AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 914 of 2018

1. Dr. Ravikant Singh Rathore, S/o Mr. Lambodar Prasad Rathore, Aged About 31 Years R/o Village Charpara, P.O. Purena (Kharsia), District Raigarh Chhattisgarh., District : Raigarh, Chhattisgarh
2. Dr. Ravishankar Prasad Dewangan, S/o Mr. J.P. Dewangan, Aged About 38 Years R/o A/89, Rajgharana Colony, Near Uslapaur, Over Bridge, Ameri, Bilaspur, District Bilapsur Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Health And Family Welfare Department, Mahanadi Bhawan, Mantralaya, Capital Complex, Naya Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. Director, Medical Education, Old Nurses Hospital, Dks Bhawan Parisar, Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
3. Director Health Services, Mantralaya, Mahanadi Bhawan, Mantralaya, Capital Complex, New Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
4. Medical Council Of India, Through Its Chairman, Pocket - 14, Phase - 1, Sector 8, Dwarka, New Delhi, 110077, District : New Delhi, Delhi

---- Respondents

WPC No. 916 of 2018

1. Dr. Ankit Paliwal S/o Mr. Kamal Kishore Paliwal, Aged About 30 Years R/o Ward No. 5 Main Road Naila, District Janjgir Champa Chhattisgarh.

2. Dr. Ranjana Tirkey D/o Mr. Anjelus Tirkey Aged About 31 Years R/o Premnagar Raigarh Road, Gharghoda District Raigarh Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Health And Family Welfare Department, Mahanadi Bhawan, Mantralaya, Capital Complex, Naya Raipur, District Raipur Chhattisgarh.
2. Director, Medical Education, Old Nurses Hospital, D.K.S. Bhawan Parisar, Raipur, District Raipur Chhattisgarh.
3. Director, Health Services, Mantralaya, Mahanadi Bhawan, Mantralaya, Capital Complex, New Raipur, District Raipur Chhattisgarh.
4. Medical Council Of India, Through Its Chairman, Pocket - 14, Phase - 1, Sector 8, Dwarka, New Delhi, Delhi 110077., District : New Delhi, Delhi

---- Respondents

WPC No. 917 of 2018

Dr. Rakesh Kumar Agrawal S/o Mr. Bishesar Lal Agrawal, Aged About 38 Years R/o P.O. Rajkamma (Katghora) District Korba Chhattisgarh., District : Korba, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Health And Family Welfare Department, Mahanadi Bhawan, Mantralaya, Capital Complex, Naya Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. Director, Medical Education, Old Nurses Hospital, Dks Bhawan Parisar, Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
3. Director Health Services, Mantralaya, Mahanadi Bhawan, Mantralaya, Capital Complex, New Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

4. Medical Council Of India, Through Its Chairman, Pocket- 14, Phase-1, Sector 8, Dwarka, New Delhi, Delhi 110077, District : New Delhi, Delhi

---- Respondent

WPC No. 923 of 2018

Dr. Bhenuj Sinha S/o Shri Toshram Sinha, Aged About 30 Years Occupation Service, Presently Posted As Doctor, District Hospital, Sukma, District Sukma (Chhattisgarh) R/o Mahalpara, Pithora, Ward No. 9, District Mahasamund (Chhattisgarh)

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Health And Family Welfare, New Mantralaya, New Raipur Chhattisgarh.
2. The Director, Medical Education, New Raipur Chhattisgarh.
3. The Dean, Pandit Deen Dayal Smriti Swasthya Vigyan Evam Ayush And Health Sciences University, Raipur Chhattisgarh.,
4. The Secretary, Medical Council Of India, Pocket- 14, Sector 8, Dwarka, New Delhi 110077, District : New Delhi, Delhi

--- Respondents

WPC No. 924 of 2018

Dr. Ravishankar Shukla S/o Shri Prem Lal Shukla Aged About 29 Years Occupation - Service , Presently Posted As Doctor, Community Health Center, Nangoor, District - Bastar (Chhattisgarh) R/o Sweety Fancy Stores , Nayamunda, Jagdalpur, Bastar Pin 494001, District : Bastar(Jagdalpur), Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary Department Of Health And Family Welfare New Mantralaya New Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. The Director, Medical Education , New Raipur Chhattisgarh., District : Raipur, Chhattisgarh
3. The Deen, Pandit Deen Dayal Smriti Swasthya Vigyan Evam Ayush And Health Sciences University , Raipur Chhattisgarh., District :

