

Sr. No. 205

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

**CWP No. 7108 of 2018(O&M)
Decided on: 25.04.2018**

Dr. Vijay Kumar Mehra

.....Petitioner

versus

State of Haryana and others

.....Respondents

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

Present: Mr. Deepak Sonak, Advocate
for the petitioner.

Mr. Ankur Mittal, Addl.AG, Haryana and
Mr. Manoj Dhankhar, AAG, Haryana

Mr. Nilesh Bhardwaj, Advocate
for respondent No.3.

Mahesh Grover, J.(Oral)

This is a writ petition where the controversy falls within a narrow compass. The State of Haryana has issued a notification dated 09.02.2018 related to the procedure for admissions to MD/MS/PG Diploma and MDs in Government/Government Aided/Private Medical and Dental Educational Institutions, clause 2 of which is essential to be noticed:-

“It is further notified that in Government Institutions covered under the Notification, 50% of the seats will be assigned to the All India Merit Category of NEET PG-2018 and NEET MDS-2018 and the remaining 50% of the seats will be assigned under the Haryana State Merit Category of NEET PG-2018 and NEET MDS-2018.

25% seats shall be reserved

(Institutional preference) for the candidates who have passed MBBS/BDS courses from the Institutions located in the State of Haryana.”

Reading of the above extracted clause makes it clear that reservation for the Institutional Preference to the extent of 25% seats is intended for the candidates subject to their fulfilling other conditions i.e. eligibility etc. who have passed their MBBS/BDS courses from the Institutions located in the State of Haryana.

The petitioner is concededly a MBBS graduate from an Institute located in the State of Haryana and by the strength of Notification dated 09.02.2018 and Clause (2) extracted above, he would certainly be entitled to this benefit.

Another notification has been issued on 16.03.2018 which apart from reiterating the earlier clause extracted above, adds another dimension by insertion of the following clause:-

“However in Service candidates who will be given additional incentive of marks for the service rendered by them in remote and or difficult areas in the State in terms of clause 9 (IV) of Post Graduate Medical Education Regulations, 2000 of MCI will not be allowed benefit of Institutional Preference.”

This denial of the benefit is the cause of grievance to the petitioner who contends that the petitioner has served the State of Haryana in difficult/remote areas and is thus, entitled to this benefit flowing from clause 9(IV) of the MCI Regulations which are being held to be a complete Code in itself.

The State would justify this on the ground of a dual benefit

being given to an incumbent enabling him to steal a march over other aspirants of the general category who though meritorious would be disadvantaged if the argument of the petitioner is accepted.

This being a limited controversy, we have given a thoughtful consideration to it and are of the opinion that the petitioner can not be denied the benefit of serving in the difficult/remote areas if the scheme of incentivization is adopted by the State in terms of clause 9(IV) of the MCI Regulations.

This cannot be termed to be a dual benefit for the simple reason that the petitioner has voluntarily opted to work for the State of Haryana in difficult/remote areas and if this entitles him to certain benefit it can not be denied to him as he undertook this service ostensibly with a view to earn this benefit. We also have to notice the fine distinction between clause 2 contained in the earlier notification entitling the petitioner to Institutional Preference as this talks of reservation of 25% seats for the candidates who have passed their MBBS/BDS examination from the State of Haryana, whereas the subsequent notification of 16.03.2018 is a scheme of incentivization which may not be covered by the definition of word 'reserve' as may be understood in common parlance.

Consequently, we accept the petition and hold the petitioner to be entitled to get the aforesaid benefits in terms of the notifications.

[MAHESH GROVER]
JUDGE

25th April, 2018

Shivani Kaushik

Whether speaking/reasoned *Yes/No*

Whether Reportable *Yes/No*

[RAJBIR SEHRAWAT]
JUDGE