

CWP no.9387 of 2018 (O&M) 1

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

CWP no.9387 of 2018 (O&M)

Date of Decision : 29.05.2018

Dr. Tejinder Pal Singh and another

....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.Puneet Gupta, Advocate for the petitioner(s)
 Ms. Anu Pal, DAG, Punjab
 Mr.K.S.Sandhu, Advocate for respondent-University

MAHESH GROVER, J.(ORAL)

CM no.8273 and 8274-CWP of 2018

Allowed as prayed for.

Main case

The present petition has been filed by the petitioners praying for a direction to the respondents to grant admission to the eligible in-service PCMS doctors (hereinafter referred to as 'in-service doctors') in Post Graduate degree/diploma courses in private medical colleges/institutions by granting them weightage of marks as incentives upto maximum of 30% of the marks obtained in National Eligibility-cum-Entrance Test (Post Graduate) (hereinafter referred to as 'NEET-PG exam-2018') as per the regulations issued by the Medical Council of India (hereinafter referred to as 'MCI'). Further prayer of the petitioners is that since the earlier counsellings have been conducted by not providing the benefit of incentivisation to the in-service doctors to the Post Graduate/Medical Courses in private

colleges/institutions, hence, the prayer is made for holding counselling for admission to Post Graduate Medical Courses in private medical colleges/institutions afresh by considering the in-service doctors with weightage of 30% marks as prescribed under the regulations of MCI.

The petitioners have claimed in the writ petition that they have passed their M.B.B.S degree from recognized universities. Petitioner no.1 passed his M.B.B.S from Maharashtra University of Health Sciences, Nashik whereas petitioner no.2 from Baba Farid University of Health Sciences, Faridkot (hereinafter referred to as 'Baba Farid University') after acquiring the qualification of M.B.B.S. Both the petitioners joined Punjab Civil Medical Services on 5.10.2015 and 20.10.2015 respectively.

It is claimed by the petitioners that regulation 9(IV) has made a provision for providing incentives to in-service doctors who have served in remote and difficult areas at the rate of 10% of the marks obtained in NEET-PG-2018 exam per year subject to maximum of 30% marks in total. The petitioners had appeared in PG NEET exam for seeking admission to Post Graduate Medical Courses. 50% seats in Post Graduate Medical Courses are meant for All India quota and the remaining 50% are meant for State quota. For filling up State quota seat the State of Punjab had authorized Baba Farid University to conduct a process of counselling. For that State of Punjab has issued notification dated 25.1.2018. This notification has provided for granting incentive upto to 30% of the total marks obtained in NEET exam as per the regulation in seats available in Government institutions. However, in the seats available for admission in private institutions no equivalent provision has been made for providing incentive upto 30% of the marks obtained in NEET-PG exam for admission against seats in private

institutions. The petitioners have further pleaded that the Hon'ble Supreme Court of India in case titled as **State of U.P vs. Dr. Dinesh Singh Chauhan** reported as 2016(9) SCC 749 has laid down that so far as granting incentives to the in-service doctors is concerned, the regulations of MCI do not make any distinction between Govt. institutions and the private institutions. Hence, the respondents deserve a direction to provide the incentives to the in-service doctors for admission to Post Graduate courses even in private institutions.

The State had filed reply by way of affidavit averring therein that both the petitioners were eligible for incentives as per the policy of the State Govt. for admission under the category of in-service doctors. Both the petitioners have been provided requisite No Objection Certificates for admission in Govt.Medical Colleges/Institutions of the State. However, qua the claim of the petitioners for getting the benefit of incentivisation for the purposes of admission in private colleges, it was pleaded that notification dated 25.1.2018 does not provide for admission to in-service doctors in private medical colleges of the State of Punjab. Hence, there is no question of granting any incentives to the petitioners for the purposes of admission in private medical colleges.

During the course of arguments, it has also transpired that after issuance of the initial notification dated 25.1.2018, the State of Punjab had also issued another notification dated 9.3.2018 whereby it was provided that the benefit of institutional preference shall be available even to the candidates who have passed out from the private universities in the State of Punjab. However, the institutional preference shall be University-wise, i.e,

preference against the seats available in Government institutions and the colleges affiliated to Baba Farid University and if any seat is left vacant only then the candidates passing their M.B.B.S exam from private universities shall be considered by way of second preference. Similarly, the students passing their qualifying examination from private university shall have their first preference in their respective University and the students passing their qualifying M.B.B.S exam from Baba Farid University shall get only second preference against the students available in the private universities/institutions. This clarification is reproduced herebelow:-

“1) In the meeting held on 22.02.2018 in O/O PSMER, Government of Punjab, Chandigarh, a point was raised regarding reservation of 50% seats for the State quota. It was clarified that 50% of seats are to be filled by way of all India seats where candidates from all over the country can apply. Rest 50% of seats are of State quota and available to be filled by way of institutional preference from the students who have passed their qualifying examination from Baba Farid University of Health Sciences. It was further clarified that alongwith Baba Farid University of Health Sciences, the candidates who have passed their qualifying examinations from other Universities established by statues of State of Punjab and in the State of Punjab shall also be eligible under this category. However, it was also clarified that

institutional preference will first be given to a candidate of the respective university. For example, if a student has passed out from Baba Farid University of Health Sciences, Faridkot or Guru Nanak Dev University, Amritsar or Punjab University, Chandigarh or Punjabi University, Patiala (in terms of Section 59(i)(b) of Baba Farid University of Health Sciences Act, 1998) then that student will get first preference in colleges affiliated to Baba Farid University of Health Sciences. Similarly this will be applicable to other Universities like Adesh University or SGRD University etc. It was also clarified that seats of Government quota in private Medical/ Dental Colleges will be filled by way of Institutional preference as already clarified above.

