IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

CWP No.6070 of 2020(O&M)

Date of Decision:-30.06.2020

Dr. Varun Garg & Anr.

.....Petitioners.

Versus

State of Punjab & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE SANT PARKASH

Present:- Mr. H.C. Arora, Advocate for the Petitioners.

Mr. Pankaj Gupta, Additional Advocate General, Punjab.

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JASWANT SINGH, J.

Hearing conducted through Video Conferencing.

1. The present writ petition has been filed seeking quashing of the Order dated 26.9.2019 (**P-8**) vide which the State Government has rejected the demand of the Rural Medical Officers (hereinafter referred to as RMO's) to be considered equivalent to PCMS (Punjab Civil Medical Service) doctors for the purpose of awarding 30% marks as incentive in Post-Graduate Admissions, in terms of Regulation 9 (IV) of the Postgraduate Medical Education Regulations, 2000 of the MCI. Further the petitioners are seeking quashing of the Notification dated 29.3.2019 (**P-4**) to the extent the notification envisages the grant of incentives of 30% of total

marks obtained in NEET PG examination only to In-service PCMS/PCMS (Dental) doctors. Still further, the prayer made by the petitioners is to direct the respondents to conduct admissions to the Postgraduate Degree courses in the State by granting incentive marks to Rural Medical Officers serving in remote and difficult areas.

The notification dated 29.3.2019 (P-4) pertains to the Session 2019-20, but the position for the session 2020-21 remains the same on account of operation of the order dated 26.9.2019 (P-8) viz the speaking order vide which the claim of RMO's has been rejected. Therefore till such time the sanctity of the speaking order dated 29.03.2019 is not adjudicated, the issue will not come to rest.

2. The RMO's were appointed by the Zila Parishads on contractual basis. The services of the RMO's were later on regularised by the Zila Parishads. The petitioners had also joined the services in Zila Parishads on contractual basis. Petitioners vide appointment letter (Annexure P-1) were inducted in regular service of Zila Parishads.

The services of the RMO's are governed by the Punjab Panchayati Raj Rural Medical (Group-A) Service Rules, 2011 (hereinafter referred to as 2011 rules). A bare perusal of the 2011 rules makes it evident that the service of the RMO's is at District level and they do not form part of Government Service and are employees of the Zila Parishads.

3. The State of Punjab issued a notification dated 9.3.2019 (Annexure P-4) for admission to Post Graduate Degree /Diploma courses and six months training in Ultrasonography in the Health Sciences Educational Institutions (Medical/Dental) in the State of Punjab for the year 2019. It is stated that petitioners are aggrieved of Clauses 15.3 to 15.4.2 of

the abovesaid notification of the State Government vide which benefit of incentive marks for admission to the Postgraduate Degree/Diploma courses has been extended only to PCMS/PCMS (Dental) Doctors. The relevant clauses impugned in the present petition reads as under:-

" 15.3 For In-service candidates (PCMS/PCMS Dental) incentive shall be granted upto 30% of total marks obtained in NEET PG 2019 as per the provision of Post Graduate Medical Education Regulations 2000 of MCI who fulfills the eligibility criteria as mentioned is clause 15.4.1(a).

15.4 Eligibility criteria for Incentive Category:-

15.4.1 For in-service Regular PCMS/ PCMS (Dental) doctors (Incentive Category) :-

a) The Eligibility requirements for grant of incentive (of 30% marks) shall be as under:

i. Regular PCMS/ PCMS (Dental) employee, and

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)l 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 ZilaParishad.

iv. Has cleared the probation period, and

v. Has Good service record, and

vi. Has no vigilance/departmental/disciplinary inquiry pending against him/her, and

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, 2019.

(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, alongwith application, submit a Certificate duly authenticated and signed by the Civil Surgeon regarding length of service, length of rural service and number of years of service left after completion of PG course and that no Departmental or Vigilance Inquiry is pending against the candidate and that based on this Certificate, the Department of Health & Family Welfare will grant eligibility certificate for participation in counselling for PG admission.

(e) Once this Eligibility Certificate is granted to a candidate by the Department of Health & Family Welfare, the candidate shall, subject to other conditions mentioned above, be eligible for submitting an application under the 'incentive category' and for counseling for admissions to PG courses. However, upon selection for admission to PG courses, the candidate would be required to furnish an 'Indemnity Bond' as mentioned in sub-para (f) below. After submission of 'Indemnity Bond by a candidate, Department of Health & Family Welfare would issue him NOC for admission and the candidate would stand relieved from the Department of Health & Family Welfare.

(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

(g) In-Service PCMS doctors of incentive category would get full pay (minus NPA) as per instructions No. 27/35/15-5H2/447931/1 dated 26.03.2015 of the Department of Health & Family Welfare, Punjab.

15 4.2 Candidates other than in service PCMS / PCMS (Dental) doctors (incentive category)

(A) PCMS I PCMS (Dental) candidates:

i) In-service PCMS I PCMS (Dental) doctors candidates who are eligible for 30% incentive marks would be covered in clause 15.4.1 above. Other in-service PCMS I PCMS (Dental) candidates are also eligible to apply for PG Degree/ Diploma courses. The eligibility conditions are that the PCMS doctors (a) should have a good service record, (b) No charge sheet or departmental / vigilance enquiry is pending under rule 18 of the Punjab Civil Service Rules, 1970 and (c) No challan has been submitted in the judicial courts regarding criminal cases. There would be no requirement of minimum rural service.

(ii) These candidates would also require verification of service and eligibility, certificate as explained in para 15.4.1 (d) and indemnity bond and NOC as explained in para 15.4.1 (e). As per instructions of '

the Department of Health & Family Welfare, they would be required to serve the department for 3 years and 5 years after completion of diploma and • degree course respectively. They would also execute indemnity bond of Rs. 10 lakhs and Rs. 15 lakhs in respect of diploma and degree course, and this amount would be forfeited in the event of their failure to complete the service of 3 years and 5 years respectively.

(iii) Such PCMS / PCMS (Dental) doctors will not get any salary and will complete the diploma I degree course at their own expenses. However, they would be entitled to fixed emoluments/stipend as ' determined by the Punjab Government from time to time.

(B) Other doctors :

(i) This category would include doctors working in other departments namely Rural Medical Officers (RMOs) in the Department of Rural Development, doctors in Municipal Corporations under the Department of Local Bodies, doctors serving in various Boards &Corporations of Punjab Government and fresh candidates.

(ii) Doctors who are serving in Boards and Corporations and other Departments will be allowed to participate in the counselling only after they produce NOC from their employer. Doctors would be required to abide by the terms and conditions of the NOC issued to them by their respective employers. These doctors would get fixed emoluments I stipend as determined by the Punjab Government from time to time.

