>25%</i> |
| <i>ii. Backward Class</i> | <i>5%</i> |
| <i>iii. Physically handicapped</i> | <i>3%</i> |

Only orthopedically handicap is entitled to reservation in physically handicapped category & shall have locomotor disability of lower limbs between 50%-70%. 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 Orthopedics of 3 State Medical Colleges. In case the candidates are not available then the candidates with disability of 40% to 50% (locomotor disability of lower limbs) may be considered.

Note 1. The availability of seats for reservation shall be as per hundred point roster being maintained category wise/subject wise/institution wise.

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

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7. Mr. H.C. Arora learned counsel for the petitioners in CWP No.7026 has argued as under:

(i) As per proviso to Regulation 9 (IV) of the Post Graduate Medical Education Regulations, 2000 (for short 'MCI Regulations') incentive at the rate of 10% of marks obtained for each year of service in remote or difficult areas upto a maximum of 30% of the marks obtained in

National Eligibility-Cum-Entrance Test is permissible to candidates who are in- service of the Government/ public authority. Clause 17 of the 2017 notification to the extent it limits the grant of such incentive only to in-service regular PCMS/PCMS (Dental) doctors is violative of the MCI Regulations as interpreted by Hon'ble the Supreme Court in **State of U.P. v. Dinesh Singh Chauhan**, (2016) 9 SCC 749.

8. Learned counsel further argued that the petitioners are in regular service of the Zila Parishad and are governed by Statutory Service Rules namely The Punjab Panchayati Raj Rural Medical(Group-A) Service Rules, 2011 (for short '2011 Rules') which have been framed by the Punjab Government. The Zila Parishad being a public authority, the petitioners cannot be denied the benefit of incentive for service in remote /difficult areas as prescribed by proviso to Regulation 9(IV) of the MCI Regulations. He further argued that as per Clause 17(iii) of the 2017 notification itself, the Rural Medical Officers once selected in PCMS are to be given benefit of the entire rural service. Hence, there is no rationale to exclude the RMOs from the benefit of incentive for service in remote/difficult areas.

9. In support of his contention that not granting the benefit of incentive for service in remote/ difficult areas for admission to Private Institutions is illegal and against Regulation 9(IV) of the MCI Regulations, he referred to observations of the Hon'ble Supreme Court in paragraph-34 of **Dinesh Singh Chauhan's** case where it has been held that Regulation 9 makes no distinction between a government and private medical institution for the grant of incentive marks to the in-service candidates who have served in remote/ difficult areas.

Sh. H.C. Arora stated that as per Regulation 9 (IV) service in remote/difficult areas is the determinative factor for grant of incentive and not the authority under which the service is rendered. The only requirement is that the service should be rendered either with the Government or any public authority. The public authority may be a Government Corporation, a Municipal Corporation, Zila Parishad, Panchayat Samiti etc.

11. CWP No.7089 of 2017 :

The petitioner after selection as PCMS-I Doctor joined at the Primary Health Centre, Brahmpura, District Tarn Taran on 03.06.2013 (which is notified as 'Difficult Area'. He worked there till 05.06.2014. From 06.06.2014 till date he is working as Medical Officer in the Primary Health Centre, Rajoke, District Tarn Taran (which is notified as 'Most Difficult Area'). His total service in 'difficult area' and 'most difficult area' comes to three years ten months.

12. The petitioner has challenged the Clause 17(III) and 17(IV) (a) (ii) where under to be eligible for the the grant of incentive of 30% marks, the regular PCMS/PCMS(Dental) doctors, should have completed four years (48 months) service in very difficult (category-D) area or 6 full years (72 months) service in difficult (Category C) area or an appropriate combination of both. In case of candidates who have completed 5 full years (60 months) of service (as on 01.01.2012), they should have completed 2 full years (24 months) of service in most difficult areas/very difficult (Category D)/ Difficult (Category C)/Most Difficult/Difficult area, as the case may be. The argument is that as per proviso to Clause 9 (IV) of the MCI Regulation, the incentive for service in remote /difficult area is to be provided at the rate of 10% for every year of service subject to a maximum

of 30%. The prescription in the impugned notification is contrary to that. Whereas Regulation 9(IV) envisages grant of the incentive commensurate to the service starting from a minimum of 10% for the first year going to a maximum of 30%, the impugned notification only provides for grant of incentive of 30% to those who are eligible thereunder. He argued that the bar of eligibility is fixed at a very high level denying the benefit of incentive to many doctors like the petitioners who have served for sufficiently long period which is contrary to the intention of the MCI Regulation.

