

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No.1352 of 2019**

Dr. Tarun Banjare S/o Shri J. L. Banjare Aged About 31 Years R/o R-15, J.R. Boy's Hostel, Chhattisgarh Institute Of Medical Services, Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Directorate Of Health And Family Welfare, Mantralaya, Mahanadi Bhawan, Atal Nagar, Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. Directorate Of Medical Education Through Director, Old Nurses Hostel, Dks Bhawan, Parisar, Raipur Chhattisgarh., District : Raipur, Chhattisgarh
3. Shri Prakash Jaiswal S/o Sukhdev Jaiswal Aged About 31 Years R/o Village Jaijpur, Post Office Latori, District Surajpur Chhattisgarh., District : Surajpur, Chhattisgarh

---- Respondents**WPC No.1363 of 2019**

- Dr. Someshwar Kahara S/o Shri Bhimsen Kahara Aged About 31 Years R/o Room No. 23, Junior Resident Block, Cims Boys Hostel, Bilaspur, Chhattisgarh, Presently Posted As Junir Resident, Cims, Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Health And Family Welfare, Mahanadi Bhawan, New Mantralaya, New Raipur, District- Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
2. The Director Through Medical Education, Directorate Of Medical Education, Old Nurses Hostel, Dks Bhawan, Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
3. Dr. Prakash Jaiswal S/o Shri Sukhdev Prasad Jaiswal Aged About 31 Years R/o Banaras Road, Village- Jaijaipur, Post- Latori, District- Surajpur, Chhattisgarh., District : Surajpur, Chhattisgarh

---- Respondents

PRESENT:-

Shri Kishore Bhaduri, Shri Rahul Tamaskar, Shri Pankaj Singh and Shri Sabyasachi Bhaduri, counsel for respective petitioner/s.

Smt. Fouzia Mirza, Additional Advocate General for State.

Shri Dev Ashish Biswas, counsel for respondent No.3 in both petitions.

**D.B. : Hon'ble Shri Manindra Mohan Shrivastava, J. &
Hon'ble Smt. Rajani Dubey, J.**

CAV Order

Per Manindra Mohan Shrivastava, J.

29/07/2019

1. This common order shall govern disposal of aforesaid two writ petitions (WPC Nos.1352 & 1363 of 2019), as both the petitions involve identical issue for consideration.

2. The petitioner in the aforesaid two writ petitions, are in-service candidates, presently working as Medical Officers in the Department of Health Services, State of Chhattisgarh. The petitioner Dr. Someshwar Kahara was appointed as Junior Resident on contractual basis in the Government Medical College, Chhattisgarh Institute of Medical Science, Bilaspur, vide its appointment order dated 05-11-2014 (Annexure P-4), since then, he is continuously working there. The petitioner in other writ petition namely Dr. Tarun Banjare has not stated anywhere in his petition (WPC No.1352 of 2019), as to when he was appointed nor has annexed any order of his appointment. In fact, earlier WPC No.1352 of 2019 was filed by Dr. Tarun Banjare and Dr. Someshwar Kahara both. Dr. Someshwar Kahara, later on, withdrew his petition with liberty to file separate petition and thereafter, he filed separate writ petition registered as WPC No.1363 of 2019.

3. Admissions to Post Graduate Courses in the Government as well as

Private medical Colleges in the Country are made from amongst meritorious candidates strictly on the basis of merit selected through Centralized Entrance Examination Scheme i.e. National Eligibility & Entrance Test, popularly known as “NEET”. Every year, this entrance examination is conducted by the National Board of Examination or Agency authorized by the Central Government. For the purpose of preparation of merit list of meritorious candidate for grant of admission in the Post Graduate Courses in various Medical Colleges across the country, in the year 2019, NEET examinations were held on 06-01-2019. Results of NEET examinations were declared on 31-01-2019. Petitioner Dr. Someshwar Kahara secured 495 marks, being more than minimum qualifying marks (340/50 percentile). In exercise of power conferred under Section 3, read with Section 4 of Chhattisgarh Medical Colleges Post Graduate Courses Entrance Act, 2002 (For short “the Act of 2002”), the State government framed rules regulating admission in the Post Graduate Courses in the Medical Colleges known as “Chhattisgarh Chikitsa Snatkottar Pravesh Niyam, 2018” (For short “the Rules of 2018”) published vide Notification dated 13-03-2018 in the State Gazette (Extraordinary). Under the Rules of 2018, Rule 6 thereof provides that 50% of the Post Graduate seats in the Medical Colleges are reserved for those in-service candidates, who have served in remote or difficult areas for at least three years. Rule 7 provides for the process of selection. Under Rule 7(k), it has been provided that in-service candidates, who, as per Rule 7(ख)(2) are in-service candidates, are also required to secure minimum qualifying marks and joint merit list of successful candidates shall be prepared by adding bonus marks as per the provisions contained in Rule 7(ख)(4). Elaborate scheme as to how and up to what extent bonus marks would be awarded, has been delineated in Clauses 4, 5 & 6 of Rule 7. Rule 8 deals with detailed procedure of counseling.