(iii) Doctors who are not employed in other Departments, Boards & Corporations of the Punjab Government and other fresh candidates, would be required to submit an indeminity bond of Rs. 15 lakhs to serve the Punjab Government for a period of 2 years after completion of diploma I degree course. This clause will not be applicable in case the offer is not given by the Punjab Government within a period of one year of passing of the PG examination.

The candidate will inform the Punjab Government that he/ she has passed PG examination. Failure to serve the Punjab Government for a period of two years will lead to recovery of bond money by the Punjab Government. These doctors would get fixed emoluments I stipend as determined by the Punjab Government from time to time for the complete course. "

4. That the State of Punjab, Department of Medical Education and Research, has issued a speaking order dated 26.9.2019 (P-8) which has been

impugned in the present petition, whereby the claim of the RMO's for grant of incentives in parity with PCMS doctors has been declined. The order dated 26.9.2019 has been issued in pursuance to the directions issued by the Hon'ble Supreme Court of India in the case of **State of Punjab and another Versus Rakesh Kumar and others, Civil Appeal No. 8171-8173 of 2017 (Annexure P-5)**.

SUBMISSIONS:-

5. Ld. Counsel for the petitioner submits that the similar notification of the respondent department was challenged by certain similarly situated RMO's in **CWP No. 7026 of 2017 (**titled as **Rajesh Kumar & Anr. Versus State of Punjab & Ors)** who also prayed for grant of incentive marks to them for admission to postgraduate degree courses. The said Civil Writ Petition was allowed by this Court vide order dated 26.4.2017. It is further submitted that the respondent State of Punjab, filed S.L.P. against the said judgement, before the Hon'ble Supreme Court of India which was converted into **Civil Appeal No. 8171-8173 of 2017, State of Punjab and another Versus Rakesh Kumar and others**. The same was allowed,*inter-alia*, on the ground that counselling for admission to postgraduate courses has already been completed and the doctors have already been selected for admission and have also paid the fees and joined the course, therefore High Court ought not to have interfered with the process of admission.

Ld. Counsel for the petitioner further submits that the Hon'ble Supreme Court of India, keeping in view the fact that admissions for the said year had already been completed, was not inclined to interfere with the admissions of the said year, to the post-graduation courses. But the Hon'ble

Supreme Court directed the State Government to reconsider the entire issue pertaining to the incentives to be given to RMO's afresh by keeping in mind the objective with which the Regulation 9 of the MCI Regulations, 2000 was made and as interpreted by the Hon'ble Supreme Court in **State of U.P. Vs. Dinesh Singh Chauhan, 2016 (9) SCC 749**.

5.1 It has been submitted by the Counsel for the petitioners that the respondent state has failed to consider the matter pertaining to grant of incentives to RMO's and has ignored the objective with which Regulation 9 of the MCI regulations, 2000 was promulgated. As per the petitioners the letter and spirit of the Regulation 9 of the MCI Regulations, 2000 as interpreted by the Hon'ble Supreme Court of India in **Dinesh Singh Chauhan's case (supra)** requires that the petitioners be granted incentives and should not be discriminated in any manner viz a viz the PCMS doctors on the issue of giving admission in the post-graduation courses.

5.2 Ld. Counsel for the petitioner also relies upon the order dated 27.3.2019 (Annexure **P-10**) passed by Ld. Single Judge of the Hon'ble High Court of Judicature at Madras in W.P. No. 8097 of 2019 and W.M.P. No. 8688 of 2019 to contend that in similar circumstances where doctors of E.S.I. Dispensaries (operating under Employees State Insurance Act, 1948) were not being granted benefits of the posting in rural service at parity with the doctors, posted in other hospitals, the Hon'ble High Court issued directions to include the ESI dispensaries located in classified areas namely hilly/remote/rural areas to be considered for grant of incentives and to extend the benefit of incentive marks to the doctors working in ESI dispensaries.

6. Ld. Counsel for the respondent has vehemently tried to defend

the actions of the State Government. The counsel for the respondent state contends that the 2019 notification of the state, identifies two distinct classes, Firstly those who are in-service regular PCMS/PCMS (Dental) doctors; and Secondly those who are Rural Medical Officers comprised in Punjab Panchayati Raj Rural Medical Group (Group-A) Service Rules, 2011 (hereinafter referred to as 2011 rules).

6.1 As per the respondent State, Rural Medical Officer's serving in Zila Parishads cannot be equated with and have never been equated with PCMS/PCMS (Dental) Doctors. Even prior to grant of incentive for service in remote/difficult areas, 60% seats in the State quota were reserved for in-service doctors. This benefit of reservation was also limited only to PCMS/PCMS (Dental) Doctors.

6.2 Ld. Counsel for the respondent to support his argument places reliance upon the judgement rendered by Ld. Single Judge of this Court in **CWP No. 11188 of 2013 dated 22.5.2013, titled as Dr. Manu Gupta Vs. State of Punjab and others**, to contend that similar relief sought by the RMO's has already been denied by this Court. It is further contended that the judgement rendered by this Court in CWP No. 11188 of 2013 has been approved by the Hon'ble Division Bench in **LPA No. 1043 of 2013**, **Dr. Manu Gupta Vs. State of Punjab and others decided on 25.7.2013**, reported as **2014 (1) SCT 48** and the challenge to the same by way of **SLP No. 25931 of 2013** titled as **Dr. Kulmeet Kaur Mahal and others Vs. State of Punjab** has been dismissed by the Hon'ble Supreme Court of India on 11.9.2013. Thus the issue being settled by Hon'ble Supreme Court of India cannot be re-agitated by the petitioners/RMO's.

7. Ld. Counsel for the petitioner to controvert this argument has

stated that the Hon'ble Supreme Court of India in **Civil Appeal No. 8171-8173 of 2017, State of Punjab and another versus Rakesh Kumar and others** (Annexure **P-5**) while directing the respondent state to reconsider the matter has left the question open. The speaking order dated 26.9.2019, has been issued in pursuance to the directions issued by the Hon'ble Supreme Court in **Rakesh Kumar's case (supra**), therefore the issue is very much alive and requires adjudication.

8. The respondents further assigns reasoning for non-grant of incentives to RMO's, by stating that regular PCMS/PCMS (Dental) Doctors are serving in the Primary Health Centres established by the State Government in Rural Areas where Specialized Services and Advanced Diagnostic Techniques are available whereas in the Subsidiary Health Centres where RMO's are recruited no such service is available, resultantly the experience garnered by the RMO's could not be equated to that of PCMS/PCMS (Dental) Doctors. Further justification has been given to the effect, that if benefit of incentive is extended to RMO's, then after acquiring the Postgraduate Degrees they can only return to Subsidiary Health Centres where the skills imparted in PG courses would not be optimally utilised. Therefore, the maximum public interest &interest of the rural public would be served, if PCMS/PCMS (Dental) Doctors who after completing their post-graduation, get posted in Primary Health Centres in rural areas and utilise their skills at each centres.