13. Seeking to defend the impugned notification from the three pronged attack, Mr. Harsimaran Singh Sethi, learned Addl. A.G., Punjab at the outset made the following two submissions which underlie his defence to each argument advanced by the petitioners :

(i) It is settled legal position that the MCI Regulations prescribe only the minimum standards. It is open to the State Government to prescribe conditions over and above those prescribed by MCI. (Reliance was placed amongst others on *State of T.N. v. Adhiyaman Educational & Research Institute* 1995(4) SCC 104 *Preeti Srivastava v. State of M.P.*, (1999) 7 SCC 120)

(ii) The proviso to Regulation 9(IV) of the MCI Regulations is only an enabling provision. It does not make it mandatory for the State to grant incentive for rendering service in remote/difficult area. The State may or may not grant such incentive.

Justifying the restriction of benefits of the incentive to regular PCMS/PCMS (Dental) doctors only and not extending them to the Rural Medical Officers

Officers serving in the Zila Parishads cannot be equated with and they have never been equated with PCMS /PCMS(Dental) Doctors. He stated that prior to grant of incentive for service in remote/ difficult areas, 60% seats in the State Quota were reserved for in-service doctors. This benefit was also limited only to PCMS/PCMS(Dental) doctors. Rural Medical Officers serving in the Zila Parishads were never given this benefit. Their challenge to this denial was negated by the Courts. He referred to decision dated 22.5.2013 of this Court in CWP No.11188 of 2013 titled '**Dr.Manu Gupta vs. The State of Punjab and others**' and other connected matters, which decision was also approved in LPA No.1043 of 2013. Even the SLP(C) No.25931 of 2013 titled 'Dr.Kulmeet Kaur Mahal & ors. vs. State of Punjab and ors.' filed there against was dismissed on 11.9.2013.

14. He argued that the Rural Medical Officers serve only in Subsidiary Health Centres, whereas, the regular PCMS/PCMS (Dental) doctors serve in the Primary Health Centres established by the State Government in the rural areas. Specialized services and advanced diagnostic techniques are available at the Primary Health Centres, which is not the case with Subsidiary Health Centres where the Rural Medical Officers recruited by the Zila Parishads are serving. He argued that if the benefit of incentive is extended to Rural Medical Officers, after acquiring the post graduate degree they can only return to Subsidiary Health Centres where the rural public will not be able to benefit from their added qualification to the same extent as when PCMS doctors after completing their postgraduation get posted in the Primary Health Centres. He argued that the policy decision of the State Government not to treat the Rural

Medical Officers as in-service candidates for the purposes of grant of

incentives is based on factual and practical considerations solely guided by considerations of what would be in the best interest of the rural population.

15. Mr. Sethi argued that the non-grant of incentive of service in remote/ difficult area for admission to private institutions is justified in public interest inasmuch as if in-service PCMS doctors on the basis of the incentive are able to get admission in private institutions, their services would be lost to the State. He argued that PCMS doctors doing their post graduation from Government institutions continue to draw their salary and serve the public through hospitals attached to these institutions. The same would not be the case with those studying in private institutions. He further pointed out that it is a condition of their eligibility that in- service PCMS doctors will have to submit a bond of ₹ 50 lacs to serve the Punjab Government for a period of 10 years after completion of postgraduate degree course. As for study in a private college the State would not continue to pay the salary, no similar bond could be executed. Thus, in extending the benefit of the incentive to private institutions the State will not be able to avail of the benefit of the services of such doctors after the completion of their post graduate degree.

16. Mr. Sethi forcefully stressed that even as per the MCI Regulations the pre-dominant criteria for admission to postgraduate courses remains merit based on the NEET exam. If in regard to admissions in private medical institutions the State Government wishes to promote merit no fault can be found therewith.

17. Regarding the challenge in CWP No.7089 of 2017 to the condition of eligibility whereby benefit of incentive of 30% is granted for

service in remote /difficult area only to those who have completed four years (48 months) service in very difficult (category-D) area or 6 full years (72 months) service in difficult (Category C) area or an appropriate combination of both etc. Sh. Sethi argued that the provision is manifestly in public interest. He argued that if the incentive even of 10% is granted after serving for one or two years then it would be prone to misuse. Any one wanting admission in post graduate class would serve in remote/difficult area for a year or two. After having availed of the benefit and securing the post graduate degree he would resign. This would not be in public interest and would defeat the very objective of grant of incentive, which is to have more doctors willing to serve in rural areas. Moreover, sufficient number of doctors, who have rendered the requisite service as required by Clause 18 (IV)(a)(ii) of the 2017 notification are available, hence there is no reason to lower the eligibility criteria to service of lesser number of years.

