

CWP Nos.8497 & 8612 of 2017 (O&M)

[1]

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

(1) CWP No.8497 of 2017 (O&M)
Date of decision:05.05.2017

Dr. Ankit and others ...Petitioners

Versus

State of Haryana and others ...Respondents

(2) CWP No.8612 of 2017 (O&M)
Date of decision:05.05.2017

Dr. Kulwant ...Petitioners

Versus

State of Haryana and others ...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. R.K.Malik, Senior Advocate, with
Mr. Deepak Sonak, Advocate, and
Ms. Rimple Kadyan, Advocate, for the petitioner(s).

Mr. B.R.Mahajan, Advocate General, Haryana, with
Mr. Lokesh Sinhal, Addl. A.G., Haryana.

Rakesh Kumar Jain, J. (Oral)

This order shall dispose of two petitions bearing CWP Nos.8497 and 8612 of 2017 as the issue involved in both the cases is same. However, for the sake of convenience, the facts are being extracted from CWP No.8497 of 2017.

The petitioners are in-service HCMS doctors who have preferred this petition for issuance of a writ in nature of *certiorari* to declare weightage of marks for admission to MD/MS/PG Diploma to the extent of 83.3333 and for admission to MDS to the extent of 44.4444 to the open seats candidates only who have passed MBBS/BDS from recognized Medical/Dental colleges of Haryana as illegal, being contrary to Clause 9(IV) of the Post-graduate Medical Education

(Amendment) Regulations, 2010 (Part-II) (hereinafter referred to as the “Regulations-2010”) and further to quash the decision dated 21.04.2017 taken by respondent no.1 by which incentive for rural service to the in-service doctors has been limited to 20% marks instead of 30%, as has been provided in Clause 9(IV) of the Post-graduate Medical Education (Amendment) Regulation, 2012 (Part I) (hereinafter referred to as the “Regulations-2012”).

In order to appreciate the controversy, it would be relevant to refer to relevant part(s) of the prospectus issued by respondent no.2-University for admission through counselling to MD/MS/PG Diploma & MDS courses in Govt./Govt. Aided and Private Unaided Medical/Dental institutions and Medical/Dental institutions under Deemed and State Private Universities for the academic session 2017-2018. Chapter XIII (Method of Selection and Admission) and the provisions of Clause 9(IV) of the Regulations-2012 are reproduced as under:-

“Chapter-XIII

Method of Selection and Admission

7. For admission to PG seats in Govt./Govt. Aided Medical/Dental institutions:-

Weightage of marks (for open seats candidates only who have passed MBBS/BDS from recognized Medical/Dental colleges of Haryana) subject to any change as per Govt. instructions.

For admission to MD/MS/PG Diploma 83.3333

For admission to MDS 44.4444”

“9. Procedure for selection of candidates for Postgraduate courses shall be as follows:-

I to III xxx xxx xxx xxx

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 Post-graduate 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 upto the maximum of 30% of the marks obtained in National Eligibility-cum-Entrance Test, the remote and difficult area shall be as defined by State Government/Competent authority from time to time.”

Counsel for the petitioners has submitted that the Medical Council of India (hereinafter referred to as the “MCI”) issued the notification dated 21.12.2010 in exercise of powers conferred by Section 33 of the Indian Medical Council Act, 1956 with the previous approval of the Central Government to make the Regulations-2010, in which Clause 9(IV) was provided to the effect that *“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 Post Graduate courses from the said merit lists only”*. The aforesaid Clause 9(IV) was further amended by the notification dated 15.02.2012 by which Postgraduate Medical Education Regulations, 2000 were amended with the Regulations-2012 and in Clause 9, the following proviso was added after sub-clause IV:-

“Provided that in determining the merit of candidates who are in-service of Government/Public Authority, weightage in the marks may be given by the Government/Competent Authority as an incentive at the rate of 10% of the marks obtained for each year of

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

A petition was filed by one Jashanpreet bearing CWP No.7594 of 2014 titled as “**Jashanpreet vs. State of Haryana and others**”, challenging the terms and conditions contained in the prospectus for admission for the academic session 2017-2018 alleging that despite the decision of the Supreme Court in the case of **State of U.P. and others vs. Dr. Dinesh Singh Chauhan**, JT 2016(8) SC 201, reservation has still been provided for in-service doctors. The said petition was disposed of by this Court on 18.04.2017 when the Deputy Director, Department of Medical Education & Research, Haryana, had submitted that the reservation has been given by mistake and assured that the fresh merit list shall be drawn in terms of the Regulations and the judgment passed by the Supreme Court in **Dr. Dinesh Singh Chauhan's case (supra)**.