8.1 Ld. Counsel for the respondents also contends that the benefit of rural service rendered by the RMO's will also be given to them once they are selected as PCMS/PCMS (Dental) Doctors. Therefore it is not the case that the rural service rendered by RMO's will not be considered for grant of

incentives even if they join the PCMS cadre. Further it has been stated that the RMO's can always compete under the All India quota, therefore it is not the case that RMO's are barred to pursuit the PG courses.

8.2 Ld. Counsel for the respondents to controvert the argument of the petitioners that the impugned notification issued by the State Government is contrary to the MCI regulations, contends that the incentives as granted under the proviso to Regulation 9 (IV) of the MCI Regulations, 2000 is not mandatory which is evident from the use of the word 'may' used in the regulations. It is up to the State Government whether to give or not to give the benefits. Further it is contended that the Hon'ble Supreme Court in the case of **Dinesh Singh Chauhan (supra**) also observed that it is within the State's power to enact suitable law to provide incentives envisaged under Regulation 9. It is submitted that though Regulation 9 is complete Code regarding procedure to be followed for admission to medical courses, but it no way restricts the power of the state to enact laws, that are not in contravention of or in conflict with Regulation 9.

9. Having scrutinized the rival contentions and the pleadings on record the questions that arise for consideration are:-

(i) Whether the action of the State of Punjab in restricting the benefit of incentives under the proviso to Regulation 9 (IV) of the MCI Regulations, 2000 to PCMS/PCMS (Dental) Doctors and not extending the benefit to RMO's can be termed as arbitrary?

(ii) Whether the action of the State government in non-extending the benefit of incentives of rural service to RMO is violative of Regulation 9 (IV) of the MCI regulations, 2000?

(iii) Whether the action of the respondents in non-extending the benefit of rural service in terms of Regulation 9 (IV) of the MCI Regulations, 2000 violative of directions issued by the Hon'ble Supreme Court in the case of State of U.P. Versus

Dinesh Singh Chauhan, 2016 (9) SCC 749?

10. Before considering the questions arising in the present petition, it would be relevant to consider proviso to Regulation 9 (IV) of the MCI Regulations, 2000. The Regulation 9 (IV) of the MCI regulations, 2000 reads as under:-

> **"** 9 (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 candidates shall be prepared on the basis of the marks obtained in National Eligibility-cum-Entrance Test and candidates shall be admitted to Postgraduate 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. **"**
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> ***(Emphasis Supplied)***

It is pertinent to mention here that Regulation 9 (IV) of the MCI Regulations, 2000 was amended vide Notification No. MCI.18(1)/2010-Med/49070 dated 21st December 2010, which was notified on 15.02.2012, to include the above mentioned proviso which came up for consideration before the Hon'ble Supreme Court of India in **Dinesh Singh Chauhan's case (supra)**.

11. The Hon'ble Supreme Court of India in **Dinesh Singh Chauhan's case (supra)** held that by allowing assigning of specified marks commensurate with the length of service rendered by the candidate in notified remote and difficult areas in the State, linked to the marks obtained in NEET, in terms of Regulation 9 ((IV) of the MCI regulations,2000 serves

dual purpose, as Firstly it attracts the Doctors to opt for rural service; and Secondly the Rural Healthcare Units will be benefited by the doctors who were willing to work in rural and remote areas. The relevant extracted observations made by the Hon'ble Supreme Court reads as under:-

> " 33. As aforesaid, the real effect of Regulation 9 is to assign specified marks commensurate with the length of service rendered by the candidate in notified remote and difficult areas in the State linked to the marks obtained in NEET. That is a procedure prescribed in the Regulation for determining merit of the candidates for admission to the Post Graduate "Degree" Courses for a single State. This serves a dual purpose. Firstly, the fresh qualified Doctors will be attracted to opt for rural service, as later they would stand a good chance to get admission to Post Graduate "Degree" Courses of their choice. Secondly, the Rural Health Care Units run by the Public Authority would be benefitted by Doctors willing to work in notified rural or difficult areas in the State. In our view, a Regulation such as this subserves larger public interest……. "

12. The Hon'ble Supreme Court of India,in **Dinesh Singh Chauhan's case** (supra) also held that by granting some weightage marks to the eligible in-service candidates linked to performance in NEET and also on the basis of 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. The relevant extracted observations made by the Hon'ble Supreme Court reads as under:-

> " 34. The crucial question to be examined in this case is: whether the norm specified in Regulation 9 regarding incentive marks can be termed as excessive and unreasonable? Regulation 9, as applicable, does not permit preparation of two merit lists, as predicated in the case of Tirthani (supra). Regulation 9 is a complete Code. It prescribes the basis for determining the eligibilities of the candidates including the method to be adopted for determining the inter se merit, on the basis of one merit list of candidates appearing in the same NEET including by giving commensurate weightage of marks to the in-service candidates.
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> 35. As aforesaid, Regulations have been framed by an Expert Body based on past experience and including the necessity to reckon the services

and experience gained by the in-service candidates in notified remote and difficult areas in the State. The proviso prescribes the measure for giving incentive marks to in-service candidates who have worked in notified remote and difficult areas in the State. That can be termed as a qualitative factor for determining their merit. Even the quantitative factor to reckon merit of the eligible in-service candidates is spelt out in the proviso. It envisages giving of incentive marks at the rate of 10% of the marks obtained for each year of service in remote and/or difficult areas up to 30% of the marks obtained in NEET. It is an objective method of linking the incentive marks to the marks obtained in NEET by the candidate. 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.***"***

(Emphasis supplied)

13. That the Hon'ble Supreme Court further held that the benefit of Regulation 9 (IV) of the MCI Regulations, 2000 does not create any distinction between Government and Non-Government Colleges for allocation of weightage of marks to In-service candidates. In fact it mandates preparation of one merit list for the State on the basis of the result of NEET. The relevant observations made by the Hon'ble Supreme Court in **Dinesh Singh Chauhan's case (supra)** reads as under:-