18. Mr. Longia, who appeared for the Medical Council of India submitted that as per the proviso to Regulation 9(IV), grant of incentive is not mandatory, which is evident from the use of the word 'may'. It is upto the State Government whether to give or not give benefit. He further argued that the incentive as per the proviso is available only to 'in-service' doctors. The benefit cannot be extended for admission to private institutions because on admission to such institutions, the PCMS doctors would have to resign and they would no longer remain 'in service', which would be against the requirement of the proviso.

19. Heard learned counsel for the parties and perused the record.

20. Three questions arise for consideration in these petitions.

- (i) Whether restricting the grant of incentive for service in remote or difficult areas to PCMS/ PCMS (Dental) doctors while not granting it to Rural Medical Officers employed by the Zila Parishads is illegal being contrary to the intent and requirement of proviso to Regulation 9(iv) of the MCI Regulations?
- (ii) Whether limiting the grant of incentives for such service for admission to post graduate classes in government colleges only and not giving similar incentive for admission to private colleges is illegal being contrary to Regulation 9(IV).
- (iii) Whether the eligibility criteria as specified in Clause 18(iv)(a)(ii) is illegal being contrary to that specified in proviso to Regulation 9(IV)?

The entire case of the petitioners is centred on proviso to Regulation 9(IV) and its interpretation. Relevant part of Regulation 9 of the MCI Regulations is reproduced below:

“9. Procedure for selection of candidate for postgraduate courses shall be as follows.—

(I) There shall be a single eligibility-cum-entrance examination, namely, “National Eligibility-cum-Entrance Test for admission to Postgraduate Medical Courses” in each academic year. The superintendence, direction and control of National Eligibility-cum-Entrance Test shall vest with National Board of Examinations under overall supervision of the Ministry of Health & Family Welfare, Government of India.

(II) 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:

. Provided further that this entire exercise shall be completed by each medical college/institution as per the statutory time schedule for admissions.

(III) In order to be eligible for admission to any postgraduate course in a particular academic year, it shall be necessary for a candidate to obtain minimum of marks at 50th percentile in “National Eligibility-cum-Entrance Test for Postgraduate courses” held for the said academic year. However, in respect of candidates belonging to the Scheduled Castes, the Scheduled Tribes, the Other Backward Classes, the minimum marks shall be at 40th percentile. In respect of candidates as provided in clause (II) above with locomotory disability of lower limbs, the minimum marks shall be at 45th percentile. The percentile shall be determined on the basis of highest marks secured in the all-India common merit list in “National Eligibility-cum-Entrance Test” for postgraduate courses:

Provided when sufficient number of candidates in the respective categories fail to secure minimum marks as prescribed in National Eligibility-cum-Entrance Test held for any academic year for admission to postgraduate courses, the Central Government in consultation with the Medical Council of India may at its discretion lower the minimum marks required for admission to postgraduate course for candidates belonging to respective categories and marks so lowered by the Central Government shall be applicable for the said academic year only.

(IV) The reservation of seats in medical colleges/institutions for respective categories shall be as per applicable laws prevailing in States/Union Territories. An all-India merit list as well as State-wise merit list of the eligible candidates shall be prepared on the basis of the marks obtained in National Eligibility-cum-Entrance Test and candidates shall be admitted to postgraduate courses from the said

merit lists only:

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 up to the maximum of 30% of the marks obtained in National Eligibility-cum-Entrance Test, the remote and difficult areas shall be as defined by the State Government/competent authority from time to time.

(V) No candidate who has failed to obtain the minimum eligibility marks as prescribed in clause (II) above shall be admitted to any postgraduate courses in the said academic year.

(VI) In non-governmental medical colleges/institutions, 50% (fifty per cent) of the total seats shall be filled by the State Government or the Authority appointed by them, and the remaining 50% (fifty per cent) of the seats shall be filled by the medical colleges/institutions concerned on the basis of the merit list prepared as per the marks obtained in National Eligibility-cum-Entrance Test.

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21. The proviso to Regulation 9(IV) has been interpreted by Hon'ble the Supreme Court in **State of U.P. v. Dinesh Singh Chauhan**, (2016) 9 SCC 749. In this case, while repelling a challenge to the validity of this provision, the Hon'ble Supreme Court considered in detail the objective and justification of this provision. Before this case, the Supreme Court had considered Regulation 9 (as it existed before its amendment in 2012) in **Sudhir N. v. State of Kerala**, (2015) 6 SCC 685. Hence, both these judgments would throw light on the issues that arise for determination in these cases.

22. In both these judgments, it has been held that Regulation 9 is a complete code regarding the procedure to be followed for admission to

medical courses and that the State has no authority to enact any law or issue executive instructions that may undermine the procedure for admission to postgraduate medical courses as laid down in these regulations.

