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

**CWP no. 10031 of 2018 (O&M)**
**Date of Decision : 14.05.2018**

Dr.Ram Lal Sharma

....Petitioner(s)

Versus

State of Punjab and another

...Respondent(s)

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR JUSTICE RAJBIR SEHRAWAT

Present : Mr.V.K.Sandhir, Advocates for the petitioner(s)

Ms. Anu Pal, AAG, Punjab

Mr. Karan Sandhu, Advocate for University

**MAHESH GROVER, J.(ORAL)**

We had posted the main matter for hearing to 23.5.2018 whereafter an application was moved by the petitioner bearing no. 6787 CWP of 2018 praying for interim directions to be considered for counseling which is likely to commence.

The State has filed the reply to the main petition by way of affidavit of Dr. Avnish Kumar, Director Research & Medical Education, Punjab, which we have taken on record. We could not decide the application without adverting to the merits of the case and this is why the issue has been argued before us at length, and see no reason now to keep the matter pending for 23.5.2018 and propose to dispose of the main petition as

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also the application moved before us after taking on Board the main petition by preponing the matter to today.

The grievance of the petitioner is that he is discharging his services as a Rural Medical Officer (hereinafter referred to as the 'RMO') and serving in rural areas. The State in the matters of grant of incentives to the in-service candidates has afforded weightage in marks to the extent of 10% of the marks obtained for each year's service in difficult/rural areas upto maximum of 30%. The relevant clause is extracted herebelow:-

> "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 candidate 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 upto 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/or difficult areas shall be as notified by State Government/Competent authority from time to time."

The aforesaid is in consonance with Rule 9(IV) of the Medical

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Council of India which has been approved by the Hon'ble Supreme Court in case titled as **State of UP vs. Dinesh Singh Chauhan** reported as 2016 (4) SCT 517, giving liberty to the States to frame scheme of incentivisation, if they so desire.

This benefit, however, has been denied to the RMOs, if they continue to discharge their service as such but in the eventuality of being selected as PCMS Doctors they would be entitled to this benefit of service in rural areas as RMOs.

Learned counsel for the petitioner contends that denial of this benefit to the RMOs would create an artificial classification injecting an element of arbitrariness in the policy.

The State has filed its reply and has stated that the RMOs cannot be equated with the PCMS doctors, there being two sources of recruitment and varied terms of discharge of functions.

It has been averred in the reply that appointments of RMOs are at District level under the Zila Parishads with the appointment being made by the Deputy Commissioners while PCMS Doctors are appointed by the State Government through Public Service Commission and the appointing authority is Principal Secretary, Govt. of Punjab, Department of Health and Family Welfare. The RMOs are required to give service in subsidiary health centres while PCMS serve at the Primary Health Centres. Being in the nature of subsidiary health centres the Post Graduation qualification acquired by RMO would hardly be of any consequence to him in the discharge of his functions, there being lack of adequate infrastructure etc.

It has been argued before us by the learned counsel for the State that in this eventuality giving incentives to the RMOs and requiring the

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State to finance such a course would be a sheer waste of money and human resource as they would be unable to utilize the specialized skills of a RMO till the time he continues to serve in Subsidiary Health Centre.

Learned counsel for the petitioner contends with reference to decision rendered by Division Bench of this Court in CWP no. 7026 of 2017 decided on 26.4.2017 that this very issue was raised before the Court at an earlier point of time but the Division Bench rejected it.

As a counter to this argument learned counsel for the State points out that the aforesaid Division Bench judgment was challenged by way of a SLP titled as **State of Punjab and another vs. Rajesh Kumar and others** reported as 2017 (3) SCT 180, before the Hon'ble Supreme Court where it was observed as follows:-

> "11. The point that arises for our consideration is whether Rural Medical Officers working in Zila Parishads are entitled to claim the benefit of the incentive provided in Regulation 9 (IV) of the MCI Regulations. Regulation 9(IV) of the MCI Regulations is as follows:-
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> [-----]
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> 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 candidate 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

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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 areas shall be as defined by State Government/Competent authority from time to time.