> " 42. It was then contended that hitherto reservation for in-service candidates was applicable only in respect of Government colleges but on account of interim directions given by this Court, dispensation of giving weightage or incentive marks as per Regulation 9 to the in-service candidates has been made applicable across the board even to non-Government medical colleges where the seats allocated to the State Government are to be filled up. In our opinion, Regulation 9 per se makes no distinction between Government and non-Government colleges for allocation of weightage of marks to in-service candidates. Instead, it mandates preparation of one merit list for the State on the basis of results in NEET. Further, regarding in-service candidates, all it provides is that the candidate must have been in-service of a Government/public Authority and served in remote and difficult areas notified by the State Government and the Competent Authority from time to time. The Authorities are, therefore, obliged to continue with the admission process strictly in conformity with Regulation 9. The fact that most of the direct candidates who have secured higher marks in the NEET than the in-service candidates, may not be in a position to get a subject or college of their choice, and are likely to secure a subject or college not acceptable to them, cannot be the basis to question the validity of proviso to Clause IV of Regulation 9. The purpose behind proviso is to encourage graduates to join as medical officers and serve in notified remote and difficult areas of the State. The fact that for quite some time no such appointments have been made by the State Government also cannot be a basis to disregard the mandate of proviso to Clause IV - of giving weightage of marks to the in-service candidates who have served for a specified period in notified remote and difficult areas of the State. "
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> ***(Emphasis Supplied)***

14. That the Hon'ble Supreme Court of India further in **Dinesh Singh Chauhan's case (supra)** approved the power of the State Governments to notify areas in the given State as remote, tribal or difficult areas. The relevant extracted observations reads as under:-

> " 44. …… 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 fulfil the test of Article 14 of the Constitution, being in larger public interest.**"**
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> ***(Emphasis supplied)***

15. It is thus evident from above, that the Hon'ble Supreme Court in **Dinesh Singh Chauhan's case (supra)** held that Regulation 9 of the MCI Regulations 2000 is a self-contained code regarding the procedure to be followed for admissions to post graduate medical courses. The provision for giving incentive marks to in-service candidates has been held to be permissible in law and the proviso to clause (IV) of regulation 9 of the MCI Regulations 2000 has been upheld keeping in view the public interest. Further the Hon'ble Supreme Court has permitted the State government to notify remote and/or difficult areas or rural areas.

16. The law laid down by the Hon'ble Supreme Court in **Dinesh Singh Chauhan's case (supra)** has been upheld by the Constitution Bench of the Hon'ble Supreme Court in **Tamil Nadu Medical Officers Association v. Union of India, (SC) 2018 (3) SCT 73**. The reference to the Constitution bench of the Hon'ble Supreme Court was made primarily on the issue that(i) The decision in Dinesh Singh Chauhan has not considered the entries in the legislative lists of the Seventh Schedule, more particularly Entry 66 of the Union List and Entry 25 of the Concurrent List and that

while coordination and determination of standards in institutions for higher education falls within the exclusive domain of the Union (Entry 66 List I), medical education is a subject in the Concurrent List (Entry 25 List III). Though, Entry 25 of List III is subject to Entry 66 of List I, the State is not denuded of its power to legislate on the manner and method of making admissions to post-graduate medical courses.

17. The Hon'ble Supreme Court in **Tamil Nadu Medical Officer's Case (supra**) while referring to **Modern Dental College and Research Centre Vs. State of Madhya Pradesh, 2016(3) S.C.T. 35** : (**2016) 7 SCC 353**., observed that while Entry 25 of List III is subject to Entry 66 of List I**,** the entire gamut of admissions is not excluded from the purview of the States. However, the exercise of any power under List III Entry 25 has to be subject to a Central law.

In **Tamil Nadu Medical Officer's case (supra**) the Hon'ble Supreme Court held that the decision in **Dinesh Singh Chauhan** holds the field.

18. Thus it is evident from the judgments referred above, that there is no iota of doubt, that the MCI regulations are binding upon the State Government and the State government having the concurrent powers under List III Entry 25 can only legislate on the issues which are not contrary to the Central Legislation.

Question No. (i) and (ii)

19. Now coming back to the controversy raised in the present petition. The Question No. (i) and (ii) being interlinked are being taken up together.

20. The issue with regard to grant of parity to RMO's with PCMS

doctors in postgraduate admissions has not arisen for the first time. The same has been considered time and again by this Hon'ble Court and by the Hon'ble Supreme Court of India in various judgements which are being considered hereunder:-

(i) CWP No. 11188 of 2013, decided on 22.5.2013, titled as Dr. Manu Gupta Vs. State of Punjab and others, 2013 (3) SCT 632.

Dr. Manu Gupta's case considers the notification issued by the State government which provides for quota, to the tune of 60% of the state quota seats to be filled up from eligible PCMS/PCMS (dental) Doctors. The providing of quota for in-service candidates was abolished by incorporation of proviso to regulation 9 (IV) of the MCI regulations, 2000. However the issue even at that point of time, was w.r.t. non-considering of the RMO's within the zone of consideration for 60% seats for postgraduate degree/diploma courses reserved for in-service doctors.The Ld. Single Judge held that the RMO's cannot be equated with PCMS in-service doctors.

(ii) LPA No. 1043 of 2013, titled as Dr. Manu Gupta Vs. State of Punjab and others decided on 25.7.2013, reported as 2014 (1) SCT 48.

The judgement passed by the Ld. Single Judge in Dr. Manu Gupta's case (2013 (3) SCT 632) was assailed by the petitioner, therein before the Hon'ble Division Bench of this Court The Hon'ble Division Bench while considering the above said issue of granting parity to RMO's with PCMS doctors at the time of admission in postgraduate degree/diploma courses held that :-

> " 18. The most important aspect sought to be emphasised by the respondents is that this is a matter of policy decision taken by the State Government which does not fall in the category of a decision which no reasonable authority could take so as to hit by the Wednesbury principle. The State Government is to look to the utility of giving the privilege to a doctor to do the post graduation

course through a State funded route and holding otherwise would amount to compelling the State to fund a category of doctors who, in the wisdom of the State Government, do not need a post graduation degree to perform the task assigned to them for which they have been recruited, especially when it is not as if they have been shut out from the possibility of acquiring post graduate degree as they can go through an open quota route.

19. We have heard the learned counsels for the parties at length today also. The reason being that in our view it has a material bearing on the future prospects of these doctors both of whom have been working with the State Government and it is this fact which weighed with us while referring the matter back to the Chief Secretary to see if a viable solution was possible where doctors of different categories can be accommodated especially taking into consideration the number of seats available. That unfortunately has not been possible. Thus, we have to proceed on the merits of the controversy.

