

**CWP no. 10758 of 2018 (O&M)
and connected case**

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

1. CWP no. 10758 of 2018 (O&M)

Dr.Himani Singh and another

....Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

2. CWP no. 11557 of 2018 (O&M)

Dr.Pritam Singh

....Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

Date of Decision : 24.05.2018

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

Present : Mr.Aditya Singh Yadav, Advocate for the petitioner(s)

Mr. Ankur Mittal, Addl. AG, Haryana

MAHESH GROVER, J.(ORAL)

By this order we will dispose of two writ petitions bearing CWP
nos.10758 of 2018 and 11557 of 2018.

The petitioners are all M.B.B.S graduates having served the
State of Haryana and claimed the benefit of incentivisation introduced by
the State for the in-service candidates serving in rural areas, entitling them

to incentive at the rate of 10% of the marks obtained for each year of

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High Court Chandigarh

service in remote/difficult areas upto maximum of 30% of the marks obtained in National Eligibility-cum-Entrance Test (NEET). This scheme of incentivisation is in compliance of Regulation 9(IV) issued by the Medical Council of India and has found acceptance. We may notice that initially the scheme was intended for candidates who have served in remote or difficult areas while dealing with case titled as **State of U.P and others vs Dinesh Singh Chauhan** reported as 2016(4) SCT 517, Hon'ble Supreme Court has observed as follows:-

“35. Presumably, realizing this position writ petition has been filed to challenge the validity of proviso to Clause IV of Regulation 9. According to the writ petitioners, the prospectus provided for 30% reservation in favour of in-service candidates for admission to post-graduate medical courses. The application of Regulation 9 results in an absurd situation because of giving weightage to specified in-service Medical Officers in the State. There is neither any committee set up nor guidelines made as to which area can be notified as remote and difficult area. The power vested in the State is an un-canalized power and disregards the settled position that for consideration after the graduate level, merit should be the sole criteria. Further, there is no nexus with the object sought to be achieved for providing weightage to the extent of 10% of the marks obtained by the candidate in the common competitive test and to the

extent of maximum of 30% marks so obtained. 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 health care facilities in remote and difficult areas in the State for want of Doctors.[1] In fact there is a proposal to make one year service for MBBS students to apply for admission to Post Graduate 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 Health Care Sector. The provision was first inserted in 2012. To determine the academic merit of candidates, merely securing high marks in the 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 health care 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 Post Graduate 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 fulfill the test of Article 14 of the Constitution, being in larger public interest.”

On 5.4.2018 the Medical Council of India introduced the term 'rural' areas alongwith difficult/remote areas thereby making the candidates who have served in the rural areas also eligible for the scheme of incentivisation in terms of the State Government notification.

The State of Haryana pursuant thereto identified areas to be termed as rural areas for the said scheme. The grievance of the petitioners is that the areas in which they have served are not covered in the ambit of rural areas in the current notification even though when they served in such areas

they were construed as rural and the attending benefits such as rural allowance etc were also made admissible to them.

Learned counsel for the petitioners contends that the current notification excluding the areas where they have served from the ambit of a rural area would certainly act to their prejudice considering the fact that they have served in such areas with the fond hope of getting benefit at the time of admission to Post Graduate courses.

Learned counsel for the State on the other hand contends that the benefit of an incentive is not an inherent right one can claim. In so far as service in the rural area is concerned, petitioners have already been granted the service benefits admissible on account of service in such areas and the State is bound to give other benefits as well such as permission to complete MD on complete pay.

We have heard learned counsel for the parties and are of the opinion that most of the difficulty as the one we are dealing with has been created on account of rural area being included in the notification issued by the Medical Council of India mid stream.

Be that as it may, the fact remains that State has now identified the rural areas by largely excluding the ones which fell within the municipal limits or have been declared as Municipal Councils. We cannot thus find fault with the notification purely on the ground that at one point of time such an area was considered rural so as to admit the incumbents serving there to certain benefits of service such as rural medical allowance etc. We also notice from the stand of the respondents that they have not disentitled the petitioners to no objection certificate that would entitle them to pursue their

Post Graduate courses , if otherwise satisfying all other conditions, while drawing complete salary from the Government. This in itself is a tremendous benefit for any incumbent pursuing his Post Graduation. We are also of the opinion that claiming an incentive is not a matter of right. Once the petitioners have been made admissible to all the benefits then simply because the areas where they have served are now excluded from the rural areas would not entitle them to raise a plea of arbitrariness. It is quite possible that whatever rural areas have been identified today in the notification may possibly be excluded for the subsequent years and the person applying today for service in rural areas which stands identified by the notification today may also stand to be disadvantaged at a subsequent time. We, therefore, do not find any merit in the instant petitions and the same are hereby dismissed. In view of this, CM no. 7658-59 of 2018 in CWP no. 10758 of 2018 for amendment of the writ petition also stand dismissed.

(Mahesh Grover)
Judge

24.05.2018
rekha

(Rajbir Sehrawat)
Judge

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No