12. This Court in the judgment of Dinesh Singh Chauhan held that Regulation 9 is a self contained code for admissions to postgraduate medical courses. There is no doubt that the proviso to Regulation 9 (IV) is an enabling provision. The State Government has the liberty to provide for weight age in the marks to in-service doctors who have served in remote and difficult areas. There is no right which inheres in the government doctors to compel the State Government for providing the incentive. The controversy that arises in this case is whether the government can restrict the benefit of the incentive only to PCMS doctors working in government hospitals and exclude the Rural Medical Officers working in the Zila Parishads.

13. As mentioned above, a Division

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Bench of the High Court in ***Dr. Manu Guptya v. State of Punjab and Ors., 2014(1) S.C.T 48: LPA No. 1043 of 2013*** and connected matters adjudicated the point of Rural Medical Officers satisfying the parameters of in-service doctors. It was held that the two services of PCMS doctors and Rural Medical Officers were different. Their service conditions were not the same and the PCMS doctors belong to a State cadre whereas the Rural Medical Officers fall within the District cadre. It was further held that the policy decision taken by the Government not to equate Rural Medical Officers with the PCMS doctors was not arbitrary. The contention of the State was that Rural Medical Officers were working only in subsidiary health centres at the Zila Parishad level where there were no facilities for secondary and tertiary care. The decision of the Government that the funding for postgraduate studies was restricted only to PCMS doctors in view of their posting to District hospitals, sub divisional hospitals and other centres where facilities were available for secondary care. After examining the report submitted by the Chief Secretary, the High Court held that the Rural Medical Officers cannot claim parity with PCMS doctors and seek admission to post graduate courses from the in-service quota.

14. The Government made the very same submissions before the High Court in CWP nos. 7026,

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7089 and 7418 of 2017 filed by the Rural Medical Officers for extension of benefit of the incentive as per Regulation 9 of the MCI Regulations, 2000. The High Court held that the judgment in Dr. Manu Gupta's case was not relevant for determination of the questions raised as Regulation 9 was not considered therein. The High Court rejected the submission made by the Government that the two services are different. In the impugned judgment, the High Court held that the health services rendered by Panchayati Raj Institutions complemented the health services provided by the State Government. The High Court observed that the laudable objective with which Regulation 9 was made would be defeated if Rural Medical Officers are not given the benefit of the incentive. The findings recorded by the High Court in the impugned judgment are completely contrary to the judgment of a coordinate Bench in Dr. Manu Gupta (supra) that two services of PCMS and Rural Medical Officers are different as they are governed by two separate set of service rules. The High Court should not have held that the judgment in Dr. Manu Gupta's case is not relevant as the points that were urged by the State Government to defend the notification were exatly the same which were held in its favour by the High Court earlier. If the High Court was not in agreement with the judgment of the coordinate Bench, the matter should have

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been referred to a larger Bench. (see: ***Safia Bee v. Mohd. Vajahath Hussain Alias Fasi (2011) 2 SCC 94*** at paragraphs 27-30; ***G.L.Batra v. State of Haryana and ors., 2013 (4) S.C.T. 776: (2014) 13 SCC 759*** *at paragraphs 14-16).*

15. Even assuming that the High Court was right in its conclusion that the impugned notification was vitiated by unreasonable classification, the matter should have been remitted back to the Government for fresh consideration. Instead, the High Court directed the authorities to proceed with the admissions process by giving the benefit of incentive to the Rural Medical Officers.