Raipur, Chhattisgarh

4. The Secretary, Medical Council Of India, Pocket - 14, Sector 8, Dwarka, New Delhi - 110077., District : New Delhi, Delhi

---- Respondens

WPC No. 1069 of 2018

Dr. Bhupendra Kumar Janghel S/o Mr. Komal Janghel Aged About 32 Years R/o Village Ghirgholi, Chhuikhadan, Rajnandgaon , District Rajnandgaon Chhattisgarh., District : Rajnandgaon, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary , Health And Family Welfare Department Mahanadi Bhawan Mantralaya Capital Complex Naya Raipur District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. Director , Medical Education , Old Nurses Hospital , D K S Bhawan Parisar , Raipur District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
3. Director Health Services , Mantralaya, Mahanadi Bhawan Mantralaya Capital Complex , New Raipur District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
4. Medical Council Of India , Through Its Chairman, Pocket - 14, Phase-1 , Sector 8 , Dwarka , New Delhi , Delhi 110077, District : New Delhi, Delhi

---- **Respondents**

WPC No. 1040 of 2018

Dr. Aditya Sinha S/o Shri Kanhaiya Lal Sinha, Aged About 31 Years R/o Village Jodhapur, District Dhamtari Chhattisgarh., District : Dhamtari, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Acting Through Principal Secretary, Department Of Health And Family Welfare, Mantralaya, Mahanadi Bahwan, New Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. Director Medical Education, Old Nurses Hostel, Dks Bhavan, Parisar,

Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---- Respondents

WPC No. 965 of 2018

- Dr. Pushpendra Singh Rathore S/o Shri Ramfer Singh Rathore, Aged About 29 Years R/o 15/16, Green City Colony, Dhanpura 1, Jagdalpur, District Bastar 494001 (Chhattisgarh), District : Bastar(Jagdalpur), Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Health And Family Welfare, New Mantralaya, New Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. The Director, Medical Education, New Raipur (Chhattisgarh), District : Raipur, Chhattisgarh
3. The Dean, Pandit Deen Dayal Smriti Swasthya Vigyan Evam Ayush And Health Sciences University, Raipur Chhattisgarh., District : Raipur, Chhattisgarh
4. The Secretary, Medical Council Of India, Pocket-14, Sector-8, Dwarka, New Delhi 110077, District : New Delhi, Delhi

---- Respondents

And

WPC No. 1205 of 2018

1. Vaibhaw Patel S/o Vinay Patel, Aged About 30 Years R/o H No.- 148, Village Kotmi, Manjha Khalpara-2, Post- Dabhra District Janjgir Champa Chhattisgarh., District : Janjgir-Champa, Chhattisgarh
2. Diwakar Kumar Bhuarya S/o Shri Bhagwan Sai Bhuarya Aged About 26 Years R/o H No.-8 Ward No.-1 Village Gorratola, The- Ambagarh Chowki P.O. Mahudmachandur District Rajnandgaon Chhattisgarh., District : Rajnandgaon, Chhattisgarh
3. Sharad Chandra Gupta S/o Laxminarayan Gupta, Aged About 34 Years R/o Hno. 108 Wno.-12 Maszid Road Ramanujganj District Balrampur Chhattisgarh., District : Balrampur, Chhattisgarh

---- Petitioners

Versus

1. State Of Chhattisgarh Through Secretary, Health And Family Welfare Department, Mahanadi Bhawan, Mantralaya Capital Complex, New Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. Director, Medical Education, Old Nurse Hospital, Dks Bhawan Parisar Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
3. Director, Health Services Indrawati Bhawan, Capital Complex New Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

4. Medical Council Of India, Through Its Chairman Pocket-14 Phase-1 Sector-8 Dwarka New Delhi, Delhi 110077, District : New Delhi, Delhi

----Respondents

For Petitioners	:	Shri Manoj Paranjpe Shri Rahul Tamaskar, Shri Sanjay Agrawal, Shri Devesh G. Kela, Advocates.
For State	:	Shri Prafull Bharat and Shri Y.S.Thakur, Additional Advocate Generals
For respondent/MCI	:	Shri R.S. Marhas and Shri Aman Tamboli.