4. 3rd Respondent-Dr. Prakash Jaisawal in WPC No.1363 of 2019 also appeared in the NEET Examination, 2019 and secured 511 marks.

5. While petitioners Dr. Tarun Banjare and Dr. Someshwar Kahara were expecting allotment of Post Graduate seats on the basis of they being in-service candidates against the quota reserved for in-service candidates, they came to know that 3rd respondent-Dr. Prakash Jaisawal was included in the list of meritorious candidate prepared for in-service candidates. As according to the petitioners, in the aforesaid two writ petitions, Dr. Prakash Jaisawal was in fact, not an in-service candidate and therefore, he was not be entitled to be placed in the merit list of in-service candidates and allotment of Post Graduate Seats, certain representations were made and when representation failed to evoke any response, these petitions were filed.

6. While pleadings made in the petition filed by Dr. Tarun Banjare (WPC No.1352 of 2019), are completely vague, but, in the other petition filed by Dr. Someshwar Kahara (WPC No.1363 of 2019), specific pleadings have been made that according to 3rd respondent, he was not qualified for weightage marks of in-service candidate, because he was not actually in service. It has been pleaded that 3rd respondent joined Chhattisgarh Institute of Medical Science, Bilaspur with effect from June, 2014 to January, 2017. Thereafter, he served from February, 2017 till January, 2018 at Pandit Jawahar Lal Nehru Medical College, Raipur on probation. Further averment is that 3rd respondent abandoned his service in the year 2018 and went to Delhi for preparation to seek admission in Post Graduate courses. As 3rd respondent was not in the service, he was not entitled to be treated as in-service candidate nor he could get the benefit as such, to be placed in the merit list of in-service candidates or benefit of bonus marks.

7. Learned counsel for the petitioners in the respective writ petitions laid challenge to the eligibility and entitlement of 3rd respondent as in-service candidate by submitting that 3rd respondent, having already abandoned his services from 01-04-2018, the date with effect from which, he continuously absented from duty without prior permission, was liable to be treated as having abandoned in service, in view of the terms and conditions of appointment order dated 01-02-2017. It is argued that 3rd respondent, after having abandoned his service with a view to prepare for Post Graduate examination, kept on sending letters to the department, but no order of sanction of leave was passed in his favour by the competent authority. Later on, a fresh advertisement was issued on 26-06-2018 inviting applications for filling vacancy of Medical Officer, 3rd respondent again applied and thereafter, he was again selected and appointed as Medical Officer vide order dated 06-02-2019. Thus, it is argued, from 01-04-2018 till 06-02-2019, he was not in service. It is contended that as per Rule 2(३), only those candidates are entitled to be treated as in-service candidate, who are not only in government service, but also completed three years of service as on 31st January of the year, in which, the examinations were held. 3rd respondent was not in service either at the time when the examinations were held or during the process of selection and preparation of merit list. Therefore, 3rd respondent could not at all be treated as in-service candidate and therefore, his selection and placement on the basis of in-service candidate with award of bonus marks of having served in the past, is against the rules. Learned counsel for the respective petitioners argued that the very object and purpose of providing incentives, reservation of seats and award of bonus marks in the matter of admission to Post Graduate Courses is intended to incentivise those in-service candidates, who have completed three years of service either as a regular or contract employee in the services of the government. Award of bonus marks is

based on the length of service rendered in the rural or difficult areas by those in-service candidates. Therefore, only those in-service candidates, who are serving with the government and completed three years of service, would be entitled to bonus marks for having served in the rural and difficult areas. The respondent authorities acted not only illegally, but also extending undue patronage and favour to 3rd respondent, by including his name in the merit list of in-service candidates and allotting seat earmarked for in-service candidates for grant of admission in the Post Graduate courses.

8. Per contra, learned counsel for the State and respondent No.3 opposed the reliefs as prayed for in both the writ petitions. Learned Additional Advocate General for the State argued that as far as reservation of 50% of seats of Post Graduate Diploma is concerned, the definition of in-service candidate, as defined under Rule 2(२) is wide enough to include not only those, who are actually in government service or serving under the Department of Medical Education or Department of Health Services, but also, those who have served the State in the past for a period of three years, no matter, they may not be actually in service during the process of selection through the competitive examination (NEET). According to the learned State counsel, the State is in dearth of Medical Officers and this scarcity is strongly felt in the remote and rural areas, because of the reluctance on the part of the Medical Officer to serve in those areas. The State has been appointing Medical Officers not only on regular basis, but also on adhoc or contractual basis for a limited period. These Medical Officers after joining government service in such capacity, if serve the State Government for a period of three years, they may be considered for admission to Post Graduate Courses against earmarked quota and may also get bonus marks for having served in the difficult, remote or rural areas. As the object of providing quota of in-service candidates with facility of bonus marks for

having served in the remote and difficult areas, is to incentivise Medical Officers to accept assignment in remote, difficult and rural areas, there is no reason as to why this benefit should not be extended to those, who though, may not be actually in the services, in the past, they have served the State for at least three years as on 31st of January of the year, in which, the competitive examination is held.