16. The first round of counseling for admission to postgraduate courses was completed on 13th, 14th and 15th of April, 2017. Doctors who were selected for admission have paid their fees and joined the courses. We are also informed that certain doctors who secured admission in institutions outside the State have given up their admissions to join the postgraduate course in the State of Punjab. We are not inclined to interfere with the admissions made to postgraduate courses for this year. As we are not interfering with the admissions for this year, we do not deem it necessary to decide the other two points pertaining to the applicability of the incentive to Private Medical Colleges and the validity of the action of

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the government in prescribing the minimum service in the remote/difficult areas are eligibility criteria.

17. While considering the challenge to the validity of Regulation 9 (IV) of the MCI Regulations, this Court considered the objective of Regulation 9 in **State of UP v. Dinesh Singh Chauhan, 2016 (4) S.C.T. 517: (2016) 9 SCC 749** at paragraph 33 and held as follows:-

"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 Post Graduate "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 Post Graduate "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 sub-serves larger public interest."

18. The Government is directed to reconsider the entire matter pertaining to the incentive to be given to the Rural Medical Officers afresh by keeping

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in mind the objective with which the Regulation 9 of the MCI Regulations 2000 were made and interpreted by this Court in Dinesh Singh Chauhan's case.

19. For the aforementioned reasons, the directions issued by the High Court in the impugned judgment for recasting the merit list for admission to postgraduate courses is set aside. The concerned authorities shall proceed with the second counseling on the basis of the notification dated 29.3.2017 and finalise the process of admission before 31.5.2017.

20. The Appeals are disposed of accordingly."

The sum and substance of the aforesaid is that the Hon'ble Supreme Court did not approve of the view of the coordinate Bench in CWP no. 7026 of 2017 for the reason that it was directly in conflict with the view expressed by another Division Bench of this Court in case titled as **Dr. Manu Gupta vs. State of Punjab and others** reported as 2014(1) SCT 48 while observing that Division Bench could not have taken a counter view of the Division Bench without referring the matter to the larger Bench. The Hon'ble Supreme Court has directed the State to re-consider the issue which indeed was done resulting in reiteration of the earlier view i.e denial of the benefit of the scheme of incentivisation to the RMOs on a similar parity of reasoning as the one which prevails earlier.

The observations of Dr. Manu Gupta's case are extracted herebelow:-

"18.The most important aspect sought to be emphasized by the respondents is that this is a matter of

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policy decision taken by the State Government which does not fall in the category of a decision which no reasonable authority could take so as to hit by the Wednesbury principle. The State Government is to look to the utility of giving the privilege to a doctor to do the post graduation course through a State funded route and holding otherwise would amount to compelling the State to fund a category of doctors who, in the wisdom of the State Government, do not need a post graduation degree to perform the task assigned to them for which they have been recruited, especially when it is not as if they have been shut out from the possibility of acquiring post graduate degree as they can go through an open quota route.

19. We have heard the the learned counsels for the parties at length today also. The reason being that in our view it has a material bearing on the future prospects of these doctors both of whom have been working with the State Government and it is this fact which weighed with us while referring the matter back to the Chief Secretary to see if a viable solution was

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possible where doctors of different categories can be accommodated especially taking into consideration the number of seats available. That unfortunately has not been possible. Thus, we have to proceed on the merits of the controversy.

20. We are afraid that some sympathy of ours for the cause of the appellants cannot translate itself into a legal right in their favour so as to entitle them to a favourable judicial verdict. The first aspect which weigh with us is the issue of policy decision. This decision has not only been taken once in 2011 but at our request the matter has been re-examined at the highest level the second time but met with the same fate. It cannot be said that this policy decision is so bereft of any basis or is so arbitrary and illegal that it has to be struck down. The rationale given, especially in the affidavit filed today in Court, is that what the two private parties are fighting for is only to have post graduation education at the expense of the State. It is not an issue of promotion of a person or parity from different cadres or equal opportunity for further promotion to posts. The State Government in its