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Sharad Kumar Gupta, Judge

Order on Board

Per Thottathil B. Radhakrishnan, Chief Justice

04/05/2018

1. These writ petitions are filed by the Doctors, who are working in different Government Hospitals in the State of Chhattisgarh and aspiring to be admitted to the Post Graduate Courses in different medical colleges in the State of Chhattisgarh following the National Eligibility-cum- Entrance Test for admission to M.D./M.S. Post Graduate Diploma Courses conducted by the National Board of Examination (for short 'NBE').

2. Hearing the learned counsel for the petitioners and the learned counsel for the Medical Council of India as well as the learned Additional Advocate General an order was issued by this Court on 13/04/2018. The relevant portion of which reads as follows :-

> "We have heard the learned counsel for the Petitioners, the learned counsel for the Medical Council of India and the learned Additional Advocate General.
>
> (i) The last date fixed for application for the NEET-PG 2018 examination was 27.11.2017.
>
> (ii) NEET examination was held on 07.01.2018.

(iii) NEET Examination results were declared on 23.01.2018.

(iv) Chhattisgarh Medical Post Graduate Entrance Rules 2018 (for short '2017 Rules*) came into force w.e.f 13.03.2018. (*corrected as '2018 Rules')

(v) The last date of online application for the State quota as per the 2018 Rules is 02.04.2018.

The Chhattisgarh Medical Post Graduation Entrance Rules, 2017 (for short '2017 Rules) was in force till the declaration of the result of the NEET examination. Applying the judgment of this Court rendered on 16.05.2017 in Writ Petition (C) NO. 924 of 2017, the provisions governing the bonus or incentive marks for ear-marked sectors ought to be available on the basis of the provisions that applied while the candidate applied for the NEET examination or at least as on the date of declaration of the result on the NEET Examination by the NBE. For the year 2018, NEET examination results were declared on 23.01.2018. Rules of selection cannot be changed adverse to the interest of the candidates, varying the provisions that governed the filed as on the date of declaration of the NEET results. Obviously, it is well within the domain of the rule making power of the State in terms of the Medical Council of India Regulations and the Indian Medical Council Act, 1956 (for short 'the 1956 Act') to make any modification or provision diluting those prescriptions or enlarging the filed of choice without affecting the interest of the candidates, who are in the list published by the NBE after the NEET examination; provided such change in the rules are not in violation of the Act, 1956 or the Regulations.

The 2017 Rules had a particular set pattern of provisions for bonus or incentive marks. As per the 2018 Rules, which are published on 13.03.2018, that has been modified contrary to what was available on

the date of publication of the results of the NEET examination for 2018. The Petitioners also have the contention that while the areas identified as the difficult areas or the scheduled areas in 2017 Rules were so identified on the basis of relevant data. The Petitioners contend that the identification of the rural area, difficult area and the remote area as per the 2018 Rules has been done without any empherical study in accordance with law laid down by the Supreme Court in State of Haryana & Another v. Narendra Soni & Another (2017) 14 SCC 642 and has made only by making reference to a particular government order which identified the areas merely for the purpose of deployment or re-deployment of government servants for the better management of the executive functions of the State. The criticism raised by the Petitioner is that such government order does not identify the areas on the basis of medical need or health services sector's issues; therefore, the identification of the areas for the purpose of confirming bonus or incentive marks have to be done for the current year following the provisions there for in the year 2017 Rules.

In the 2018 Rules, the field of choice has been enlarged by the Government to bring any student who are the residents of the Chhattisgarh, who had obtained MBBS degree from the Universities outside the State of Chhattisgarh. This is an enlargement made from the situation available in 2017 where admission was confined to MBBS graduates from the Medical Colleges of the State of Chhattisgarh. This does not obviously operate against any of the candidates in the State quota. It enlarges the field of choice. Therefore, that clause in the 2018 Rules will prevail over any contrary clause in the 2017 Rules.