20. We are afraid that some sympathy of ours for the cause of the appellants cannot translate itself into a legal right in their favour so as to entitle them to a favourable judicial verdict. The first aspect which weigh with us is the issue of policy decision. This decision has not only been taken once in 2011 but at our request the matter has been re-examined at the highest level the second time but met with the same fate. It cannot be said that this policy decision is so bereft of any basis or is so arbitrary and illegal that it has to be struck down. The rationale given, especially in the affidavit filed today in Court, is that what the two private parties are fighting for is only to have post graduation education at the expense of the State. It is not an issue of promotion of a person or parity from different cadres or equal opportunity for further promotion to posts. The State Government in its wisdom is of the view that keeping in mind the cadres created, the deployment of these doctors as per the cadre, and the different modes of recruitment entitle them to get the benefit of State funding of post graduate education only for the PCMS doctors. As we have noticed earlier that the PCMS doctors are deployed at overall state level, while RMOs are deployed only at district level. It is not as if quality medical help is not to be provided in the rural areas but there are different periods/stages of medical assistance requiring different medical centres. The deployment of the RMOs took place

at the base level centres and they cannot be posted inter district. It has already been stated in the Minutes of Meeting that the Health Department of State provides service through District Hospitals, Sub Divisional Hospitals, Community Health Centres and Primary Health Centres which is only qua the Subsidiary Health Centres at the Zila Parishad level that the RMOs were deployed for. Thus, it does not dis entitle them from improving their prospects by acquiring post graduate degree as the open quota route is available to them. The second option, of course, with them is to go through the PCMS route. We are thus, of the view that the State Government cannot be compelled to fund their post graduate medical education.

21. The second aspect which weighs with us is that the recruitment of both the categories of doctors were actually for different purpose through different routes. The RMOs, when joined service, knew that their appointment is on contractual basis and that too at the base level of the medical centres. This is another matter that their services were regularised subsequently. It is not as if on regularization, two cadres of doctors merged. This is apparent from the fact that the terms and conditions of service are not the same for both of them. Thus, the RMOs cannot claim parity only on the basis that both the categories of persons are MBBS and all doctors should be treated alike. No doubt to function as a doctor, one must have a basic qualification of MBBS, but their recruitment is through a different system and their deployment is for different purposes and at different levels of health care policy of the State.

22. The fact that there are now statutory rules governing the services of the RMOs again would not put them on a higher pedestal to equate them with PCMS doctors as that is not a necessity arising out of their regularization. It is not our endeavour to state that the assistance being provided by the RMOs to the system is inferior or that they are the doctors who should be put at inferior level. The question before us is actually limited to the facility of providing opportunity for post graduate medical education by funding through a State Government department. For this purpose, the State Government has considered it appropriate that keeping in mind the requirement of the State and the deployment of these doctors, the State Government should be funding only the PCMS doctors through 60% State quota, giving all others to compete through 40% quota which would include the

> seats which would be available out of 60% quota seats remaining vacant.
>
> 23. Since the phraseology used in the Minutes of the Meeting was that `as things stand today', we presume that it is based on the current situation which does not preclude the State Government for having second look on the matter in issue for future recruitment if the exigencies of health care facilities of the State requires the State Government to do so. ***"***
>
> ***(Emphasis supplied)***

It is thus evident from above that the Hon'ble Division Bench dismissed the appeal filed in Dr. Manu Gupta's case on the ground that:-

(i) Two private parties are fighting for is only to have post-graduation education at the expense of the state. It is not an issue of promotion of a person or parity from different cadres or equal opportunity for further promotion to posts.

(ii) RMO's and PCMS belong to separate cadres and operate in different fields. RMO's are deployed at district level whereas PCMS doctors are deployed at overall state level. The RMO's are deployed at basic level centres and cannot be posted at State level. Therefore the benefit of qualification of PG would not be utilised, as the RMO's after attaining the qualification will join back in district level centres.

(iii) RMO's are not dis-entitled in improving the qualification as they can always compete against open quota or they can get selected in PCMS for availing the in-service quota.

(iv) Lastly, what seem to have weigh with the Hon'ble Division Bench is that the RMO's had joined service on contractual basis at the base level of the medical centres. Though the services have been later on regularised but upon regularisation the two cadres of doctors have not merged and the services / terms and conditions of services of PCMS and RMO's are absolutely different. Therefore the RMO's cannot claim parity merely on the basis that both RMO's and PCMS are possessing same qualification viz MBBS.

(iii) Rajesh Kumar and another Vs. State of Punjab and others, 2017 (2) SCT 802.

The issue of non-consideration of RMO's equivalent to PCMS doctors in admission to postgraduate course in terms of proviso to Regulation 9 (IV) of the MCI regulations came up consideration. This Court held that, restricting the grant of incentive for service in remote or difficult areas in PCMS/PCMS (Dental) doctors while not granting it to Rural Medical Officers employed by Zila Parishads is illegal being contrary to the object, intent and requirement of proviso to Regulation 9(IV) of the MCI Regulations. Therefore direction was issued to the State Government to consider Rural Medical Officers employed in the Zila Parishads entitled to the benefit of incentive for remote/difficult areas service. Further the Hon'ble High Court also decided the issue with regard to restricting the benefit of incentives as provided in regulation 9 (IV) of the MCI regulations, 2000 to only government colleges. This court held that limiting the grant of incentives for PCMS/PCMS (Dental) for admission to PG courses in Govt. colleges only and not giving similar incentive for admission to private colleges, is illegal being contrary to the very object of Regulation 9(IV) of MCI Regulations, 2000.

(iv) State of Punjab and another V. Rajesh Kumar and others, 2017 (3) SCT 180.

(a) The judgement rendered by this Court in Rajesh Kumar case (supra) was assailed by the State Government before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India, observed that, there is no doubt that Regulation 9 is a self-contained code for admissions to postgraduate medical courses. But the proviso to regulation 9 (IV) of the MCI regulations, 2000 is an enabling provision and the State government is at liberty to provide for incentives to in-service doctors who have served in remote and difficult areas. There is no vested right with the Government doctors to compel the State government for providing the incentives.

"12. This Court in the judgment of Dinesh Singh Chauhan held that Regulation 9 is a self contained code for admissions to postgraduate medical courses. There is no doubt that the proviso to Regulation 9 (IV) is an enabling provision. The State Government has the liberty to provide for weight age in the marks to in-service doctors who have served in remote and difficult areas. There is no right which inheres in the government doctors to compel the State Government for providing the incentive. The controversy that arises in this case is whether the government can restrict the benefit of the incentive only to PCMS doctors working in government hospitals and exclude the Rural Medical Officers working in the Zila Parishads."