9. Learned counsel appearing for the 3rd respondent, while supporting the argument of the State, as an alternative submission, argued on the factual aspect contending that 3rd respondent continued in service, after having been appointed vide earlier appointment order dated 01-02-2017. It is argued that 3rd respondent after having been appointed as Registrar in the Medical College, continued to perform his duties until 31-03-2018 and by that time, he had already completed more than three years of service. However, he had to take leave due to unavoidable circumstances, because his mother was taken ill and not keeping well. Further argument is that in fact, 3rd respondent had submitted an application for grant of leave on 13-04-2018. While he was on leave for attending his ailing mother, the government issued an advertisement on 26-06-2018 inviting applications for appointment against vacancy of 423 posts of Medical Officer. 3rd respondent also applied for seeking permission to participate in the examination and thereafter, he participated and was also selected and appointed as Medical Officer vide appointment order dated 06-02-2019. Finally, he submitted his resignation from the post of Registrar on 19-02-2019 along with one month salary, whereafter an order was issued on 20-02-2019 by the Chief Medical & Health Officer, Ambikapur, directing 3rd respondent to join the services at the place of posting. It is further argued that 3rd respondent was on leave, while he was working as Registrar in the Medical College and neither he had abandoned his service nor was he terminated.

Therefore, notwithstanding his absence from duties, he continued in service until he resigned from the post of Registrar on 19-02-2019.

10. We have heard learned counsel for the parties and perused records.

11. Following two issues arise for consideration in these petitions :-

(A) “Whether the quota earmarked for in-service candidates as provided in Rule 6 of the Post Graduate Examination Admission Rules, 2018, includes those Medical Officers, who are not in service, but ex-employees, provided they have rendered three years of services in the Directorate of Medical Education or the Directorate of Health Services as on 31st January of the year, in which, examinations are held ?”

(B) “Whether 3rd respondent ceased to be in service, on the post of Registrar under the Directorate of Medical Education, with effect from 01-04-2018, and therefore, not in service during the relevant period, when the examinations were held, results declared and preparation of merit list of in-service candidates for admission to Post Graduate Courses?”

12. In order to decide the first issue, it would be necessary to examine provisions with regard to reservation of in-service candidates as have been made in the Rules of 2018.

13. Rule 2 (ठ) of the Rules of 2018 reads as under:-

“सेवारत अभ्यर्थी” से अभिप्रेत है छत्तीसगढ़ राज्य शासन के अधीन संचालनालय चिकित्सा शिक्षा एवं संचालनालय स्वास्थ्य सेवायें के अधीन सेवारत कर्मचारी (नियमित/तदर्थ/संविदा), जिन्होंने परीक्षा वर्ष के 31 जनवरी को शासकीय सेवा में 3 वर्ष पूर्ण कर ली हो, सेवारत अभ्यर्थी के रूप में पात्र होंगे !

The word “सेवारत” means “in-service” or “serving in presentee”. Merely because, the definition provides that only those serving employee, who have

completed three years of service by 31st of January of the year, in which, examinations were held, would be eligible as “in-service candidates”, does not, by any stretch of imagination, be construed to mean that even those, who are not presently serving, but who served three years in the past, are included in the definition of 'in-service' candidate.

14. Rule 6 of the Rules of 2018 reads as under:-

सीटों का आरक्षण

(एक) सेवारत अभ्यर्थियों हेतु परिभाषित नियम 2(ठ) के अन्तर्गत पात्र अभ्यर्थियों के लिये चिकित्सा महाविद्यालयों में स्नातकोत्तर डिप्लोमा पाठ्यक्रमों की 50 प्रतिशत सीटें सरकारी सेवा में उन चिकित्सा अधिकारियों के लिए आरक्षित होगी जिन्होंने दूर दराज के और/या दुर्गम क्षेत्रों में कम से कम 03 वर्ष तक सेवा की है। स्नातकोत्तर डिप्लोमा प्राप्त करने के पश्चात चिकित्सा अधिकारियों समय समय पर राज्य सरकार/सक्षम प्राधिकारी द्वारा यथा परिभाषित दूर दराज के और/या दुर्गम क्षेत्रों में दो और वर्षों तक सेवा करेंगे। यह आरक्षण मेडिकल काउंसिल ऑफ इंडिया के अन्तर्गत 'पोस्ट ग्रेजुएट मेडिकल एजुकेशन रेगुलेशन 2000' (जुलाई 2017 में संशोधित) के नियम 9(1) (ख) के अधीन प्रदत्त है।

A rational and logical construction and interpretation of the rule in the context of definition of 'in-service' candidate, as provided in Rule 2 (ठ) is that 50% seats of Post Graduate Diploma courses are earmarked for those Medical Officers, who are in government service and have completed three years of government service in remote and or difficult areas. In the entire rules, the only word “सेवारत” (serving or in-service) has been stated. There is absolutely nothing in the rules to say that the word “सेवारत” (serving or in-service) would mean that those, who are not in service, served for three years in the past would also be benefited. Such an interpretation is completely contrary to the plain language of the provision.

