

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP no.7691 of 2018 (O&M)

Date of Decision : 20.04.2018

Dr. Abhay Raj Singh

....Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

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

Present : Mr. Sanjay Kaushal, Sr. Advocate with
Mr. Gaurav Singla, Advocate for petitioner

Ms. Anu Pal, AAG, Punjab

Mr. R.K.Malik, Sr. Advocate with
Mr. Sunil Hooda, Advocate

Mr. Gurminder Singh, Sr. Advocate with
Mr. R.P.S.Bara, Advocate

Ms. Savi, Advocate for respondent no.3

MAHESH GROVER, J.(ORAL)

In the instant writ petition, a prayer has been made to quash notification bearing no.5/26/2016-5HB-IV/557 dated 25.1.2018 as it contravenes proviso to Regulation 9(4) while laying the eligibility conditions for candidates aspiring to the Post Graduate Course in medical stream. A further prayer has been made to claim weightage in marks in terms of proviso to Regulation 9(IV) as interpreted by the Hon'ble Supreme Court in case titled as **State of U.P. And others Vs. Dinesh Singh**

Chauhan 2016 AIR (SC) 3841.

The petitioner is a qualified doctor with MBBS degree to his credit and an aspirant for the Post Graduate course.

Petitioner joined the service of the State of Punjab in the year 2016 and is currently on probation. During these two years he claims to have served in difficult/most difficult areas by volunteering for it.

According to the petitioner the eligibility criteria extracted herebelow is arbitrary inasmuch as makes the scheme of incentivisation applicable to those who have completed 4 full years in *very difficult areas* or 6 full years in *difficult areas* or those who have completed 5 full years with 2 years in *most difficult* and 3 full years in *difficult areas*.

Eligibility criteria:-

A. For in-service Regular PCMS/PCMS(Dental) doctors:

a) The Eligibility requirements for grant of incentive shall be as under:-

i) Regular PCMS/PCMS (Dental) employee

ii) Has completed 4 full years (48 months) service in very difficult (Category-D) area or 6 full years (72 months) service in difficult (Category C) area or an appropriate combination of both. In case of candidates who have completed 5 full years (60 months) of service (as on 01-01-2012), they should have completed 2 full years (24 months) of service in most difficult areas or 3 full years (36 months) of service in difficult areas. Very difficult (Category D)/Difficult (Category C)/ Most Difficult/ Difficult area as the case

may be, shall be as defined by Department of Health & Family Welfare, Government of Punjab.

iii. RMOs once they are selected in PCMS/PCMS (Dental) will be given benefits of rural service rendered by them as RMOs under Zila Parishad.

iv. Has cleared the probation period.

v. Has Good service record.

vi. Has no vigilance/departmental/discipline inquiry pending against him/her.

vii. Will have 10 years of service left after completion of the course.

b) The period of rural service shall be computed as on 31st March, 2018.

c) Adhoc service rendered in respective category will be counted for the purpose of computing the stipulated period.

d) PCMS/PCMS (Dental) in service candidates will submit alongwith the application a certificate regarding length of service, length of rural service, number of years of service left after completion of PG course & that no department/vigilance inquiry is pending against the candidate.

e) All PCMS/PCMS (Dental) doctors who are selected for admission to post graduate courses shall have to produce a No Objection Certificate from Department of Health & Family Welfare, Govt. of Punjab.

f) All in service doctors shall have to submit a

bond of Rs.50 lakhs to serve the Punjab Government for a period of 10 years after completion of Post Graduate degree course or bond of Rs.25 lakhs to serve the Punjab Government for a period of 6 years after completion of Post Graduate diploma course. If the candidate fails to do so he/she shall have to deposit the bond money with the Government.”

While setting up a claim in the present petition as noticed above, the petitioner perceives the afore-extracted condition to be regressive to his cause as it excludes candidates like him who have served in *very difficult areas* for 2 years.

It has been argued before us that such a condition is contrary to the proviso to Regulation 9(IV) and the observations of the Hon'ble Supreme Court in Dinesh Singh Chauhan's case (supra).

We may for the purposes of reference extract Regulation 9 including 9(IV) and the proviso thereto

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

I. There shall be a single eligibility cum entrance examination namely ' National Eligibility-cum-Entrance Test for admission to Postgraduate Medical Courses' in each academic year. The superintendence, direction and control of National Eligibility-cum-Entrance Test shall vest with National Board of Examinations under overall supervision of the Ministry of Health & Family Welfare, Government of India.”

II. 3% seats of the annual sanctioned intake capacity

shall be filled up by candidates with locomotory disability of lower limbs between 50% to 70%:

Provided that in case any seat in this 3% quota remains unfilled on account of unavailability of candidates with locomotory disability of lower limbs between 50% to 70% then any such unfilled seat in this 3% quota shall be filled up by persons with locomotory disability of lower limbs between 40% to 50% - before they are included in the annual sanctioned seats for General Category candidates.

Provided further that this entire exercise shall be completed by each medical college/institution as per the statutory time schedule for admissions.