(Emphasis Supplied)

(b) With regard to issue restricting the benefit of incentive marks only to PCMS doctors working in government hospitals and excluding the RMO's working in Zila Parishads, **it has been observed that the findings in the Rajesh Kumar's case (supra) are completely contrary to the judgement of the Coordinate bench in Dr Manu Gupta's case (supra).**Therefore it has been held that, if the High Court was not in agreement with the judgement of the Coordinate Bench the matter should have been referred to the Larger Bench. The relevant portion of the judgement reads as under:-

" 13. As mentioned above, a Division Bench of the High Court in Dr. Manu Gupta v. State of Punjab and Ors., 2014(1) S.C.T. 48 : LPA No.1043 of 2013 and connected matters adjudicated the point of Rural Medical Officers satisfying the parameters of in-service doctors. It was held that the two services of PCMS doctors and Rural Medical Officers were different. Their service conditions were not the same and PCMS doctors belong to a State cadre whereas the Rural Medical Officers fall within the District

cadre. It was further held that the policy decision taken by the Government not to equate Rural Medical Officers with the PCMS doctors was not arbitrary. The contention of the State was that Rural Medical Officers were working only in subsidiary health centres at the Zila Parishad level where there were no facilities for secondary and tertiary care. The decision of the Government that the funding for postgraduate studies was restricted only to PCMS doctors in view of their posting to District hospitals, sub divisional hospitals and other centres where facilities were available for secondary care. After examining the report submitted by the Chief Secretary, the High Court held that the Rural Medical Officers cannot claim parity with PCMS doctors and seek admission to post graduate courses from the in-service quota.

14. The Government made the very same submissions before the High Court in CWP Nos.7026, 7089 and 7418 of 2017 filed by the Rural Medical Officers for extension of benefit of the incentive as per Regulation 9 of the MCI Regulations, 2000. The High Court held that the judgment in Dr. Manu Gupta's case was not relevant for determination of the questions raised as Regulation 9 was not considered therein. The High Court rejected the submission made by the Government that the two services are different. In the impugned judgment, the High Court held that the health services rendered by Panchayati Raj Institutions complemented the health services provided by the State Government. The High Court observed that the laudable objective with which Regulation 9 was made would be defeated if Rural Medical Officers are not given the benefit of the incentive. The findings recorded by the High Court in the impugned judgment are completely contrary to the judgment of a coordinate Bench in Dr. Manu Gupta (supra) that the two services of PCMS and Rural Medical Officers are different

as they are governed by two separate set of service rules. The High Court should not have held that the judgment in Dr. Manu Gupta's case is not relevant as the points that were urged by the State Government to defend the notification were exactly the same which were held in its favour by the High Court earlier. If the High Court was not in agreement with the judgment of the coordinate Bench, the matter should have been referred to a larger Bench. (see: Safia Bee v. Mohd. Vajahath Hussain Alias Fasi (2011) 2 SCC 94 at paragraphs 2730; G.L. Batra v. State of Haryana and Ors., 2013(4) S.C.T. 776 : (2014) 13 SCC 759 at paragraphs 1416).

(Emphasis supplied)

15. Even assuming that the High Court was right in its conclusion that the impugned notification was vitiated by unreasonable classification, the matter should have been remitted back to the Government for fresh consideration. Instead, the High Court directed the authorities to proceed with the admission process by giving the benefit of incentive to the Rural Medical Officers."

(c) The Hon'ble Supreme Court **while setting aside the directions issued by this Court to recast the merit, directed the State Government to reconsider the entire matter pertaining to the incentive to be given to the RMO's afresh by keeping in mind the objective with which Regulation 9 of the MCI regulations 2000 was made and as interpreted in Dinesh Singh Chauhan's case (supra).**These directions issued by the Hon'ble Supreme Court have led into the passing of the impugned order dated 26.9.2019 (Annexure P-8).The relevant directions reads as under:-

"18. The Government is directed to reconsider the entire

matter pertaining to the incentive to be given to the Rural Medical Officers afresh by keeping in mind the objective with which the Regulation 9 of the MCI Regulations 2000 were made and interpreted by this Court in Dinesh Singh Chauhan's case. **”**

(v) **Ram Lal Sharma Versus State Of Punjab And Anr, C.W.P. No. 10031 of 18, decided on 14.05.2018.**

The State of Punjab for the session 2018-19 again issued similar notification wherein incentive marks for in-service candidates working in rural areas was not extended to RMO’s and was restrained to PCMS/PCMS (dental) Doctors. The decision of the State of Punjab was again assailed by the RMO’s before this Hon’ble Court. This Court relying upon the dictum as laid down in Dr. Manu Gupta's case (supra) by this Court, dismissed the writ petition. The relevant paras of the order reads as under:-

“ A perusal of para 23 extracted above indicates that the State was not precluded from having a second look at the matter for future recruitment which in fact has been cemented by the observations of the Hon'ble Supreme Court while deciding the issue and noticed above. But the State in its wisdom has once again reiterated its earlier view and we, therefore, are in a situation where we cannot deviate from the observations of the Hon'ble Supreme Court in Dr. Manu Gupta's case (supra) unless we have strong reasons to disagree for which we have to refer the matter to the Larger Bench. While examining the matter closely we find no such reasons that have offered themselves to persuade us to record a disagreement with the view in the Dr. Manu Gupta's case (supra) or to even suggestively reveal an arbitrariness in the view of the State. We, therefore, decline interference and dismiss the instant petition. Consequently, all pending applications are also hereby dismissed.**”**

(vi) **Rajesh Kumar versus State of Punjab and others, CWP No. 13253 of 2019, decided on 07.02.2020.**

(a) **The notification dated 29.3.2019, impugned in the present petition came up for the challenge before this Court in the above mentioned petition**. The issues referred to the Hon'ble Full Bench for consideration and decision were:-

" (a) Whether the judgment in Dr. Manu Gupta Vs. State of Punjab and others, 2014 (4) SLR 165 is applicable to the present controversy?

(b) Whether in-service Rural Medical Officers (RMOs) are also entitled to the benefit of Regulation 9 of the Post Graduate Medical Education Regulations, 2000?

(c) If yes, whether clauses 15.3 and 15.4 of the notification dated 29.03.2019 are illegal being violative of Regulation 9 of the 2000 Regulations?"

(b) The Hon'ble Full Bench, held that the issue with regard to non-grant of parity to RMO's with PCMS/PCMS (dental) doctors at the time of granting incentives and postgraduate admissions, as provided in the impugned clauses 15.3 and 15.4of the notification dated 29.3.2019 are similar to the clauses contained in the notification dated 29.3.2017 that were ultimately upheld by the Hon'ble Supreme Court in the case of Rajesh Kumar (supra) by setting aside the order passed by this Court. Therefore once the issue stands concluded by the decision of the Hon'ble Supreme Court rendered in Rajesh Kumar's case (supra), the same cannot be reopened by this Court on similar or identical grounds. Further the Hon'ble Full Bench noticed that in pursuance to the directions of the Hon'ble Supreme Court in Rakesh Kumar's case (supra) , the State government has passed a speaking order dated 26.9.2019 which is not been challenged in the petition. The order passed by the Hon'ble Full Bench reads as under:-

" Before we advert to the matter in issue, it would be apposite to observe that in the year 2017, the petitioner – Rajesh Kumar along with other Rural Medical Officers (RMOs) vide three writ petitions, the lead case being CWP-7026-2017, titled as Rajesh Kumar and another Vs State of Punjab and others, challenged the validity of clause 17 of the notification dated 29.03.2017 issued by the respondent – State relating to admissions to the Post-Graduate Degree/Diploma (Medical/Dental) Courses in the State of Punjab. The challenge was made on the ground that the incentive of 30% of the total marks obtained in NEET, which was given to inservice PCMS/PCMS (Dental) doctors ought to have been extended even to the petitioners who were working on the post of RMOs. The petitions were disposed of by this Court vide order dated 26.04.2017 holding that impugned clause was discriminatory as it treated RMOs differently as it did not grant 30% incentive marks to them, while the same was granted to PCMS/PCMS (Dental) doctors although they belonged to the same class.