15. The object and purpose of providing quota for in-service candidates and provision for bonus marks for having served in the remote and difficult areas, has been explained in number of decisions.
16. In the case of ***AIIMS Students Union vs. AIIMS and Others***¹, the Supreme Court held as under:-

Reservation or only a source of entry

31. “Placing reliance on *K. Duraisamy Vs. The State of T.N.*, (2001)2 SCC 538, it was contended by the learned counsel for the appellants that the reservation of 33% post-graduation seats in favour of AIIMS students is not a reservation and use of the expression reservation in this context is misplaced. In fact, there are two sources of entry to P.G. courses of study in AIIMS which are: (i) in-house candidates of AIIMS, and (ii) open- category candidates i.e. students other than from AIIMS. The ratio of entry between the two sources is 33:67, that is to say, for admission as against 33% PG seats there is a competition as amongst the students who have passed MBBS examination from AIIMS and they get admission in accordance with the order of merit within their category. The remaining 67% PG seats are available for open category candidates, that is, left open for students other than AIIMS and they get admission in the order of merit prepared out of the candidates belonging to such open category, subject to reservations within that category. The learned counsel for the appellants further submitted that in *K. Duraisamy*’s case, this Court has upheld the legality and permissibility of defining and laying down such two sources of entry and the principles applicable to constitutional reservations for scheduled caste, scheduled tribe and backward candidates cannot be applied to test the validity of two sources of entry to PG courses of study by treating one of the sources of entry as reservation in favour of AIIMS candidates. We are not impressed. *K. Duraisamy* and *Anr.s* case was one where limited seats available for post-graduation were equally divided between in-service candidates, i.e., doctors already in the employment (of Government and Semi-Government bodies) and open category candidates which included all candidates, other than those falling within the definition of in-service candidates. This Court held that the State Government had undoubted power, as a matter of policy, insofar as the admissions to super-specialty and P.G. Diploma/Degree/M.D.S. courses are concerned to devise scheme or pattern of two sources of entry based upon a broad classification into two categories, i.e. in-service candidates and non-service or private candidates with each one of them allocated exclusively for their own category of candidates 50% of the seats; the ultimate selection for admission depending upon the inter-se merit performance amongst their own category of candidates. A candidate belonging to one category could not move across to the other category and seek entry therefrom. The PG seats available for candidates in each of the two categories were limited and the aspirants in each category were much more than the number of seats allocated to each source of entry. There was competition amongst the candidates belonging to each category. It is not as if all the candidates belonging to any of the two categories were completely assured of availability of seats so as to take away the element of competition and chances of failure for anyone in its entirety. Such scheme envisaged not reservation but classification of the sources from which admissions have to be accorded. This

1 (2002) 1 SCC 428

Court also opined that the meaning, content and purport of the expression reservation will necessarily depend upon purpose and object with which it is used. It is to be noted that in K. Duraisamys case in-service candidates did not belong to any weaker section of the society nor were one who deserved or needed to be protected. The candidates in both the categories were medical graduates. Some of them had done graduation sometime in the past and were either picked up in the government service or had sought for joining government service because, may be, they could not get a seat in post-graduation and thereby continue their studies because of shortage of seats in higher level of studies. On account of their having remained occupied with their service obligations they became detached or distanced from theoretical studies and therefore could not have done so well as to effectively compete with fresh medical graduates at the P.G. Entrance Examination. Permitting in-service candidates to do post-graduation by opening a separate channel for admittance would enable their continuance in government service after post-graduation which would enrich health services of the nation. Candidates in open category having qualified in post-graduation may not necessarily feel attracted to public services. Providing two sources of entry at the post-graduate level in certain proportion between in-service candidates and otherwise candidates thus achieves the laudable object of making available better doctors both in public sector and as private practitioners. The object sought to be achieved is to benefit two segments of the same society by enriching both at the end and not so much as to provide protection and encouragement to one at the entry level."

It is, therefore, clear that object sought to be achieved is to benefit two segments of the same society by enriching both at the end and not so much as to provide protection and encouragement to one at the entry level. If that is the object behind providing a separate quota for in-service candidates, an interpretation that the quota is available not only for those, who have completed three years of service, but also to those, who may not actually be in service, were in the services in the past for a period of three years, would be completely destructive of the very object of providing quota. The argument in this regard raised on behalf of the government has no legs to stand and we are rather surprised as to how such stand has been taken by the State on the face of rules framed by it with the background of such rules, on which, such quota is provided in the rules.