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wisdom is of the view that keeping in mind the cadres created, the deployment of these doctors as per the cadre, and the different modes of recruitment entitle them to get the benefit of State funding of post graduate education only for the PCMS doctors. As we have noticed earlier that the PCMS doctors are deployed at overall state level, while RMOs are deployed only at district level. It is not as if quality medical help is not to be provided in the rural areas but there are different periods/stages of medical assistance requiring different medical centres. The deployment of the RMOs took place at the base level centres and they cannot be posted inter district. It has already been stated in the Minutes of Meeting that the Health Department of State provides service through District Hospitals, Sub Divisional Hospitals, Community Health Centres and Primary Health Centres which is only qua the Subsidiary Health Centres at the Zila Parishad level that the RMOs were deployed for. Thus, it does not dis-entitle them from improving their prospects by acquiring post graduate degree as the open quota route is available to them. The second option, of course, with

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them is to go through the PCMS route. We are thus, of the view that the State Government cannot be compelled to fund their post graduate medical education.

21. The second aspect which weighs with us is that the recruitment of both the categories of doctors were actually for different purpose through different routes. The RMOs, when joined service, knew that their appointment is on contractual basis and that too at the base level of the medical centres. This is another matter that their services were regularized subsequently. It is not as if on regularization, two cadres of doctors merged. This is apparent from the fact that the terms and conditions of service are not the same for both of them. Thus, the RMOs cannot claim parity only on the basis that both the categories of persons are MBBS and all doctors should be treated alike. No doubt to function as a doctor, one must have a basic qualification of MBBS, but their recruitment is through a different system and their deployment is for different purposes and at different levels of health care policy of the State.

22. The fact that there are now statutory rules

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governing the services of the RMOs again would not put them on a higher pedestal to equate them with PCMS doctors as that is not a necessity arising out of their regularization. It is not our endeavour to state that the assistance being provided by the RMOs to the system is inferior or that they are the doctors who should be put at inferior level. The question before us is actually limited to the facility of providing opportunity for post graduate medical education by funding through a State Government department. For this purpose, the State Government has considered it appropriate that keeping in mind the requirement of the State and the deployment of these doctors, the State Government should be funding only the PCMS doctors through 60% State quota, giving all others to compete through 40% quota which would include the seats which would be available out of 60% quota seats remaining vacant.

23. Since the phraseology used in the Minutes of the Meeting was that 'as things stand today', we presume that it is based on the current situation which does not preclude the State Government for having

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second look on the matter in issue for future recruitment if the exigencies of health care facilities of the State requires the State Government to do so.

24. The result is, we find no infirmity in the order of the learned Single Judge or merit in the writ petitions clubbed with these matters and are thus, constrained to dismiss the same leaving the parties to bear their own costs.

25. Interim orders stand vacated.

26. We, however, clarify that this will not preclude the RMOs from being considered for the current year in the open quota as per their merit giving due weightage of their rural service as in the prospectus.

27.The record produced by the University in sealed cover has been perused by the Court and returned back to the counsel duly sealed."

A perusal of para 23 extracted above indicates that the State was not precluded from having a second look at the matter for future recruitment which in fact has been cemented by the observations of the Hon'ble Supreme Court while deciding the issue and noticed above. But the State in its wisdom has once again reiterated its earlier view and we, therefore, are in a situation where we cannot deviate from the observations of the Hon'ble Supreme Court in Dr. Manu Gupta's case (supra) unless we have strong reasons to disagree for which we have to refer the matter to the

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larger Bench. While examining the matter closely we find no such reasons that have offered themselves to persuade us to record a disagreement with the view in the Dr. Manu Gupta's case (supra) or to even suggestively reveal an arbitrariness in the view of the State. We, therefore, decline interference and dismiss the instant petition. Consequently, all pending applications are also hereby dismissed.

**(Mahesh Grover)**
**Judge**

14.05.2018 **(Rajbir Sehrawat)**
rekha **Judge**
Whether speaking/reasoned Yes/No
Whether reportable Yes/No

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