Apropos, the State Government issued instructions dated 21.04.2017, in compliance of the aforesaid order dated 18.04.2017 passed by this Court in **Jashanpreet's case (supra)** in order to make provisions for in-service HCMS/HCDS category for admission to P.G. Degree/P.G. Diploma/ M.D.S. Courses for the academic session 2017-2018 and laid down that “*minimum of three years rural service and total four years service is mandatory to avail incentive/weightage of marks as per Regulation 9 of Post Graduate Medical Education Regulation 2000 of MCI for in-service candidates*” and “*for the current academic session 2017-2018, maximum incentive of 20% of marks obtained in NEET-PG-2017/NEET-MDS-2017 will be given to in-service candidates for admission to PG degree courses*”.

The first grievance of the petitioners is regarding the restriction/cap of 20% marks obtained in the NEET-PG-2017 as incentives for the rural service rendered by the in-service doctors instead of allowing them to take the advantage of 10% marks for each year service rendered by them in rural/remote/difficult areas upto the maximum of 30%.

In this regard, counsel for the petitioners has not only referred to the decision of the Supreme Court in **Dr. Dinesh Singh Chauhan's case (supra)** but has also referred to the Division Bench judgment of the Rajasthan High Court rendered in the case of **Dr. Chandra Prakash Sharma vs. State of Rajasthan and others**, CWP No.4518 of 2017, decided on 07.04.2017, which was decided along with other writ petitions, in which the issue was that the Rajasthan Government had reduced the benefit of rural service to the in-service doctors only to the extent of 10% irrespective of the length of service rendered by them. The Rajasthan High Court, while referring to proviso to Clause 9(IV) of the Regulations-2012, held that the restriction/cap on incentives to the extent of 10% of marks obtained in the NEET-PG-2017 exam irrespective of length of service is contrary to Clause 9(IV) of the Regulations-2012, in which it has been provided that the candidate would get 10% of the marks as incentive for each year rural service upto maximum of 30% marks.

Learned counsel for the respondents had informed the Court on the previous date of hearing that the said decision of the Rajasthan High Court has been assailed before the Supreme Court but he has also been fair enough to contend that the operation of the said order has not been stayed. It is also submitted by learned counsel for the respondents that the word used in the

proviso is “remote and/or difficult areas” but in **Jashanpreet's case (supra)**, this Court has held that the incentive is for the rural/remote/difficult areas. Thus, the benefit has to be given to the in-service candidates who have served in the rural/remote/difficult areas of Haryana.

Now the issue is as to how much incentive has to be given.

The language of the proviso with which the Court is concerned and is to be interpreted is very clear and there is no ambiguity in it because it is mentioned therein that the candidates who are in service of Government/public authority would get weightage in the marks, which may be given by the Government/Competent Authority as an incentive @ 10% marks for each year of rural service but it can go upto maximum of 30% marks. Meaning thereby, if a candidate renders three years of rural service, then he can be given 30% of marks as incentive, i.e. 10% marks for each year, but if a candidate hypothetically renders 5 years of rural service, then he cannot claim 50% marks as the restriction/cap has been provided upto maximum of 30% marks.

Thus, in view thereof, this Court is of the considered opinion that the decision taken by the department vide its order dated 21.04.2017, restricting the incentive to the maximum of 20% marks for the rural service rendered by the in-service doctors is patently erroneous and illegal and is, thus, set aside. It is rather held that the in-service doctors, who has served in remote/difficult/rural areas shall be entitled to 10% marks as incentive for each year of service which would be upto maximum of 30% marks *de hors* the length of service.

The first question is decided accordingly.

The second question that has been raised by the petitioners is

about the grant of weightage of marks to the extent of 83.3333 for admission to the MD/MS/PG Diploma course and to the extent of 44.4444 for admission to MDS course to the candidates who had secured their MBBS/BDS degrees from the recognized Medical/Dental colleges located in the State of Haryana.

Counsel for the petitioners has submitted that this weightage is totally unwarranted and uncalled for as it runs contrary to the Regulations. In this regard, he has referred to Clause 9(IV) of the Regulations-2010 to contend that the reservation of seats in the medical/dental colleges/institutions for respective categories have to be on the basis of merit list prepared on the basis of the marks obtained in NEET-PG_2017 and the candidates shall be admitted to Postgraduate courses from the said merit lists only. His contention is that there is only one exception carved out in the said Regulation for the in-service doctors who have rendered rural service and have to be given 10% marks as incentive for each year rural service in the remote/rural/difficult areas, which has been upheld by the Supreme Court in **Dr. Dinesh Singh Chauhan's case (supra)** as permissible.

The learned Advocate General has vehemently argued that the State has the right to give institutional preference for the purpose of admission to the Postgraduate courses as the institutional preference has been accepted repeatedly by the Courts. In this regard, he has also referred to an interim order passed by the Supreme Court in the case of **Yatinkumar Jasubhai Patel and others vs. State of Gujarat and others**, SLP No.7003/2017, decided on 18.04.2017. He has also drawn attention of the Court to the order of the Division Bench of the Gujarat High Court in the case of **Yatinkumar Jasubhai Patel and others vs. State of Gujarat and others**, Special Civil Application No.19918 of 2016, decided on 22.02.2017. He has also referred to a decision of this Court rendered in the case of **Dr. Mitthat and others vs.**

State of Punjab and others, CWP No.4324 of 2015, decided on 13.04.2015, in which it has been held that the institutional preference in the Postgraduate degree/diploma courses is legal and justified.