17. The next issue arising for consideration is as to whether 3rd respondent was in service or ceased to be in service, as claimed by the petitioners. In para

8.10 of the petition, it has been categorically averred that 3rd respondent, at the relevant time, was not serving the official respondents. It has been averred categorically that 3rd respondent worked in CIMS, Bilaspur, with effect from June, 2014 to January, 2017 and thereafter, served as Probationer in the Pandit Jawahar Lal Nehru Medical College, Raipur, from February, 2017 till January, 2018. It has further been stated emphatically that 3rd respondent abandoned his services in January, 2018 and went to Delhi to prepare for admission in Post Graduate Courses and was not in service of the State from February, 2018 till 31-01-2019 yet he tendered resignation from services with effect from February, 2019 as if he was continuing in service. The petitioner has made allegations of undue favour and patronage extended by the authorities to the 3rd respondent that despite all this, he was allotted seat of Diploma in Orthopedics, which the petitioner would have got as in-service candidate.

18. In its first reply, 3rd respondent has firstly sought to take stand that as per Para 2(L) of the Rules of 2018, in-service candidate would include even those employees, who worked in the past under the Directorate of Medical Education and Directorate of Health Services on (regular/adhoc/contract) basis and completed three years of government service as on 31st day of January of the year, in which, examinations is held and therefore, 3rd respondent fulfills this criteria, because he had served in CIMS, Bilaspur 23-05-2014 to 13-03-2017 and thereafter, from 15-03-2017 to 31-03-2018, he had served in Pandit Jawahar Lal Nehru Medical College, Raipur and thus, total period of service rendered is 3 years & 9 month. He asserted that he had availed leave for taking care of his mother and has denied that he was not in service.

19. Additional reply was, later on, filed by 3rd respondent, wherein apart from repetition of earlier pleading, it has been added that after having availed leave

from 01-04-2018, he joined his service with effect from 29-01-2019. It has also been stated that pursuant to advertisement dated 26-06-2018, inviting applications for appointment on the post of Medical Officer, 3rd respondent filed an application seeking permission to apply and appear in the interview. 3rd respondent was selected and appointed vide appointment order issued on 06-02-2019 and then he submitted resignation from the post of Registrar on 19-02-2019. It has also been stated that he had not abandoned his services and was working under the government.

20. The averments made in the two affidavits filed by 3rd respondent, would show that 3rd respondent has come out with the case that due to illness of his mother, he had proceeded on leave on 01-04-2018 and during this period, when another advertisement was issued on 26-06-2018, he applied by submitting application seeking permission to appear, he joined his services on 29-01-2019 and after issuance of appointment order dated 06-02-2019, he finally resigned from his services with effect from 19-02-2019.

21. As far as the State is concerned, this Court finds that the State has conveniently avoided to take stand on the issue as to whether 3rd respondent had abandoned his service, as stated by the petitioner. If we may say so, there is no whisper in the counter-affidavit filed by the State on the factual aspect as to whether 3rd respondent had abandoned his services. The reply of the State is mostly confined to interpretation and meaning of "in-service candidate". As we have dealt with hereinabove, the State has gone to the extent of saying that the one, who has served in the past, is also treated as in-service candidate, even though, he was not actually in service. The aforesaid contention has also been repelled for reasons stated hereinabove.

22. Having found that the petitioner had been filing various documents

obtained under Right to Information Act to demonstrate that 3rd respondent was not actually on duty and remained continuously absent with effect from 01-04-2018 and 3rd respondent and State both taking evasive stand and trying to suppress true facts, this Court had directed the State to produce original records and files relating to selection and appointment of 3rd respondent as contractual employee and as Registrar of the Medical College as also records relating to selection, pursuant to which, 3rd respondent was appointed as Medical Officer, vide order dated 06-02-2019.

23. Indisputably, 3rd respondent was selected and appointed on the post of Registrar in the Medical College vide order dated 01-02-2017, filed as Annexure-A along with the application for taking documents on record filed by the petitioner on 10-05-2019. This order clearly shows that the 3rd respondent was appointed on probation on the post of Registrar, Medical College, for a period of two years.

24. One of the terms and conditions of appointment of the 3rd respondent, as contained in Clause 4 of the appointment order, relevant for the present case, was as below:-

4. “अस्थाई नियुक्ति के दौरान उनकी अस्थायी सेवाएं किसी भी समय एक पक्ष द्वारा एक माह का नोटिस देकर या उसके एवज में एक माह का वेतन तथा भत्ते देकर समाप्त की जा सकेगी । नोटिस देने के पहले या बाद में यदि वे अपने कार्य से बिना पूर्वानुमति के अनुपस्थित रहेंगे, तो यह समझा जावेगा कि उन्होंने अनुपस्थिति के दिनांक से बिना नोटिस दिये सेवा छोड़ दी है तथा उन्हें एक माह की अवधि में से जितनी अवधि कम हो उस अवधि का वेतन तथा भत्ते का भुगतान करना होगा ।”

The aforesaid clause, as it reads, clearly constitutes one of the conditions of the employment that the temporary services as probationer could be brought to an end by giving a months notice or by depositing a months salary in lieu of

notice. The second part of this clause categorically provides that before or after notice, if the employee remains absent from his duty without prior permission, it will be treated that he has abandoned his services from the date of absence and the employee will have to pay salary and allowances for the part of the month.