23. In **Sudhir's** case, it was observed as under:

“15. Regulation 9 is, in our opinion, a complete code by itself inasmuch as it prescribes the basis for determining the eligibility of the candidates including the method to be adopted for determining the inter se merit which remains the only basis for such admissions. To the performance in the entrance test can be added weightage on account of rural service rendered by the candidates in the manner and to the extent indicated in the third proviso to Regulation 9. Suffice it to say that but for the impugned legislation making an attempt to change the basis on which admissions can be made, such admissions must, in all categories, be made only on the basis of merit as determined in terms of the provision extracted above. That method, however, is given a go-by by the impugned legislation when it provides that in-service candidates seeking admission in the quota reserved for in-service doctors shall be granted such admission not on the basis of one of the methodologies sanctioned by Rule 9(2) of the Rules but on the basis of inter se seniority of such candidates. The question is whether the State was competent to enact such a law. Our answer to that question is in the negative. The reasons are not far to seek.”

24. In **Dinesh Singh Chauhan's** case, the same view was reiterated as under:

“24. By now, it is well established that Regulation 9 is a self-contained code regarding the procedure to be followed for admissions to medical courses. It is also well established that the State has no authority to enact any law much less by executive instructions that may undermine the procedure for

admission to postgraduate medical courses enunciated by the Central legislation and regulations framed thereunder, being a subject falling within Schedule VII List I Entry 66 of the Constitution (see Preeti Srivastava v. State of M.P.). The procedure for selection of candidates for the postgraduate degree courses is one such area on which the Central legislation and regulations must prevail.”

25. Referring to the concession made on behalf of the State of U.P. that it would make admissions in conformity with Regulation 9, the Supreme Court in **Dinesh Singh Chauhan's** case again underscored the binding character of these regulations by observing that even in the absence of such undertaking it is not open to the State Government to provide for a dispensation different than the one specified by the Central Act and Regulations made thereunder. The relevant observations are as under:

*“20. Be that as it may, after the interim order dated 12-5-2016³ was passed by this Court on the basis of assurance given by the State, it is not open for the State Government to contend to the contrary. Notably, the State Government has not prayed for relieving itself from the statement as has been recorded in the order dated 12-5-2016. That interim order, therefore, in one sense was invited by the State Government to strictly follow Regulation 9 by giving a weightage of marks to eligible in-service candidates and redraw the merit list. The concomitant of such an informed statement made to this Court, inevitably, results in withdrawal of the Government Order dated 28-2-2014 (which in fact has been justly quashed by the High Court); and also to notify that the admissions to postgraduate degree courses in the State of U.P. will be in conformity with Regulation 9, including to give only weightage or incentive marks to eligible in-service candidates who have served in notified remote/difficult areas of the State. **In any case, it is not***

open to the State Government to provide for a dispensation different than the one specified by the Central Act and Regulations made thereunder.” (emphasis supplied.)

In the background of the aforesaid enunciation by Hon'ble the Supreme Court of the binding character of the Regulation 9, we proceed to consider the three questions that fall for determination in these cases.

26. Question No.(i) :

In regard to the first question, Mr. Sethi argued that plainly the proviso does not make it mandatory for the States to grant the incentive. It only enables the grant of this incentive. The States may or may not grant this incentive. If any State does not grant such an incentive and decides that admissions will be solely on merit no fault could be found therewith. Also if the State chooses to restrict the incentive to doctors in the service of the State Government only, no fault can be found therewith. Moreover there are justifiable reasons for not extending the benefit to Rural Medical Officers employed with the Zila Parishad, as their service conditions, experience, expertise etc. are not comparable with the government doctors. He argues that the significance of the proviso is that in its absence such an incentive could not have been granted. The admissions then would have to be made only on merit as per NEET. Any provision granting such incentive could have been challenged as being in violation of the MCI Regulations. Now such incentive is permissible.

27. For the decision of this case, where the State has, as a matter of fact, granted the incentive, we need not consider the argument of Mr. Sethi that the proviso is only enabling and does not mandate the grant of this incentive. The question that arises is, having chosen to grant the incentive

could the State Government restrict such benefit only to doctors in the service of the Government and not include those serving under other 'public authority'.