The last date of online application as per the 2018 Rules for admission in the State Quota for the year 2018 is 02.04.2018. The last date of application

> is to be treated as the date for acquisition qualification, unless of course; an earlier cut off date is prescribed for a reasonable purpose. In the said situation, it is ordered that the last date for obtaining the requisite qualification including as regards the period of service which may enable any candidate to obtain bonus or incentive marks is to be treated as 31.03.2018 which is the last date for online submission of application.
>
> It is directed that the admissions to the service State quota for the post graduate medical education 2018 in the State of Chhattisgarh will be affected in terms of what is stated above."

3. It is submitted today that the State Government would give effect to the said interlocutory order and the counselling commences tomorrow.

4. This takes us to certain other issues raised in some other writ petitions. We proceed to deal with them.

5. The provision for bonus or incentive marks for government doctors who are working under the Directorate of Health Services as well as the Directorate of Medial Services would accrue to them only if they work in certain areas which are identified as core scheduled areas and scheduled areas. In terms of the order dated 13/04/2018 quoted above, the identification of the areas will have to be in accordance within the 2017 Rules. Therefore the question is whether persons who do not work in the difficult areas or the scheduled areas in terms of the 2017 Rules could claim that there is hostile discrimination by their elimination from the group of government doctors for benefit of the incentive marks or bonus. The plea is that all government doctors working under the Health Service Department and under the Medical Education Department should be treated as a homogeneous group for the purpose of granting bonus

or incentive marks and that there is no foundation to classify them and cull out a group which would take in only those government doctors who work in rural, difficult or remote area, for the purpose of enjoying the incentive or bonus marks. The purpose of providing incentive by way of bonus marks is essentially a way to ensure the pressing need of the State to have doctors in the rural, difficult and other similar areas. As noted in the aforequoted interlocutory order dated 13.04.2018, the classification of such areas under the 2017 Rules is made on the basis of relevant considerations. As far as the plea of hostile discrimination noted in this paragraph is concerned, all that is needed to be stated is that the fact that there is an intelligible differentia is certainly made out by the existence of the identifying mark which brings the group of those serving in the rural and difficult areas into a particular category among the government doctors. This, according to us, is a reasonable classification based on an intelligible differentia. Therefore, it does not amount to hostile discrimination. It is also a classification made in the larger interest of the State.

6. Incidental to the aforesaid, is the plea that there is no modality of a choice for any particular government doctor to opt and go for rural or difficult area service and it is best left to the control and decision of those in governance, to choose as to who may be deployed to such regions. Superficially, it may appear that this may give room for nepotism. But on deeper consideration, we are of the view that nothing amounting to arbitrariness could be deduced on this premise, because transfers and postings are incidence of service and; being posted in a particular area and availing the benefit which may accrue to a person of having been an area are matters would be *fait accompli* to service. They do not, by themselves, suffice, in

judicial determination, to uphold the plea of discrimination as is attempted to be raised in this case. The challenge on this issue also therefore fails.

7. There is yet another contention for some of the petitioners. The 2018 Rules prescribe the requirement of three years of service in a particular area to enjoy the benefit of the bonus or incentive marks. In the 2017 Rules the required period was two years. The 2018 Rules came into force w.e.f 13.02.2018 i.e. after 27.11.2017 which was the last date fixed for applications for NEET PG 2018 examinations and also after holding of the NEET examination on 07.01.2018 as well as publication of the results of that examination on 23.01.2018. The rules of selection cannot be changed adversely, as against the interest of the competing candidates, varying the provisions that governed the field as on the last date of application for the NEET PG examination. For this reason and the other reasons stated in the interim order which is quoted above, which is being made absolute hereby, the 2017 Rules should govern. This means that the period that an aspirant ought to have worked in a particular area is two years. The plea projected is that the MCI guidelines provides that 10% bonus or incentive marks can be given per year for a maximum of 3 years and therefore 10% marks has to be awarded for every candidate who has worked in such an area for one year. The State Government has in its wisdom prescribed a minimum eligibility period of the 2017 Rules. The MCI guidelines is only as regards the maximum limit of bonus or incentive marks that can be awarded for a particular year. It also pegs the bonus and incentive marks to be a maximum of 30 which means that the MCI postulates that any stage, may in his wisdom, grant such bonus or incentive marks only for a maximum period of three years. That

does not necessarily mean that such bonus marks or incentive should be available at 10% per year, by merely following the MCI regulations without any freedom for the State Government to fix a particular qualifying condition to make a person eligible for the bonus or incentive marks. The plea in this regard is also repelled now.