The aforesaid clause 4 unmistakably shows that a probationer could either resign by giving a month's notice or he could be discharged from services by giving a month's notice or he will have to pay one month's salary and allowances in lieu of notice and he would be treated as having abandoned his services, if he remained absent from his duties without prior permission. Thus, the relationship of Master and Servant with regard to appointment of probationer vide appointment order dated 01-02-2017 could come to an end by any of the three modes as provided in Clause 4 of the order of appointment.

25. It has, therefore, to be examined as to whether the relationship of Master and servant as between 3rd respondent and the State created under order dated 01-02-2017 came to an end in accordance with Clause 4 of his appointment order, on the post of Registrar of the Medical College.

26. While 3rd respondent came out with a feeble plea of he having continued in service, though remained on leave with effect from 01-04-2018 on the ground of illness of his mother, we find that 3rd respondent has not placed on record, any order passed by the competent authority granting him prior permission to proceed on leave. In fact, there is no document filed by 3rd respondent or by the State to establish that 3rd respondent was granted prior permission to proceed on leave with effect from 01-04-2018. From the documents, which have been placed on record, as has been the stand of 3rd respondent himself, he remained absent from his duties with effect from 01-04-2018. The

information received under Right to Information by the petitioner and placed on the records of this case, clearly reflects the factual position. 3rd respondent also does not dispute that from 01-04-2018, he was not on duty. According to him, he had availed leave. However, there is no order relating to prior permission or grant of leave, filed by 3rd respondent or by the State. From the original records and files placed before us, we find that 3rd respondent had submitted an application on 17-04-2018 before the Dean, Pandit Jawahar Lal Nehru Medical College, Raipur, stating that he is required to attend his ailing mother and therefore, he would not be able to attend the duties from 11-04-2018 onwards. An endorsement of the Dean recorded on 23-04-2018 is that 3rd respondent should submit his application through proper channel. The Director-cum-Professor/Head of the Department of Medicine, vide his memo dated 28-05-2018 informed Dean of the Medical College that 3rd respondent is absent from duties without prior permission with effect from 01-04-2018. A letter was issued on 30-05-2018 to 3rd respondent from the office of the Dean, Pandit Jawahar Lal Nehru Medical College that he has remained absent from duties without prior intimation with effect from 01-04-2018 and therefore, he is required to show cause. An application, was thereafter, filed by 3rd respondent on 01-06-2018 before the Dean stating that he is required to attend his ailing mother, therefore, he is unable to perform his duties since 01-04-2018 and due to mistake, he could not inform the department, for which, he seeks apology and undertakes not to repeat this mistake in future. There is another application dated 27-09-2018, in which, 3rd respondent again requested the Dean to grant him further time of 1 & 1/2 months to join duty. Record also contains letter dated 13-07-2018 signed by the Dean on 12-07-2018, in which, it has been recorded that his application dated 01-06-2018 has been received and considering the ground of illness of his mother, his case has been considered sympathetically,

but he has been directed to immediately join the duties, so that, his period of absence be recommended as Leave without pay and forwarded to the government. Another communication made by the Head of Department /Dean, Medical College on 06-09-2018 is that 3rd respondent has remained absent from duties with effect from 01-04-2018 till date. From the notice dated 11-09-2018 issued by the Dean, Medical College to the 3rd respondent, it is revealed that he remained absent from duty with effect from 01-04-2018 without prior information and though, he was asked to give explanation, no such information has been received, which shows that he is no longer interested in service and therefore, he is required to submit his explanation regarding unauthorized absence within seven days. Finally, on 15-01-2019, the Dean, Medical College sent a letter to the State Government, Department of Medical Education, informing that 3rd respondent has remained unauthorizedly absent from duties with effect from 01-04-2018 and therefore, the State may take necessary steps for termination of services. Soon thereafter, on 29-01-2019, 3rd respondent submitted an application to the Dean, stating that now, health of his mother is improved, resultantly, he has joined back his services and therefore, his joining may be accepted. 3rd respondent then submitted resignation on 15-02-2019, which was forwarded to the government on 21-02-2019 by the Dean.

27. The aforesaid communications placed in the original records and the files, leave no manner of doubt that 3rd respondent proceeded on unauthorized leave and remained absent from his duties without seeking any prior permission with effect from 01-04-2018. Neither it is the stand of the respondents nor any document filed before this Court nor revealed from the original records and files that before proceeding on leave with effect from 01-04-2018, 3rd respondent has taken any prior permission.