28. In **Dinesh Singh Chauhan's** case (*supra*), the Supreme Court noticed the fact that the concentration of doctors is in urban areas and the rural areas are neglected. Large number of posts in public health care units in the State are lying vacant and unfilled in spite of sincere effort of the State Government. The Court recognized the imperative of giving some incentive marks to doctors working in notified remote or difficult areas over a period of time. It held that incentive marks specified in Regulation 9 linked to the marks obtained by the in-service candidate in NEET and commensurate with the services rendered by them in notified remote/difficult areas of the State is a legitimate and rational basis to encourage the medical graduates/doctors to offer their services and expertise in remote or difficult areas of the State for some time. It was observed:

“29. In the present case, we have held that providing 30% reservation to in-service candidates in postgraduate “degree” courses is not permissible. It does not, however, follow that giving weightage or incentive marks to in-service candidates for postgraduate “degree” courses entails in excessive or substantial departure from the rule of merit and equality. For, Regulation 9 recognises the principle of giving weightage to in-service candidates while determining their merit. In that sense, incentive marks given to in-service candidates is in recognition of their service reckoned in remote and difficult areas of the State, which marks are to be added to the marks obtained by them in NEET. Weightage or incentive marks specified in Regulation 9 are thus linked to the marks obtained by the in-service candidate in NEET and reckon the commensurate

experience and services rendered by them in notified remote/difficult areas of the State. That is a legitimate and rational basis to encourage the medical graduates/doctors to offer their services and expertise in remote or difficult areas of the State for some time. Indisputably, there is a wide gap between the demand for basic health care and commensurate medical facilities, because of the inertia amongst the young doctors to go to such areas. Thus, giving specified incentive marks (to eligible in-service candidates) is permissible differentiation whilst determining their merit. It is an objective method of determining their merit.

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31. However, in the present case, the Medical Council of India itself has framed a regulation predicating one merit list by adding the weightage of marks assigned to in-service candidates for determining their merit in NEET.

32. The imperative of giving some incentive marks to doctors working in the State and more particularly serving in notified remote or difficult areas over a period of time need not be underscored. For, the concentration of doctors is in urban areas and the rural areas are neglected. Large number of posts in public healthcare units in the State are lying vacant and unfilled in spite of sincere effort of the State Government. This problem is faced by all States across India. This Court in Snehelata case had left it to the authorities to evolve norms regarding giving incentive marks to the in-service candidates. The Medical Council of India is an expert body. Its assessment about the method of determining merit of the competing candidates must be accepted as final [State of Kerala v. T.P. Roshana (SCC para 16); also see Medical Council of India v. State of Karnataka]. After due deliberations and keeping in mind the past experience, Medical Council of India has framed regulations, inter alia, providing for giving incentive marks to in-service candidates who have worked in notified remote and

difficult areas in the State to determine their merit. The Regulation, as has been brought into force, after successive amendments, is an attempt to undo the mischief.”

29. The Supreme Court observed that because of this incentive fresh qualified doctors will be attracted to opt for rural service, as later they would stand a good chance to get admission to postgraduate “degree” courses of their choice. It was particularly noticed that the rural health care units run by the public authority would be benefited by doctors willing to work in notified rural or difficult areas in the State. The Regulation was held to subserve larger public interest.

“33. As aforesaid, the real effect of Regulation 9 is to assign specified marks commensurate with the length of service rendered by the candidate in notified remote and difficult areas in the State linked to the marks obtained in NEET. That is a procedure prescribed in the Regulation for determining merit of the candidates for admission to the postgraduate “degree” courses for a single State. This serves a dual purpose. Firstly, the fresh qualified doctors will be attracted to opt for rural service, as later they would stand a good chance to get admission to postgraduate “degree” courses of their choice. Secondly the rural health care units run by the public authority would be benefited by doctors willing to work in notified rural or difficult areas in the State. In our view, a Regulation such as this subserves larger public interest.”
(emphasis supplied)

30. The objective of the Regulation being to encourage the doctors to serve in rural areas, such objective cannot be achieved by limiting the incentive to those in service of the Government. The health services

provided by the State Government may be limited. In any case such services may have to be complemented by the health services provided by the Panchayati Raj Institutions. After the enactment of the Constitution 73rd and 74th Amendments, the Panchayats and Municipalities have been accorded Constitutional status as the third tier of Government. As per Schedule XI of the Constitution, the Panchayati Raj institutions can be entrusted functions in relation to 'Health and sanitation, including hospitals, primary health centres and dispensaries'. Similarly, Municipalities can be entrusted with functions relating to 'Public health.' These being institutions of self government functioning at the grass roots and expected to cater to the needs and demands at the local level, the expanse and reach of the health related services provided by the Panchayati Raj Institutions may also be considerable. It appears that it was in recognition of this fact that in the proviso to Regulation 9(IV) the incentive was envisaged for those in-service of the Government/ public authority. Denying the benefit of this incentive to doctors serving in such institutions may defeat the laudable objective behind the proviso. In any case, the Regulation having provided so, it is not open to any State Government to limit it to only those in-service of the Government.