On the other hand, counsel appearing on behalf of the petitioners has referred to a Division Bench judgment of the Kerala High Court in the case of **Praveen S. Lal vs. State of Kerala**, 2006(4) KLT 712 to contend that the marks in the name of institutional preference cannot be awarded. He has rather submitted that only percentage of reservation can be allowed but not in this case because the admission in this case are regulated by the Regulations issued by the MCI in which it is provided that the admission have to be made only on the basis of the marks obtained in the NEET-PG-2017. It is further submitted that there is only one exception that has been provided by way of proviso to Clause 9(IV) of the Regulations-2012 and nothing else.

There is no dispute that the institutional preference can be given in the admissions to the Postgraduate courses. In **Yatinkumar Jasubhai Patel's case (supra)**, the issue before the Gujarat High Court was that whether the preference would be given first to the candidates who have graduated from the Gujarat University and, thereafter, the preference would be given to the candidates who have graduated from the other Universities located in the State of Gujarat. The said writ petition was dismissed by the Gujarat High Court, against which the matter was taken up to the Supreme Court in SLP No.7003/2017 in which an interim direction is issued by the Supreme Court that the State of Gujarat shall have the institutional preference for 25% of their postgraduate seats for all the students who have passed their MBBS/BDS course from the Universities situated in the State of Gujarat. Meaning thereby,

the Supreme Court did not agree with the University for creating a 'class' within the 'class' of the students hailing from the State of Gujarat who had graduated from the Gujarat University as well as the other Universities located in the State of Gujarat.

This decision, to my mind, is not applicable to the facts and circumstances of the present case because there is no dispute that the respondent-State can provide institutional preference but the issue involved is whether the State can go beyond the Regulations in which it is provided that the merit list shall be prepared only on the basis of marks obtained in the NEET-PG-2017. There is only one exception provided in the said Regulation , that too for the in-service doctors who have rendered job in rural/remote/ difficult areas in order to give them incentive and in this regard, the observations made by the Supreme Court may be referred that *“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 Post Graduate Medical Courses enunciated by the Central Legislation and Regulations framed thereunder, being a subject falling within the Entry 66 of List I to the Seventh Schedule of the Constitution. The procedure for selection of candidates for the Post Graduate Degree Courses is one such area on which the Central Legislation and Regulations must prevail”*. It is further observed that *“Clause (I) of Regulation 9 mandates that there shall be a single National Eligibility-cum- Entrance Test (hereinafter referred to as NEET) to be conducted by the designated Authority. Clause (II) provides for*

three per cent seats of the annual sanctioned intake capacity to be earmarked for candidates with locomotory disability of lower limbs. We are not concerned with this provision. Clause (III) provides for eligibility for admission to any Post Graduate Course in a particular academic year. Clause (IV) is the relevant provision. It provides for reservation of seats in medical colleges/institutions for reserved categories as per applicable laws prevailing in States/Union Territories. The reservation referred to in the opening part of this clause is, obviously, with reference to reservation as per the constitutional scheme (for Scheduled Caste, Scheduled Tribe or Other Backward Class Candidates); and not for the in-service candidates or Medical Officers in service. It further stipulates that 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 the NEET and the admission to Post Graduate Courses in the concerned State shall be as per the merit list only. Thus, it is a provision mandating admission of candidates strictly as per the merit list of eligible candidates for the respective medical courses in the States. This provision, however, contains a proviso. It predicates that in determining the merit of candidates who are in-service of Government or a 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 specified remote or difficult areas of the State upto the maximum of 30% of the marks obtained in NEET. This provision even if read liberally does not provide for reservation for in-service candidates, but only of giving a weightage in the form of incentive marks as specified to the class of in-service candidates (who have served in notified

remote and difficult areas in the State).

Thus, keeping in view the aforesaid facts and circumstances, I am of the considered opinion that the respondents cannot, by its own fiat, fix weightage for the institutional preference in the face of the language used in Regulation 9(IV) of the Regulations-2010, which specifically bars any other weightage except for the weightage given to the in-service doctors who have served in the remote/difficult/rural areas.

Thus, the weightage for admission to MD/MS/PG Diploma to the extent of 83.3333 and for admission to MDS to the extent of 44.4444 to the open seats candidates only who have passed MBBS/BDS from recognized Medical/Dental colleges of Haryana is also illegal and hereby set aside.

With these observations, both the writ petitions are hereby allowed.

May 05, 2017
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(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned: Yes/No

Whether Reportable: Yes/No