III. In order to be eligible for admission to any postgraduate course in a particular academic year, it shall be necessary for a candidate to obtain minimum of marks at 50th percentile in 'National Eligibility-cum-Entrance Test for Postgraduate courses' held for the said academic year. However, in respect of candidates belonging to Scheduled Castes, Scheduled Tribes, Other Backward Classes, the minimum marks shall be at 40th percentile. In respect of candidates as provided in clause 9(II) above with locomotory disability of lower limbs, the minimum marks shall be at 45th percentile. The percentile shall be determined on the basis of highest marks secured in the All India common merit list in 'National Eligibility-cum-

Entrance Test' for Postgraduate courses:

[Provided when sufficient number of candidates in the respective categories fail to secure minimum marks as prescribed in National Eligibility-cum-Entrance Test held for any academic year for admission to Post Graduate Courses, the Central Government in consultation with Medical Council of India may at its discretion lower the minimum marks required for admission to Post Graduate Course for candidates belonging to respective categories and marks so lowered by the Central Government shall be applicable for the said academic year only.

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 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.”

It is not the case of the petitioner that a scheme of incentivisation cannot be provided at all. Rather his case is that the notification as it flows with the afore-extracted clause is impermissible in view of the observations made in Dinesh Singh Chauhan's case (supra) by prescribing a cap on the number of years of service in a *difficult/very difficult area*. Extensive reliance has been placed on the following observations made by the Hon'ble Supreme Court which we also intend to extract herebelow:-

“20. 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 muchless 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 (See: Preeti Srivastava (Dr.) V. State of M.P.[2]). 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.

21. Thus, we must first ascertain whether Regulation 9, as applicable to the case on hand, envisages reservation of seats for in-service Medical Officers generally for admission to Post Graduate "Degree" Courses. Regulation 9 is a composite provision prescribing procedure for selection of candidates - both for Post Graduate "Degree" as well as Post Graduate "Diploma" Courses. 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 State. 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).

22. From the plain language of this proviso, it is amply clear that it does not envisage reservation for in-service candidates in respect of Post Graduate "Degree" Courses with which we are presently

concerned. This proviso postulates giving weightage of marks to "specified in-service candidates" who have worked in notified remote and/or difficult areas in the State - both for Post Graduate "Degree" Courses as also for Post Graduate "Diploma" Courses. Further, the weightage of marks so allotted is required to be reckoned while preparing the merit list of candidates.

23. Thus understood, the Central Enactment and the Regulations framed thereunder do not provide for reservation for in-service candidates in Post Graduate "Degree" Courses. As there is no express provision prohibiting reservation to in-service candidates in respect of admission to Post Graduate "Degree" Courses, it was contended that providing for such reservation by the State Government is not impermissible in law. Further, there are precedents of this Court to suggest that such arrangement is permissible as a separate channel of admission for in-service candidates. This argument does not commend to us. In the first place, the decisions pressed into service have considered the provisions regarding admission process governed by the Regulations in force at the relevant time. The admission process in the present case is governed by the Regulations which have come into force from Academic Year 2013-14. This Regulation is a self- contained Code. There is nothing in this Regulation to even remotely indicate that a separate

channel for admission to in-service candidates must be provided, at least in respect of Post Graduate "Degree" Courses. In contradistinction, however, 50% seats are earmarked for the Post Graduate "Diploma" Courses for in-service candidates, as is discernible from Clause (VII). If the Regulation intended a similar separate channel for in- service candidates even in respect of Post Graduate "Degree" Courses, that position would have been made clear in Regulation 9 itself. In absence thereof, it must be presumed that a separate channel for in-service candidates is not permissible for admission to Post Graduate "Degree" Courses. Thus, the State Government, in law, had no authority to issue a Government Order such as dated 28th February 2014, to provide to the contrary. Hence, the High Court was fully justified in setting aside the said Government Order being contrary to the mandate of Regulation 9 of the Regulations of 2000, as applicable from Academic Year 2013-14.”

Our attention has also been drawn to the latter part of the aforesaid judgment where the Hon'ble Supreme Court in support of the reasoning has created an illustration:-

“To illustrate, if an in-service candidate who has worked in a notified remote and/or difficult area in the State for at least one year and has obtained 150 marks out of 200 marks in NEET, he or she would get 15 additional marks;

and if the candidate has worked for two years, the candidate would get another 15 marks. Similarly if the candidate has worked for three years and more, the candidate would get a further 15 marks in addition to the marks secured in NEET. 15 marks out of 200 marks in that sense would work out to a weightage of 7.5% only, for having served in notified remote and/or difficult areas in the State for one year. Had it been a case of giving 10% marks enbloc of the total marks irrespective of the marks obtained by the eligible in-service candidates in NEET, it would have been a different matter. Accordingly, some weightage marks given to eligible in-service candidate linked to performance in NEET and also the length of service in remote and/or difficult areas in the State by no standard can be said to be excessive, unreasonable or irrational. This provision has been brought into force in larger public interest and not merely to provide institutional preference or for that matter to create separate channel for the in-service candidate, muchless reservation. It is unfathomable as to how such a provision can be said to be unreasonable or irrational.”

From the above, it is contended that the prescription of a cap on

(supra) which would render the notification and the eligibility clause negatory.

It has also been contended by the learned counsel for the petitioner that the ratio of Dinesh Singh Chauhan's case (supra) has been referred to a larger Bench where after arguments it awaits a decision, in so far as the interim relief is concerned in the first instance. A perusal of the order of reference would suggest a doubt created in the Dinesh Singh Chauhan's case (supra) as the conclusion was based without taking into consideration entry 25 of List 3.

To our mind atleast for the present, we do not find that this reference or the pendency of matter before the Hon'ble Supreme Court as a good reason to hold us back from determining the present issue since it flows from a plain interpretation of Regulation 9(IV) and the proviso appended thereto. Accepting the argument as has also been approvingly held in Dinesh Singh Chauhan's case (supra) and related judgments that the Medical Council of India guidelines with regard to ensuring excellence in higher medical education are to be given due deference with the liberty to the States to formulate their own scheme of incentivisation if they so desire, with the language also paying due deference to such a scheme, we would proceed in the matter.

Once the power of the State to formulate a scheme of incentivisation is acknowledged and respected even by the Medical Council of India and approved by the Hon'ble Supreme Court what requires to be seen is whether such a scheme is an affront to the regulations of the Medical Council of India or not.

A careful examination of the proviso to Regulation 9(IV) makes

it abundantly clear that the limit of incentivisation has been pegged down to 30% of marks obtained in NEET. Evidently primacy has been given to the performance of a candidate in entrance examination (NEET) with some leeway to the in-service candidates who have served the purposes of the State by rendering their services in *remote/difficult/very difficult/most difficult/rural areas*. Whether a person has served for 6 years, 5 years or 4 years would make no difference in view of the yearwise benefit pegged at 10% for a year with a cap of 30% determined by the Medical Council of India in its regulations. In no way we find this to be arbitrary to invite any adverse comment in the exercise of our power of judicial review, particularly, when the power of the State to frame a policy of incentivisation to in-service candidates is not in question and even otherwise undisputably acknowledged.

Even otherwise, the petitioner in the present petition has other obstacles to cross. He joined the service in the year 2016 and has merely two years to his credit and yet to surmount the hurdle of a successful probation. That apart the notification was issued on 25.1.2018 and the petitioner applied, participated in the NEET when the conditions were obviously to his knowledge, but he chose to participate and questioned the clause after the results were out. The eligibility condition was evidently a notice to all and there would be many incumbents like the petitioner who probably might have not even responded, finding themselves ineligible as per the criteria and if the claim of the petitioner is accepted to declare him eligible at this stage, it would be grossly unfair to place him at an advantage qua those who were similarly placed but kept themselves away from the

process.

For the aforesaid reasons, instant petition is held to be devoid of any merit and the same is hereby dismissed.

We also notice that some of the candidates have filed miscellaneous applications under Order 1 Rule 10 CPC which we allow.

Before parting with the judgment we would also refer to the issues highlighted by the applicants which would also be a reason to decline the claim of the petitioner, considering that some of the candidates who have undertaken the counselling would certainly be in a grave predicament in case the claim of the petitioner is accepted. To illustrate this point we notice just one paragraph of the application bearing CM no.5514-CWP of 2018, citing an example of one Dr. Ramandeep Kaur:-

“16. That Dr. Ramandeep Kaur i.e proposed Respondent no.4, who scored 628 out of 1200 in NEET, and gained rank of 6450 in All India Merit List and 200 in State Merit List, appeared in Round 1 of the All India Quota Counselling held on 17.3.2018-26.3.2018 and was allotted Ophthalmology at Government Medical College, Patiala for which she was required to report for joining/upgradation/resigning of seat by 7.4.2018. In the meanwhile, she attended Round 1 of State Counselling on 3.4.2018, in which she forego her seat and did not opt for any field as she was not being allotted field of choice. However, she was confident of obtaining her desired field of specialization in Round II of the State Counselling as per the seat availability matrix, since by Round II, several seats are vacated. However, as a result of pendency of present Writ Petition, Round II of the

State Counselling has been deferred indefinitely, thus forcing her to participate in Round II of All India Counselling which has commenced, and in pursuance to which the joining has to be given by 23.4.2018, failure to do so would de-bar her from participating in Round II of State Counselling as per Scheme uploaded on official website on 9.4.2018 (Annexure A-10). As a result, despite being a meritorious candidate, Dr. Ramandeep Kaur is being greatly disadvantaged by the aforementioned Petition, since she stands to lose her seat on both counts. In case she opts for admission in Round II of All India Counselling, she would have to report for joining by 23.4.2018 and if she abstains from opting in All India Counselling Round II, and, in the event that the petition is allowed, she will fail to obtain admission in desired field of specialization in Round II of State Counselling.”

It has been brought to our notice that there are numerous candidates who would be facing a similar predicament and therefore this is enough to persuade us to deny interference. Since we have decided the main petition, we liberate the State from the consequences of the order dated 3.4.2018.

(Mahesh Grover)
Judge

(Rajbir Sehrawat)
Judge

20.04.2018

rekha

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No