31. Even otherwise, the argument on behalf of the State Government about the basis of distinction between the two services does not appear justified.

32. We have perused the 2011 Rules. Under these Rules a regular service called the Punjab Panchayati Raj Rural Medical Group (Group-A) Service comprising the posts specified therein has been created. Thereunder recruitment is to be made by a selection committee at the level

of the Zila Parishad to be called the Zila Parishad Selection Committee. Appointment is to be made by the Director on the recommendations of the Selection Committee. A degree in M.B.B.S or its equivalent is the essential qualification for the post. Appointment is to be made from amongst eligible candidates on the basis of merit. Additional marks are to be given for post graduate qualification. In matters of discipline, punishment and appeal the service is governed by the Punjab Civil Services (Punishment and Appeal) Rules, 1970 as amended from time to time. A perusal of the Appendix A of the Rules indicates that this is a large cadre comprising about 1186 permanent posts. As the very nomenclature of the post indicates these doctors would be serving in rural areas only. There can be no justification for excluding this large section of the doctors serving in rural areas from the benefit of the incentive provided under the proviso to regulation 9.

33. Further, as per clause 17 (IV)(a)(iii) the benefit of the rural service rendered by the Rural Medical Officers will be given to them once they are selected in PCMS/PCMS(Dental). This provision further negates the argument of Mr. Sethi that the two services can under no circumstances be treated alike. The argument of Sh. Sethi that if the benefit of the incentive is granted to the Rural Medical Officers, they after acquiring the post graduate degree will at most go back to serve in the Subsidiary Health Centres, where such expertise cannot be put to optimum use again appears flawed. If a good, experienced and highly skilled doctor is available at the Subsidiary Health Centres, it is to be welcomed. The State, in any case, should be encouraging better skilled personnel at the grass root level. Moreover unlike in the case of PCMS doctors who after acquiring the post

graduate degree may not opt to serve in remote and difficult areas, by the very nature of their job and location of their Centres in rural areas, the Rural Medical Officers after acquiring their post graduate degree may continue to serve in the rural areas which would be furthering the objective of the grant of incentive.

34. During the hearing, it has not been pointed out to us that there is any other public authority which similarly employs doctors to serve in remote/ difficult areas.

35. The reliance by Mr. Sethi on the decision of this Court in **Dr.Manu Gupta's** case (supra) is misplaced because in that case Regulation 9 was not considered. Thus that decision is not relevant for determination of the questions raised in the present petitions.

36. Accordingly, we are of the view that restricting the grant of incentive for service in remote/ difficult areas only to in-service Regular PCMS/ PCMS (Dental) doctors and not granting the same benefit to Rural Medical Officers comprised in Punjab Panchayati Raj Rural Medical Group (Group-A) Service is illegal being violative of proviso to Regulation 9(IV) of the MCI Regulations.

It is directed that the Rural Medical Officers employed in the Zila Parishads are entitled to the benefit of the incentive for service in remote/ difficult areas subject to the same conditions of eligibility as in the case of in-service PCMS/PCMS(Dental) doctors.

37. Question No.(ii) :

In **Dinesh Singh Chauhan's** case, it has been noticed that

before the introduction of the provision for grant of incentive marks for

service in remote/ difficult areas by Regulation 9 reservation for in-service candidates was applicable only in respect of government colleges. But as per Regulation 9 the the incentive therein is made applicable even to non-government colleges where seats allocated to the State Government are to be filled up. The Court has observed as under :

“42. It was then contended that hitherto reservation for in-service candidates was applicable only in respect of government colleges but on account of interim directions given by this Court, dispensation of giving weightage or incentive marks as per Regulation 9 to the in-service candidates has been made applicable across the board even to non-government medical colleges where the seats allocated to the State Government are to be filled up. In our opinion, Regulation 9 per se makes no distinction between government and non-government colleges for allocation of weightage of marks to in-service candidates. Instead, it mandates preparation of one merit list for the State on the basis of results in NEET. Further, regarding in-service candidates, all it provides is that the candidate must have been in service of a Government/public authority and served in remote and difficult areas notified by the State Government and the competent authority from time to time. The authorities are, therefore, obliged to continue with the admission process strictly in conformity with Regulation 9. The fact that most of the direct candidates who have secured higher marks in NEET than the in-service candidates, may not be in a position to get a subject or college of their choice, and are likely to secure a subject or college not acceptable to them, cannot be the basis to question the validity of proviso to clause (IV) of Regulation 9. The purpose behind the proviso is to encourage graduates to join as medical officers and serve in notified remote and difficult areas of the State. The fact that for quite some time no such appointments have been made by the

State Government also cannot be a basis to disregard the mandate of proviso to clause (IV) of giving weightage of marks to the in-service candidates who have served for a specified period in notified remote and difficult areas of the State.”