2) Vide Memo No.26/12/94-252/1185391/1 dated 04.03.2018, Department of Health and Family Welfare, Government of Punjab has stated that for in-services candidates (PCMS/PCMS Dental) incentive shall be given up to 30% of total marks obtained in NEET PG 2018 for admission to PG Diploma/ Degree courses.”

Still further another clarification/amendment was also issued by the State of Punjab on 2.4.2018 whereby it was provided that even the in-service doctors in the Department of Health, State of Punjab shall be

considered eligible irrespective of the fact whether they have passed qualifying exam from Baba Farid University or any other university within the State of Punjab or from any University outside State of Punjab. Accordingly, clause 15(ii) of the original notification dated 25.1.2018 was amended. This clarification is reproduced herebelow:-

“15. Distribution of Seats in Govt. Institutions (Govt. Medical/ Dental College, Amritsar & Patiala, GGS Medical College, Faridkot).

I. In the Govt. Institutions, 50% of the total seats shall be filled by the Government of India at All India level, and remaining 50% seats shall be filled at the State level as State Quota seats.

II. 50% seats of the State Quota seats shall be reserved by way of Institutional Preference, for general category candidates who have passed their qualifying examination from Baba Farid University of Health Sciences, Faridkot.

III. For In-service candidates (PCMS/PCMS Dental) incentive shall be granted upto 30% of total marks obtained in NEET PG 2018 as per the provision of Post Graduate Medical Education Regulations 2000 of MCI.”

Having heard learned counsel for the parties and appreciating the original and amended notifications issued by the State of Punjab we are of the considered opinion that the case of the petitioner no.1 cannot succeed for the simple reason that despite amendments he is not rendered eligible

under either of the provisions. However, petitioner no.2 becomes eligible on

the strength of amendment issued by the State of Punjab vide the above said amendment dated 2.4.2018. So far as original notification is concerned, it had provided reservation on the basis of institutional preference only to the extent of 50% but restricting the same to the students passing out from Baba Farid University only. However, by the above said amendment dated 9.3.2018 the degree of institutional preference reservation was extended upto 100%, however, the reservation of institutional preference was made University wise including the candidates passing out from universities situated within State of Punjab but other than Baba Farid University. On the strength of this notification the in-service doctors who had passed their qualifying M.B.B.S examination from anywhere outside State of Punjab were excluded altogether. Therefore, this necessitated the subsequent amendment dated 2.4.2018 which provided an exception to the institutional preference by providing that the in-service doctors would be considered eligible in the Government colleges/institutions irrespective of the fact whether they have passed M.B.B.S exam from Baba Farid University, any other University from the State of Punjab or even any University outside the State of Punjab. However, this amendment was restricted to amending the clause 15(ii) of the original notification. Therefore, despite this amendment the benefit of consideration for in-service doctors who have passed their qualifying M.B.B.S examination from State of Punjab is still restricted to the seats available in the State Govt. Medical colleges. As a result even after amendment, the in-service doctors who have passed their qualifying M.B.B.S exam from the University outside the State of Punjab are still not eligible. For the purposes of reference, notification dated 2.4.2018 is

“GOVERNMENT OF PUNJAB
DEPARTMENT OF MEDICAL EDUCATION & RESEARCH
(HEALTH-III BRANCH)
NOTIFICATION

No. 5/26/2016-5HB-III/1508

Dated:2-4-2018

SUBJECT: Admission to Post Graduate Degree/Diploma courses and Six month training in Ultrasonography in the Health Sciences Educational Institutions (Medical/Dental) in the State of Punjab- Session 2018.

In partial modification of the Notification No.5/26/2016-5HB-III/557 dated 25.01.2018, all PCMS doctors working in Department of Health & Family Welfare, Government of Punjab whether they have passed their qualifying examination from Baba Farid University of Health Sciences, Faridkot or any other University located in State of Punjab or any other University located out side the State of Punjab, they will be considered under category listed at clause-15(II) of the Notification as IP candidates. The Clause-15(II) stand amended accordingly.

Dated, Chandigarh
the: 02-04-2018

Sanjay Kumar, IAS
Principal Secretary to the Govt. of
Punjab, Department of Medical
Education & Research”

It deserves mention here that entire process of admissions has already been conducted as per the notifications issued by the State of Punjab. It is only the fag end of the process. Still further the final notification dated 2.4.2018, which restricted the benefit to the in-service doctors only in the Government institutes/colleges has not even been challenged by the petitioners.

In view of above, present petition is partly accepted qua petitioner no.2 while dismissed qua petitioner no.1 and is disposed of as such.

(Mahesh Grover)
Judge

29.05.2018	
rekha	
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No

(Rajbir Sehrawat)
Judge