The order passed by this Court in Rajesh Kumar and another Vs State of Punjab and others (supra) was assailed by the State and the Supreme Court vide its judgement in State of Punjab and another Vs Rajesh Kumar and others (2017) 14 SCC 655 set aside the said order and directed the State to consider the entire matter afresh pertaining to the incentive to be given to the RMOs keeping in mind the objective with which Regulation 9 of the Medical Council of India Regulations, 2000 was made and interpreted by the Supreme Court in the case of State of U.P. Vs Dinesh Singh Chauhan (2016) 9 SCC 749.

Significantly, the State of Punjab, in its short reply filed to CM-12805-2019 has placed on record the speaking order dated 26.09.2019, passed in compliance to the directions issued by the

Supreme Court ibid, vide which the matter of granting incentive to RMOs was re-examined and has been rejected. Admittedly, the said order was passed by the State after filing the present bunch of petitions and the same is not the subject matter of challenge herein.

From a perusal of the present bunch of petitions, it is evident that petitioners by way of the present petitions have again challenged the provisions contained in clauses 15.3 and 15.4 of the notification dated 29.03.2019 which are similar to the clauses contained in the notification dated 29.03.2017, that have ultimately been upheld by the Supreme Court in the case of Rajesh Kumar (supra) by setting aside the order passed by this Court.

In view of the aforesaid facts and circumstances, it is evident that the issue raised by the petitioners as on date stands concluded by the decision of the Supreme Court rendered in Rajesh Kumar (supra) and cannot be re-opened by this Court on similar or identical grounds, more so, as the subsequent decision of the State, pursuant to the direction issued by the Supreme Court in paragraph 18 of its decision in Rajesh Kumar (supra) has neither been assailed, nor is the subject matter of these petitions. In such circumstances, the issues referred to the Full Bench do not arise for consideration, at this stage, and are not required to be answered in view of the decision of the Supreme Court in the case of Rajesh Kumar (supra). ***”***

(Emphasis supplied)

21. The challenge in the present petition, in addition to the notification dated 29.3.2019 which was subject matter of consideration before the Hon’ble Full Bench in **Rajesh Kumar versus State of Punjab and others, CWP No. 13253 of 2019**, is to the speaking order dated 26.9.2019 (Annexure P-18) which has been passed by the State Government

in pursuance to the directions of the Hon'ble Supreme Court in **Rajesh Kumar's case (supra**).

22. The reasoning assigned by the State Government in the impugned order dated 26.9.2019 is that the RMO's and PCMS doctors are two distinct classes. The RMO's serving in Zila Parishads cannot be equated with and have never been equated with the PCMS doctors. Even prior to grant of incentive for service in remote/difficult areas, 60% seats in the state quota were reserved for in-service PCMS doctors. This benefit was also limited only to PCMS/PCMS (dental) doctors.

Further the reason assigned for non-grant of benefit to RMO's, is that the RMO's serve only in Subsidiary Health Centres whereas the PCMS doctors serve inPrimary Health Centres/Sub-Divisional Hospitals/District Hospitals established by the State Government in rural areas. Specialised services and advanced diagnostic techniques are only available at the Primary Health Centres. Therefore the skills imparted in the PG courses would not be optimally utilised as the RMO's after completing the postgraduate degree will only return to subsidiary health centres.

23. After considering pleadings on file, submissions made by the parties and the settled position in law, it is deducible from above, that the RMO's and PCMS doctors are two distinct classes. The PCMS doctors are employees of the State government whereas the RMO's are employees of the Zila Parishads. The PCMS doctors are serving at the state-level whereas the RMO's are serving at the district level. The PCMS doctors have joined in service by way of proper selection procedure whereas the RMO's such like the petitioners joined the service on contractual basis and have been subsequently regularised. However the regularisation is also by the Zila

Parishads and not by the State government.

24. We have gone through the reasoning assigned in the impugned order and we are of the considered view that, the reasoning assigned cannot be termed as arbitrary, as the purpose of granting incentive marks for service rendered in remote and/or difficult areas, is that, firstly qualified doctors will be attracted to opt for total service so that they can later on have a good chance to get admission to postgraduate course of their choice; and secondly rural healthcare centres will be benefited by the specialised skills and qualification attained by the doctors during the PG course which they will utilise in the rural centres. The State government in its wisdom taking into consideration the public interest at large has rightly considered non-grant of benefits to RMO's, as the RMO's after attaining the qualification of Post-graduation will serve only in subsidiary health centres where the skills imparted during the PG course would not be optimally utilised on account of non-availability of the infrastructure. Whereas the PCMS doctors after attaining the qualification of PG will serve in the Primary Health Centres/Sub-Divisional Hospitals/District Hospitals established by the State Government in rural areas where specialised services and advanced diagnostic techniques are available. It is apparent that the actual purpose for granting incentive marks under regulation 9 (IV) of the MCI regulations, 2000 for rendering service in rural and/or difficult areas, is to ensure that effective advanced medical benefits/services are available in rural areas. The same will only be fulfilled if after attaining the qualification of Post-graduation the skills are utilised at the appropriate centres in rural areas.

While exercising the power of a judicial review on the action of the Executive, the Court has to see if it suffers from the vice of arbitrariness

or reeks of excessive exercise of power or lack of its or is violative of any law. The reasoning assigned in the order dated 26.09.2019 cannot be termed as arbitrary as the intent of the State government is only to ensure effective medical services/benefits i.e. better healthcare services are available in the rural areas.

25. The reliance placed by the petitioner on the judgement rendered by the Hon'ble Madras High Court, dated 27.3.2019, Annexure **P-10** is of no relevance, as the same is distinguishable on facts. A bare perusal of the judgement, **P-10** makes it evident that the doctors who were serving in Employment State Insurance dispensaries located in remote/difficult/rural areas were not being granted incentive marks for admission to the postgraduate medical courses. In the said case the doctors working at ESI dispensaries, were selected through medical services recruitment Board and it was only a place of posting. The transfer of an employee is incidental to service and posting at a particular station is not in the hands of the employee. The same is evident from paragraph 22 wherein the Hon'ble High Court holds that, had the doctors in ESI dispensaries been put to notice about the intention of non-grant of incentive marks, they would have preferred to work in PHC's and other hospitals in classified location, instead of ESI dispensaries. Thus it is evident, that in the said case the doctors had an option to choose the posting and it was only later on that the benefit of service rendered in ESI dispensaries was not been counted. It was in this background that the Hon'ble High Court granted the benefit of rural/difficult/rural areas to the doctors employed in the ESI dispensaries.