Therefore, per force, clause 4 of the appointment order dated 01-02-2017, by which, 3rd respondent was appointed as probationer, he ceased to be in service by necessary implication upon operation of the terms contained in Clause "4" of the appointment order. That clause 4 of the appointment order dated 01-02-2017 contained specific condition, according to which, a probationer could either be discharged by specific order of termination or he could resign by submitting an application. As has been dealt with hereinabove, Clause 4 of the appointment order dated 01-02-2017, apart from providing termination and resignation, also provided for abandonment of service in certain contingencies. Thus, under three contingencies, relationship of Master and Servant could come to an end. Firstly, by termination, secondly by resignation and thirdly by abandonment as contemplated therein. The terms of Clause 4 relating to abandonment of service became operative and effective, the moment, 3rd respondent, a probationer, absented from duty without prior permission with effect from 01-04-2018. This requirement of prior permission obliged 3rd respondent to necessarily obtain sanction of the competent authority, prior to leaving duty. From the records, we did not find that the fact that 3rd respondent absented from duty with effect from 01-04-2018 was brought to the notice of the appointing authority i.e. the State Government, who appointed 3rd respondent vide order dated 01-02-2017. It was the bounden duty of the Dean to immediately bring this fact to the notice of the Government. But, for the reasons best known to the Dean, he kept on delaying the matter. The petitioner appears to be correct in alleging that the authorities, particularly Dean of the Medical College was extending undue favour and patronage to 3rd respondent, who had otherwise abandoned service by remaining absent without prior permission, the condition, which he was fully aware of at the time of accepting appointment on the post of Registrar, Medical College, vide order

dated 01-02-2017. He fully knew the consequence that once he remained absent, without prior permission, he will be treated as having abandoned service. The competent authority to take decision in this matter was the State Government and no other subordinate authorities.

28. The conduct of 3rd respondent otherwise also shows that he had abandoned his service. This is clearly manifest from his application offering his candidature for the appointment on the post of Medical Officer in the Department of Health Services, in response to advertisement dated 26-06-2018. It is to be noticed that vide order dated 01-02-2017, 3rd respondent was appointed as Registrar in the Medical College, in the Department of Medical Education, whereas advertisement dated 26-06-2018 was issued, inviting applications for appointment on the post of Medical Officer in the Directorate of Health Services. In the on-line application form for the post of Medical Officer, Department of Health and Family Welfare, submitted by 3rd respondent, declaration given by him in Column 16 & 17, is as below:-

(16) यदि आवेदक सेवारत हो या सेवारत रहे हो तो पूरा विवरण भरे :-
Year 0 Total Experience (कुल अनुभव) : Months
(17) Are you presently working (in Govt. Dept.) : नहीं

Curiously enough, 3rd respondent, apart from declaring that he is presently not working in any government department, no details of experience about having worked in government service, were given. The declaration given by 3rd respondent in his application form dated 04-07-2018, which contains the aforesaid clause 16 & 17 of the application, as below:-

I PRAKASH JAISWAL do hereby declare that all the information

furnished above are true, complete and correct to the best of my knowledge and belief. In the event of day of the aforesaid information being found false or incorrect at any stage here after, my candidature/selection is liable to canceled without any notice to me.

It is thus clear that when 3rd respondent submitted an on-line application on 04-07-2018, he clearly declared that he was not in service.

29. We find that 3rd respondent with no intention of performing duties and serving as Registrar and having abandoned service, had only been submitting various applications from time to time seeking leave and sanction for his unauthorized absence. Not only this, he submitted an application seeking permission to appear in the examination for selection on the post of Medical Officer, pursuant to advertisement dated 26-06-2018, as if he was continuing in service, whereas he no longer remained in service, having abandoned the same. This application was submitted by 3rd respondent before the Dean, Head of the Department, Medical College on 01-07-2018 and three days thereafter, when he submitted on-line application on 04-07-2018, he declared that he was not in service. Even though, on account of 3rd respondent having unauthorizedly remained absent from duties with effect from 01-04-2018 and thereafter, having abandoned his services, as per clause 4 of the appointment order dated 01-02-2017, 3rd respondent was submitting applications in the department as if he was in service. It is quite clear that 3rd respondent was playing the game of hide and seek and attempted to misleading the authorities. He did not submit application on 01-07-2018 for grant of permission to appear in the examination. But, no such permission was granted to him. The Dean retained the letter with him and did not inform the State Government. Three days thereafter, 3rd respondent declared on his on-line application that he was not in service.