38. In the face of this clear enunciation by the Supreme Court, there is escape but to hold that not extending benefit of the incentive under the proviso to Regulation 9(IV) for admission to private medical institutions is illegal being violative of the said Regulation.

39. The arguments advanced by Sh. Sethi for denying this benefit for admission to private medical institutions cut no ice, nor are we required to deal with the same. As has been painstakingly stressed by the Supreme Court the MCI Regulations have been framed by an Expert body based on past experience. It has undergone repeated changes before it emerged in the present form. It having been approved and held to be binding by the Supreme Court has to be adhered to and no breach thereof can be permitted.

40. It is directed that just as in the case of admission to Government medical Colleges, the benefit of the proviso to Regulation 9(IV) be granted for admission to private medical institutions as well.

41. Question No.(iii) :

In para 32 of **Dinesh Singh Chauhan's** case, the Supreme Court has noticed that in an earlier case *Snehelata Patnaik v. State of Orissa* (1992(2) SCC 26 the Court had left it to the authorities to evolve norms regarding giving incentive marks to the in-service candidates. It noticed that the Medical Council of India being an expert body, its method of determining merit of the competing candidates must be accepted as final.

with their service to in-service candidates who served in remote and difficult areas. It was observed as under:

“32. The imperative of giving some incentive marks to doctors working in the State and more particularly serving in notified remote or difficult areas over a period of time need not be underscored. For, the concentration of doctors is in urban areas and the rural areas are neglected. Large number of posts in public healthcare units in the State are lying vacant and unfilled in spite of sincere effort of the State Government. This problem is faced by all States across India. This Court in Snehelata case had left it to the authorities to evolve norms regarding giving incentive marks to the in-service candidates. The Medical Council of India is an expert body. Its assessment about the method of determining merit of the competing candidates must be accepted as final [State of Kerala v. T.P. Roshana (SCC para 16); also see Medical Council of India v. State of Karnataka]. After due deliberations and keeping in mind the past experience, Medical Council of India has framed regulations, inter alia, providing for giving incentive marks to in-service candidates who have worked in notified remote and difficult areas in the State to determine their merit. The Regulation, as has been brought into force, after successive amendments, is an attempt to undo the mischief.”

42. In paragraph 35 of the said judgment, it has been noted that the proviso prescribes the measure for giving incentive marks to in-service candidates who have worked in notified remote and difficult areas in the State. That can be termed as a qualitative factor for determining their merit. Even the quantitative factor to reckon merit of the eligible in-service candidates is spelt out in the proviso. The relevant observations are:

“35. As aforesaid, the Regulations have been framed by an expert body based on past experience and including the

necessity to reckon the services and experience gained by the in-service candidates in notified remote and difficult areas in the State. The proviso prescribes the measure for giving incentive marks to in-service candidates who have worked in notified remote and difficult areas in the State. That can be termed as a qualitative factor for determining their merit. Even the quantitative factor to reckon merit of the eligible in-service candidates is spelt out in the proviso. It envisages giving of incentive marks @ 10% of the marks obtained for each year of service in remote and/or difficult areas up to 30% of the marks obtained in NEET. It is an objective method of linking the incentive marks to the marks obtained in NEET by the candidate. To illustrate, if an in-service candidate who has worked in a notified remote and/or difficult area in the State for at least one year and has obtained 150 marks out of 200 marks in NEET, he or she would get 15 additional marks; and if the candidate has worked for two years, the candidate would get another 15 marks. Similarly, if the candidate has worked for three years and more, the candidate would get a further 15 marks in addition to the marks secured in NEET. 15 marks out of 200 marks in that sense would work out to a weightage of 7.5% only, for having served in notified remote and/or difficult areas in the State for one year. Had it been a case of giving 10% marks en bloc of the total marks irrespective of the marks obtained by the eligible in-service candidates in NEET, it would have been a different matter. Accordingly, some weightage marks given to eligible in-service candidate linked to performance in NEET and also the length of service in remote and/or difficult areas in the State by no standard can be said to be excessive, unreasonable or irrational. This provision has been brought into force in larger public interest and not merely to provide institutional preference or for that matter to create separate channel for the in-service candidate, much less reservation. It is unfathomable as to how such a provision can

be said to be unreasonable or irrational.