26. The present case is at a different footing as Firstly the RMO's were not selected on regular basis and were appointed on contractual basis

by the Zila Parishads and not by the State Government and secondly the RMO's are governed by separate set of rules and are serving at district level and at no point of time can they be appointed at state-level, until and unless they get selected in the PCMS cadre. Even otherwise, Annexure **P-10,** is an order passed by Ld. Single Judge of Madras High Court whereas **Dr Manu Gupta (supra**) has been upheld upto Hon'ble Supreme Court. Therefore no benefit can be derived by the petitioners by relying upon the judgement Annexure **P-10**.

27. We accordingly hold that the decision of State Government in restricting the benefit of incentive marks to PCMS/ PCMS (Dental) doctors and not extending the same to RMO's, passes the test of reasonable and permissible classification as it does fulfil the two mandatory conditions as laid down by the Supreme Court in a series of judgments including the decision in the case of **Ram Krishna Dalmia v. Justice S.R. Tendolkar, AIR 1958 SC 538**, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that the differentia must have a rational relation to the object sought to be achieved by the statute in question. Apart from passing the test of reasonable classification, it also does not suffer from the vice of unreasonableness or arbitrariness so as to violate Article 14 of the Constitution of India as per the test laid down by the Hon'ble Supreme Court in **E.P. Royappa Vs. State of Tamil Nadu (1974) 4 SCC 3**.

28. Therefore keeping in view the above said facts, reasoning and settled position of law, we find no reason to differ from the findings as recorded by the Hon'ble Division Bench of this Court in the case of **Dr.**

Manu Gupta (supra). Thus the question no. (i) and (ii) are decided against the petitioners and in favour of the respondents.

Question No. (iii)

29. In **Dinesh Singh Chauhan's case (supra)** the Hon'ble Supreme Court observed that Regulation 9 of the MCI regulations, 2000 is a self-contained code regarding the procedure to be followed for admissions to medical courses. It is well established that the state has no authority to enact any law much less by executive instructions that may undermine the procedure for admission to postgraduate medical courses enunciated by the Central Legislation and regulations framed there under being a subject falling within Schedule VII List I Entry 66 of the Constitution. Prior to the notification of the Regulation 9, the State Governments used to provide reservation for service being rendered by the doctors at health centres in rural and/or difficult areas, as notified by the State Government. The Hon'ble Supreme Court held that once a process under Regulation 9 for grant of incentive marks has been provided, no reservation to in-service candidates in respect of admission to postgraduate degree courses can be provided by the State government.

30. The regulation 9 (IV) of the MCI regulations, 2000 was upheld on the ground that the same will encourage doctors to opt for rural service and the rural healthcare units run by the public authority would be benefited by the services rendered by the doctors. Further at the same time the Hon'ble Supreme Court granted discretion to the State government to notify areas in the given state to be remote, tribal or difficult as it may deem fit.

The Regulation 9 (IV) of the MCI regulations is an enabling provision. The State government has the liberty to provide for weightage in

the marks to in-service doctors who have served in remote and/or difficult areas. There is no right which inhers in the Government Doctors to compel the Government for providing the incentives.

31. The power to lay down the guidelines for admission to the post graduate courses are enshrined under Entry 66 of List I of the Constitution of India. Entry 25 of List III is subject to Entry 66 of List I. But the entire gamut of admissions is not excluded from the purview of the State Governments. The State government in its wisdom, while exercising the powers under Entry 25 of List III can formulate regulations or issue directions on the matters which have not been specifically provided by the Central Government in exercise of powers under Entry 66 of List I or are not contrary to the regulations/rules of the central government formulated under Entry 66 of List I.

32. In the present case the State government is following the procedure as prescribed under Regulation 9 (IV) of the MCI regulations while awarding marks to the in-service candidates who have rendered service in rural and/or difficult areas *in toto*. The State government has taken a policy decision to restrict the benefits of incentives as provided under Regulation 9 (IV) to the PCMS doctors and not to grant said benefits to the RMO's. The stand of the State government is static as even prior to the notification of Regulation 9 (IV) of the MCI regulations, 2000 the benefit of reservation of seats for admission to PG Courses to in-service candidates was restricted only to the PCMS doctors. The laudable object with which Regulation 9 has been formulated would be defeated if RMO's are given the benefit of incentive, as the intent and purpose of Regulation 9 (IV) of the MCI regulations, 2000 and the judgement rendered by the

Hon'ble Supreme Court in **Dinesh Singh Chauhan's case (supra)** is to provide better healthcare services in rural areas. The object will only be fulfilled if the rural healthcare units are benefited by the services of the doctors who after attaining the specialised qualification of PG serve in rural and/or difficult areas of the state, where such knowledge can be put to use i.e. by the PCMS Doctors by serving at Primary Health Centres/Sub Divisional Hospitals/District Hospitals with adequate advanced infrastructure established by State Governments in Rural Areas. Once the RMO's after attaining the qualification of PG can only return back to serve in Subsidiary Health Centres established by Zila Parishads at the district level with no infrastructure available for utilization of advanced knowledge of post graduation level**,** the decision to deny the benefit of incentive marks cannot be held to be unreasonable or arbitrary.

33. We are of the considered opinion that while extending the benefits of incentive marks to in-service doctors for service rendered in difficult and/or rural areas, the State has to keep the object and purpose which is to be achieved (viz better & advanced medical facilities to be provided in rural areas) and therefore, as noticed hereinabove, the impugned classification having rational relationship with the object sought to be achieved, cannot be held to be illegal or arbitrary or contrary to the spirit of Regulation 9 (IV) of MCI Regulations, 2000.

34. As we have already held hereinabove while deciding question No. (i) & (ii) that the rationale behind not extending the benefit of incentive marks to the RMO's cannot be termed as arbitrary, as the same is backed by a logical reasoning and the intention of extending better medical services in rural and/or difficult areas, we do not find the action of the respondents

violative of directions issued by the Hon'ble Supreme Court in **Dinesh Singh Chauhan's case (supra)**. Accordingly Question no (iii) is also decided against the petitioner and in favour of respondent State.

(JASWANT SINGH)
JUDGE

(SANT PARKASH)
JUDGE

June 30th, 2020
Vinay

Whether speaking/reasoned	***Yes/No***
Whether Reportable	***Yes/No***