8. The next issue that is raised, particularly, in Writ Petition (C) No. 923/2018 and Writ Petition (C) No. 924/2018 is that the fixation of cut off date has been arbitrarily made. This issue no more survives for consideration in the light of judgment rendered by this Court in ***Saurabh Sinha vs. Union of India and others***, W.P.(C) No.632 of 2018 order dated 08/03/2018. Hence, this contention is also repelled.

9. In Writ Petitions (C) No. 965 of 2018 and 1205 of 2018, challenge is levied to the 2018 Rules, to the extent it provides that students who are residents of Chhattisgarh, but had obtained their MBBS degrees from Universities outside the State of Chhattisgarh, could also come into the State quota. In the aforequoted interim order, it was noted that the said provision in the 2018 Rules is an enlargement made from the situation available in 2017 and would not operate against any of the candidates in the State quota. However, on a deeper consideration, on the basis of the submissions made today by the learned counsel for the Petitioners in the said two writ petitions and the learned Additional Advocate General, we are of the view that the said observation in the interlocutory order and the consequential direction therein that the said Clause in 2018 Rules will prevail over any contrary Clause in 2017 Rules, would not stand. This is firstly because 2017 and 2018 Rules deal only with the State quota and not with open merit quota. Secondly, and more importantly, as on the last date of application to the State quota, the candidates who were

eligible to apply under the State quota as per the 2017, as on the last date for application for NEET 2018, were an identifiable lot; which did not include those students belonging to State of Chhattisgarh but had obtained their MBBS degrees from Universities outside that State. It is the 2017 Rules which have to operate. Those rules exclude the students who had obtained MBBS degrees from outside the State of Chhattisgarh being included in the State quota for Chhattisgarh. The larger field of choice under the 2018 Rules would bring into the Chhattisgarh State quota, those students who had obtained qualifying MBBS degree from other States though they were not eligible to make claim to the Chhattisgarh State quota as on the last date fixed for application for NEET. This is impermissible since 2017 Rules ought to run for the current year also, for the reasons stated in this judgment. The field of choice for the State quota ought to be in conformity with 2017 Rules, in toto, and hence students who had obtained MBBS degree from Universities outside the State of Chhattisgarh cannot be allotted State quota seats, insofar as in-service candidates are concerned.

10. In Writ Petition (C) No. 1040/2018, the petitioner has different contentions of which; those contentions which stand covered by what we have stated hereinabove, are decided against him. His only plea that remains for consideration is that he has not been enlisted as a 'service candidate' by the Director of Medical Education while preparing the list for counselling, though marks have been counted as if he is a service candidate. That is purely as a factual issue and the eligibility of the petitioner will depend upon different factors. The first issue would be as to what is the mark that he has gained in the competitive examination. The second issue would be as to what is the bonus or incentive marks that would accrue to him in terms of the

2017 Rules. The third would be as that whether he is eligible to be counted as a service candidate for the purpose of inclusion in the list in terms of the 2017 Rules. If there is any error referable to the Rules of 2017 in accordance with what is stated hereinabove, the petitioner in WP(C) No. 1040 of 2018 will be at liberty to make a representation before the Directorate of Medical Education, pointing out his specific grievance. The Director, Medical Education will ensure that such representation is considered promptly.

11. In the result:

(i) It is declared and directed that admissions to the State quota for Post Graduate Medical Education in the State of Chhattisgarh for the year 2018 shall be in conformity with the Chhattisgarh Medical Post Graduate Entrance Rules, 2017 including as regards the exclusion of the students who had obtained MBBS degrees from outside the State of Chhattisgarh. With such modification, the interim order dated 13.04.2018, as quoted above, is affirmed.

(ii) Writ Petition (C) No. 1040 of 2018 is ordered directing that any representation of the Petitioner therein will be considered by the Directorate of Medical Education in accordance with law in the light of what is stated in paragraph 10 above.

(iii) These writ petitions are ordered as above.

Sd/- Sd/-

(Thottathil B. Radhakrishnan)
Chief Justice

(Sharad Kumar Gupta)
Judge

Kamde / Padma