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44. Dealing with this contention, we find that the setting in which the proviso to clause (IV) has been inserted is of some relevance. The State Governments across the country are not in a position to provide healthcare facilities in remote and difficult areas in the State for want of doctors. In fact there is a proposal to make one-year service for MBBS students to apply for admission to postgraduate courses, in remote and difficult areas as compulsory. That is kept on hold, as was stated before the Rajya Sabha. The provision in the form of granting weightage of marks, therefore, was to give incentive to the in-service candidates and to attract more graduates to join as medical officers in the State healthcare sector. The provision was first inserted in 2012. To determine the academic merit of candidates, merely securing high marks in NEET is not enough. The academic merit of the candidate must also reckon the services rendered for the common or public good. Having served in rural and difficult areas of the State for one year or above, the incumbent having sacrificed his career by rendering services for providing healthcare facilities in rural areas, deserve incentive marks to be reckoned for determining merit. Notably, the State Government is posited with the discretion to notify areas in the given State to be remote, tribal or difficult areas. That declaration is made on the basis of decision taken at the highest level; and is applicable for all the beneficial schemes of the State for such areas and not limited to the matter of admissions to postgraduate medical courses. Not even one instance has been brought to our notice to show that some areas which are not remote or difficult areas has been so notified. Suffice it to observe that the mere hypothesis that the State Government may take an improper decision whilst notifying the area as remote and difficult, cannot be the basis to hold that Regulation 9 and in particular proviso to clause (IV)

is unreasonable. Considering the above, the inescapable conclusion is that the procedure evolved in Regulation 9 in general and the proviso to clause (IV) in particular is just, proper and reasonable and also fulfils the test of Article 14 of the Constitution, being in larger public interest.”

43. We have already noticed that the Supreme Court has held that Regulation 9 is a complete code regarding procedure to be followed for admissions to medical courses and the States have no authority to undermine the procedure for admission specified therein. It has also been noticed that the proviso prescribes both the qualitative factor (the measure for giving incentive marks to in-service candidates who have worked in notified remote and difficult areas in the State) as well as the quantitative factor to reckon merit of the eligible in-service candidates (in terms of the percentage of incentive for each year of such service). The proviso thus operates to determine the merit of such in-service candidates.

44. The argument of Mr. Sethi that the Regulations lay down only the minimum standards and it is permissible for the State to enhance the standards to our mind may not be helpful in the context of the proviso.

45. Undeniably, the Supreme Court has held that it is open to the State Authority to lay down higher standards or qualifications than those prescribed in the Regulations of the Medical Council of India. The most evident example of such higher standards may be a case where the State prescribes a higher percentage of marks to be secured in the entrance test than those prescribed in the Regulations.

46. Regulation 9 enables the preparation of merit list after granting the benefit of the incentive marks as specified therein. It has nothing to do

with qualifications but is concerned with the determination of merit for the purposes of admission to post graduate courses. The impugned notification does not lay down a higher standard or qualification but alters the manner of determination of merit as fixed by the Regulation 9. Instead of granting the incentive on a graded scale commensurate with the length of service as prescribed in the Regulation, it adopts an all or nothing approach. This leaves out of consideration a large section of such in-service doctors who on strength of the Regulation may have opted for service in remote/ difficult areas in the expectation of getting the benefit of the incentive.

47. Thus, we hold and declare that the eligibility criteria as laid down in Clause 17 (IV) (a)(ii) of the notification dated 29.03.2017 is illegal being violative of Regulation 9 of the MCI Regulations.

48. It is directed that the benefit of service in remote/ difficult areas be granted strictly as prescribed in proviso to Regulation 9(IV) of the MCI Regulations.

49. Relief :

- (i) The restriction of granting of incentive for service in remote/ difficult areas only to in-service Regular PCMS/ PCMS (Dental) doctors and not granting the same benefit to Rural Medical Officers comprised in Punjab Panchayati Raj Rural Medical Group (Group-A) Service is illegal being violative of proviso to Regulation 9(IV) of the MCI Regulations.

It is directed that the Rural Medical Officers employed in the Zila Parishads be granted the benefit of the incentive for service in remote/ difficult areas subject to the same conditions of eligibility as in the case of in-service PCMS/PCMS(Dental)

doctors.

(ii) It is directed that just as in the case of admission to Government medical Colleges, the benefit of the proviso to Regulation 9(IV) be granted for admission to private medical institutions as well.

(iii) It is directed that the benefit of service in remote/difficult areas be granted strictly as prescribed in proviso to Regulation 9(IV) of the MCI Regulations.

The merit list for admission to post graduate courses be re-cast as per the directions given in these cases.

50. All the three petitions are disposed of accordingly.

(RAJESH BINDAL)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

April 26, 2017
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Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No