30. In drawing aforesaid conclusion based primarily on unauthorized absence as provided in Clause 4 of the appointment order dated 01-02-2017, we place reliance on the decision of the Supreme Court in the case of ***Buckingham and Carnatic Co. Ltd., vs. Venkatiah and another***². In that case, an employee had proceeded on leave of six days, to which, he was entitled. Though, the leave expired, the employee did not join back his duties after the expiry of leave and remained unauthorizedly absent without leave. When he again appeared before the authorities requesting to allow him to join after long absence, which was unauthorized one, joining was refused. The employer relied upon applicable standard standing order No.8(II) which provided that where an employee remain absent without leave beyond stipulated period, he shall be deemed to have left the services. Placing reliance upon the certified standing orders as embodying terms and conditions of service, a distinction was drawn between abandonment and relinquishment of service to be inferred from length of absence, surrounding circumstances and it being a question of intention and another situation, and those cases where parties agreed upon the terms and conditions of the service included in certified standing orders where the doctrine of common law and considerations of equity would not be relevant. It was held that it would then be a matter of construing the relevant terms of contract itself. Observation and enunciation of concept of abandonment of service in Service Jurisprudence, were stated as below:-

5 “Mr. Sastri for the appellant contends that the case of Venkatiah falls squarely within the provisions of Standing Order 8(ii) and the High Court was in error in holding that the decision of the appellant in refusing to condone the absence of Venkatiah was either unfair or improper, or that it contravened the provisions of [S.73](#) of the Act. Let us first examine Standing Order No. 8(ii) before proceeding any further. The said

2 AIR 1964 SC 1272

Standing Order reads thus:

"Absent without Leave: Any employee who absents himself for eight consecutive working days without Leave shall be deemed to have left the Company's service without notice thereby terminating his contract of service. If he gives an explanation to the satisfaction of the management, the absence shall be converted into leave without pay or dearness allowance.

Any employee leaving the Company's service in this manner shall have no claim for re-employment in the Mills.

But if the absence is proved to the satisfaction of the Management to be one due to sickness, then such absence shall be converted into medical leave for such period as the employee is eligible with the permissible allowances."

This Standing Order is a part of the certified Standing Orders which had been revised by an arbitration award between the parties in 1957. The relevant clause clearly means that if an employee falls within the mischief of its first part, it follows that the defaulting employee has terminated his contract of service. The first provision in clause (ii) proceeds on the basis that absence for eight consecutive days without leave will lead to the inference that the absentee workman intended to terminate his contract of service. The certified Standing Orders represent the relevant terms and conditions of service in a statutory form and they are binding on the parties at least as much, if not more, as private contracts embodying similar terms and conditions of service. It is true that under common law an inference that an employee has abandoned or relinquished service is not easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon service. Abandonment or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf. But where parties agree upon the terms & conditions of service and they are included in certified Standing Orders, the doctrines of common law or considerations of equity would not be relevant. It is then a matter of construing the relevant term itself. Therefore, the, first part of Standing Order 8(ii) inevitably leads to the conclusion that if an employee is absent for eight consecutive days without leave, he is deemed to have terminated his contract of service

and thus relinquished or abandoned his employment.”

31. We, therefore, conclude on the second issue that 3rd respondent had already abandoned his service on account of he having remained unauthorizedly absent without due prior permission with effect from 01-04-2018. He came back to government service only after selection pursuant to advertisement dated 26-06-2018 and vide order dated 06-02-2019, appointed as Medical Officer for a period of one year.

32. We accordingly declare that 3rd respondent was not eligible to get admission in the Post Graduate Medical Course from the quota of in-service candidates, it being against the mandate of statutory rules governing admission. Official respondents, are therefore, directed to forthwith cancel the provisional admission of 3rd respondent -Dr. Prakash Jaiswal.

It is clear that if 3rd respondent would not have been treated as in-service candidate, candidate next in order of merit in OBC category would have secured admission, however, our hands are tied in view of the notified time schedule and last date of admission to various medical courses including Post Graduate seats as well, published vide Annexure R-1, under the directions of the Supreme Court in the case of WPC No.76/2015 in I.A.No.7 & 8 (Ashish Ranjan and Ors. Vs. Union of India and Ors.) dated 18-01-2016. The last date of joining as per the date of notification having already expired on 18-05-2019, therefore, direction for consideration of admission of petitioner-Dr. Someshwar Kahara cannot be issued at this stage, even though, we hold that 3rd respondent-Dr. Prakash Jaiswal is not eligible for admission as in-service candidate in that quota of seats for Post Graduate courses.

33. The petition WPC No.1352 of 2019, filed by Dr. Tarun Banjare being

bereft of any material pleadings and proper relief and therefore, at the instance of the petitioner-Dr. Tarun Banjare, no directions can be issued and the said writ petition, is therefore, dismissed.

34. Accordingly, the writ petition (WPC No.1363 of 2019) is partly allowed to the manner and to the extent stated hereinabove.

35. Before parting with the case, we direct the Registrar (Judicial) to keep in sealed cover, true Photostat copies of the original records produced for perusal of this Court by the learned Additional Advocate General during the course of hearing. True Photostat copies of the original records shall form part of the records of the present case. The original records shall be returned to the learned Additional Advocate General under acknowledgment of receipt.

SD/-
(Manindra Mohan Shrivastava)
Judge

SD/-
(Rajani Dubey)
Judge