

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

CWP No.9609 of 2019 (O&M)

Date of decision: 22.10.2019

Urmi Aggarwal and others

..Petitioners

Versus

State of Haryana and others

..Respondents

**CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY
HON'BLE MR. JUSTICE SUDHIR MITTAL**

Present: Mr. Rakesh Nagpal, Advocate
for the petitioners.

Mr. Ankur Mittal, Addl. AG, Haryana
for respondent No.1-State.

Mr. Shreenath A. Khemka, Advocate
for respondent No.2.

Mr. M.S. Longia, Advocate
for respondents No.3 and 12.

Daya Chaudhary, J.

Prayer in the present writ petition is for issuance of a writ in the nature of certiorari for quashing of Merit List prepared on 04.04.2019 (Annexure P-4) for counselling to be held for the State of Haryana for 11 seats in Post Graduate Institute of Dental Sciences (PGIDS), Rohtak for the Post Graduation Course in Master of Dental Surgery (MDS). A further prayer has been made for quashing of clause 10(XVII) of notification dated 19.03.2019 whereby benefit of 10% marks each year subject to the outer limit of 30% marks obtained in NEET (PG exam) to the service candidates, who rendered service in the institution in remote/difficult/rural areas, has been provided. A further prayer has also been made for direction to

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respondents to give one seat to the petitioners as per merit list uploaded on 02.04.2019.

Briefly the facts of the case as made out in the present writ petition are that the petitioners passed Bachelors of Dental Surgery from different institutions and being eligible for admission for the post graduate course applied in pursuance of advertisement for National Entrance-cum-Exam Test in the month of October, 2018. Finding themselves to be eligible, they appeared in the examination held on 14.12.2018. The result was declared on 14.01.2019. All the petitioners qualified the test. A list of eligible candidates for admission to MDS course was prepared by respondent No.2. All the petitioners except petitioner No.5 filed objections and served a notice through attorney via e-mail to respondent No.2 on 03.04.2019 before 5:00 pm. In final list dated 04.04.2019, petitioner No.2 was given institutional seat and petitioners No.3 and 4 were given open seats whereas petitioners No.1 and 5 were not allotted any seat. As per notification, total 33 seats were allocated to State of Haryana. Out of those 33 seats, 50% i.e. 17 seats were given to All India Quota whereas 50% i.e. 16 seats were for State Quota. Out of total 50% State Quota, 25% i.e. four seats were allocated to Institutional Quota; 11 seats were kept for Open Category and one seat was given to candidate belonging to Person with Disability (PWD). The petitioners are aggrieved by Clause 9 (IV) of Post Graduate Medical Education Regulations, 2000 to the extent that weightage of 10% to 30% given to some of the candidates.

Learned counsel for the petitioners submits that petitioners No.1 and 5 have not been given benefit of institutional preferences because

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of not rendering service in rural areas. He further submits that had the weightage of marks be not given to the private respondents then the petitioners would have been kept upper in the merit list and they would have got the admission in their preferred subject/field for MDS course. Petitioner No.2 has been given institutional seat and petitioners No.3 and 4 have been given open seat whereas petitioners No.1 and 5 have not been allotted any seat. Learned counsel further submits that double benefit has been given to private respondents whereas as per various judgments including judgment rendered by Hon'ble the Apex Court, the weightage of marks cannot be given to any candidate working in rural area as while giving institutional preference, no weightage of marks can be given. Learned counsel has also relied upon judgment rendered by Hon'ble the Apex Court in ***Dr. Ankit and others vs. State of Haryana and others, Special Leave to Appeal (civil) No.15869 of 2017 decided on 30.05.2017*** and judgments rendered by this Court in ***Dr. Mitthat and others vs. State of Punjab and others, 2015(2) SCT 734, Dr. Ankit and others vs. State of Haryana and others, CWP No.8497 of 2017 decided on 05.05.2017 and Vikas Nehra and others vs. State of Haryana and others, LPA No.762 of 2017 dated 24.07.2017*** in support of his arguments. Learned counsel also submits that had the proper procedure and ratio of judgments in above said cases, been followed by the respondents, the petitioners could have been admitted but still their cases have not been considered. At the end, learned counsel for the petitioners submits that petitioners No.2 to 4 have got the different field instead of institutional preferential field due to above said reason.

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Learned counsel appearing for respondents No.1, 2 and 12 have opposed the submissions made by learned counsel for the petitioners and submit that same controversy was there in the judgment of Hon'ble the Apex Court in ***State of Uttar Pradesh and others vs. Dr. Dinesh Singh Chauhan, 2016 (8) SC 201*** wherein it has been held that admission is to be as per merit list on the basis of NEET. The sole exception being Clause 9 (iv) of MCI Regulations 2010, which gives incentive @ 10% of the marks obtained in NEET for each year of service rendered in the institutes located in remote/difficult areas/rural areas upto maximum of 30% of the marks obtained in NEET. Learned counsel further submits that the award of 83.33/44.44 marks was struck down along with notification dated 21.04.2017. The judgments relied upon by learned counsel for the petitioners are not applicable in the present controversy. The judgment rendered by Hon'ble the Apex Court in **Dr. Dinesh Singh Chauhan's case (supra)** has attained finality.

Heard arguments of learned counsel for the parties and we have also perused the documents available on the file.

Admittedly, same controversy was there in **Dr. Dinesh Singh Chauhan's case (supra)** wherein it was held that the procedure for admissions to Post Graduate Medical Examinations was a subject matter of the Union, falling under List 1 of the 7th Schedule of the Constitution, which was wholly determinable by the MCI Regulation, which was a Code itself. It was also held that the admissions were to be as per merit list on the basis of NEET. The sole exception being Clause 9 (iv) of MCI Regulations 2010, which gave an incentive @ 10% of the marks obtained in NEET for each

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year of service rendered in the institutes located in remote/difficult areas/rural areas upto maximum of 30% of the marks obtained in NEET.

This fact has not been disputed by learned counsel for the respondents also. The relevant portion is para No.35 of the judgment rendered in **Dr. Dinesh Singh Chauhan's case (supra)**, which is reproduced as under: -

“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.[11] In fact there is a proposal to make one year service for MBBS students to apply for admission to Post Graduate

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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

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14 of the Constitution, being in larger public interest.”

On perusal of said finding recorded in para No.35 of the judgment rendered in **Dr. Dinesh Singh Chauhan's case (supra)**, it is apparent that the procedure as provided in Clause (iv) of the Regulation 9 is just, proper and reasonable, which fulfill the test of Article 14 of the Constitution of India and the same is stated to be in the larger public interest.

In the present case also, the petitioners have challenged the said provision of Clause 9(iv) and Clause 10 (XVII).

Accordingly, by considering the ratio of judgment rendered in **Dr. Dinesh Singh Chauhan's case (supra)**, we find no merit in the contentions raised by learned counsel for the petitioners and the writ petition being devoid of any merit is, hereby, dismissed.

(DAYA CHAUDHARY)
JUDGE

22.10.2019
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(SUDHIR MITTAL)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes