



W.P.Nos.18430 and 18431 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.08.2023

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKEVALU

W.P.Nos.18430 and 18431 of 2023

1. DR.GURUBARAN
2. DR.MADESH RAMAMOORTHY
3. DR.SAKTHIVEL
4. DR.SANTHOSH KUMAR
5. DR.THAYANITHI
6. DR.VISHALI
7. DR.A.K.VARUNI

.. Petitioners
in both writ petitions

Vs

- 1 THE UNION OF INDIA
REP. BY ITS SECRETARY TO GOVERNMENT
MINISTRY OF HEALTH AND FAMILY WELFARE
ROOM NO.201-D NIRMAL BHAWAN
NEW DELHI - 110 011.
- 2 THE STATE OF TAMIL NADU
REP. BY ITS PRINCIPAL SECRETARY TO GOVERNMENT
HEALTH AND FAMILY (MCA-1) DEPARTMENT
FORT ST. GEORGE, CHENNAI - 600 009.
- 3 THE DIRECTOR OF MEDICAL EDUCATION
DIRECTORATE OF MEDICAL EDUCATION
KILPAUK CHENNAI-600 010.



W.P.Nos.18430 and 18431 of 2023

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4 THE SELECTION COMMITTEE
REP. BY ITS SECRETARY
DIRECTORATE OF MEDICAL EDUCATION
162 PERIYAR E.V.R. HIGH ROAD
KILPAUK CHENNAI-600 010.

5 NATIONAL MEDICAL COMMISSION
REP. BY ITS SECRETARY
POCKET 14 SECTOR-8
DWARKA PHASE I
NEW DELHI-110 077.

.. Respondents 1 to 5
in both writ petitions

1. DR.RAMPRASATH
2. DR.HARSHITHA T.K.
3. TAMIL NADU MEDICAL OFFICERS ASSOCIATION
REP. BY ITS STATE SECRETARY, DR.AKILAN
25, MRJ COMPLEX, THIRUKKANURPATTI
NALROAD, VALLAM MAIN ROAD
THANJAVUR – 613 303
(Refer W.M.P.Nos.19853 and 19861 of 2023)

.. Applicants/Proposed
respondents in
both WPs.

1. DR.DHINESH BABU
(Refer W.M.P.Nos.19554 and 19556 of 2023)

.. Applicant/Proposed
respondent in
both WPs.

Prayer in W.P.No.18430 of 2023: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of declaration declaring Regulation 9(4) of the Postgraduate Medical Education Regulations, 2000 as illegitimate, illegal and ultra vires the National Medical Commission Act 2019 and the Constitution of India insofar as it permits State Governments to provide incentives to in-service candidates participating in the Open Category of Post Graduate Medical Admission Counselling.



W.P.Nos.18430 and 18431 of 2023

Prayer in W.P.No.18431 of 2023: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus calling for the records of the 2nd respondent contained in G.O.(Ms.) No.463, dated 07.11.2020 and to quash the same as arbitrary, unjust, illegal and ultra vires Regulation 9(4) of the Post Graduate Medical Education Regulations, 2000 and the Constitution of India and to direct the 2nd respondent to treat "in service" and "non-service" candidates on par in making admissions to Post Graduate Degree seats in Tamil Nadu Government Medical Colleges and Government seats in Self-Financing Medical Colleges affiliated to the Tamil Nadu Dr.M.G.R.Medical University.

For the Petitioners
in both writ petitions

: Mr.Suhrith Parthasarathy

For the Respondents
in both writ petitions

: Mr.R.Shunmugasundaram
Advocate General
assisted by
Mr.P.Muthukumar
State Government Pleader
and Ms.A.G.Shakeena
for respondents 2 and 3

: Mr.J.Ravindran
Additional Advocate General
assisted by
Mrs.M.Sneha
for 4th respondent

: Mr.P.G.Santhosh Kumar
Senior Panel Counsel
for 1st respondent

: Mrs.Subharanjani Anandh
for 5th respondent



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W.P.Nos.18430 and 18431 of 2023

: Mr.P.Wilson, Senior Counsel
for Mr.Richardson Wilson
for the applicants (proposed
respondents) in WMP
Nos.19853 and 19861 of
2023

: Mr.E.Manoharan
for the applicant (proposed
respondent) in WMP
Nos.19554 and 19556 of
2023

COMMON ORDER

(Order of the court was made by the Hon'ble Chief Justice)

The petitioners herein are desirous of seeking admission to the Post-Graduate Medical Courses.

2. The present writ petitions are filed assailing Regulation 9(4) of the Postgraduate Medical Education Regulations, 2000 [hereinafter referred to as "*the Regulations, 2000*"] insofar as it permits the State Governments to provide incentives to in-service candidates participating in the open category of the Postgraduate Medical Admission Counselling. The petitioners also assail G.O (Ms.) No.463, dated 7.11.2020, by virtue of which the



W.P.Nos.18430 and 18431 of 2023

in-service candidates are allowed to participate in the open competition category with the advantage of additional weightage marks allotted to them for serving in rural, remote and/or difficult areas, so also by the direction mandating that 50% of the State quota seats in the Post Graduate (MD, MS and MDS) Degree courses in Tamil Nadu Government Medical Colleges and Government seats in Self-Financing Medical Colleges affiliated to the Tamil Nadu Dr.M.G.R.Medical University be exclusively allocated for in-service doctors serving in Government Health Institutions in the State of Tamil Nadu.

3.1. Mr.Suhrith Parthasarathy, learned counsel for the petitioners, during the course of his lucid submissions, canvassed the following propositions:

(a) The policy of exclusively allocating 50% of seats for in-service candidates and further allowing in-service candidates to apply in the open category and awarding incentive marks to in-service candidates in both categories introduced since the year 2021-2022 is illegitimate on the



W.P.Nos.18430 and 18431 of 2023

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grounds:

- (i) The reservation of 50% in favour of in-service doctors is arbitrary, unreasonable and disproportionate. The State of Tamil Nadu is the only State that reserves as many as 50% of Postgraduate seats in favour of in-service doctors. Reliance is placed on the judgment of the Apex Court in the case of *State of Tamil Nadu v. T.Dhilipkumar*, (1996) 5 SCALE 208 (2), to submit that the Apex Court in the said case directed the State of Tamil Nadu to appoint a highly qualified committee to determine year to year what ought to be the percentage-wise reservation required for in-service category having regard to the then prevailing situation and reduce the percentage of 50%, if found appropriate. The State has failed to appoint such a Committee to re-consider the percentage-wise reservation on



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W.P.Nos.18430 and 18431 of 2023

a yearly basis. It has also failed to reduce the 50% reservation granted to in-service doctors.

(ii) Though such reservation was discontinued for the academic years 2018-2019, 2019-2020 and 2020-2021, in-service candidates remained largely unaffected and were, in fact, more in number than non-service candidates during the academic year 2018-2019.

(b) The policy decision to permit in-service doctors to participate in the open competition category and to further permit them to carry their weightage marks has caused a disproportionate effect and is in the teeth of the judgments of the Apex Court. Reference is made to the case of *K.Duraisamy and another v. State of Tamil Nadu and others*, (2001) 2 SCC 538. In the said case, 50% reservation was confined for selection from in-service candidates and remaining 50% of seats were exclusively earmarked for non-service candidates. The same was held to be valid.



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W.P.Nos.18430 and 18431 of 2023

(i) In *State of M.P. and others v. Gopal D.Tirthani*, (2003) 7 SCC 83, the Apex Court held that it was permissible to assign a reasonable weightage to services rendered in rural/tribal areas only for the purposes of determining inter se merit within the class of in-service doctors.

(ii) In the case of *Satyabrata Sahoo v. State of Orissa*, (2012) 8 SCC 203, the Apex Court in identical circumstances quashed the decision of the State of Odisha to grant additional incentive marks to in-service doctors competing in the open competition category and held that comparative merit should be the only basis for admission in open category.

(c) The judgment of the Apex Court in the case of *State of Uttar Pradesh v. Dinesh Singh Chauhan*, (2016) 9 SCC 749, cannot be relied upon for the proposition that weightage



W.P.Nos.18430 and 18431 of 2023

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marks can be awarded in the open competition category, because the said judgment has been overruled by the Constitution Bench judgment in the case of *Tamil Nadu Medical Officers Association v. Union of India*, (2021) 6 SCC 568.

(d) The judgments in the case of *Gopal D. Tirthani and Satyabrata Sahoo* (supra) have been cited with approval in the case of *Tamil Nadu Medical Officers Association* (supra). In the said judgment, the Constitution Bench nowhere decided that incentive marks can be carried over by in-service doctors participating in the open competition category. In paragraph 3.15(c) of the judgment, it has been noted that the State's submission to the effect that earmarking of seats would not by itself dilute merit since the preferential weightage would merely alter the order in which in-service candidates would rank in the merit list prepared for in-service candidates and thus would not be a case of double reservation.



W.P.Nos.18430 and 18431 of 2023

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(e) A proper reading of Regulation 9(4) of the Regulations, 2000 makes it clear that the weightage that is accorded to in-service doctors must necessarily be limited to the determination of *inter se* merit within the category of seats earmarked to in-service doctors. Regulation 9(4) of the Regulations, 2000 uses the word “*may*” granting power to State Governments to provide weightage to in-service doctors. This calls for an exercise of discretion. The discretion by an administrative authority must conform to the basic principles of fairness and proportionality.

(f) The National Medical Commission, in its reply dated 17.7.2023 in the present writ petitions, has stated that permitting in-service doctors to compete in the open competition category with incentive marks would result in the dilution of merit and would amount to a discrimination of non-service doctors.



W.P.Nos.18430 and 18431 of 2023

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(g) If Regulation 9(4) of the Regulations, 2000 is read to permit the grant of weightage in the open competition category, the upshot would be a complete elimination of merit, which is meant to serve as the guiding criteria in making admissions to postgraduate medical courses. The dilution of merit will run directly counter to the outlined function of the National Medical Commission. Allowing weightage in the open category will effectively render the uniformity mandated under Section 14 of the National Medical Commission Act, 2019 a nullity.

(h) The number of public health centres and the government hospitals in the State of Tamil Nadu that are awarded up to 30% weightage (2050 PHCs and GHs out of a total of 2596 faculties) is also the highest in the country.

(i) During the process of admission, students from the in-service and non-service categories are admitted first to the



W.P.Nos.18430 and 18431 of 2023

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seats allotted in the open competition category and thereafter the remaining in-service candidates are admitted in the in-service category. Therefore, non-service candidates not only have to suffer the disadvantage of competing in a single source of entry with in-service doctors (who have weightage of marks), but are forced to compete with the top-ranking in-service candidates.

(j) No other State in the country grants weightage to the extent of 30% to in-service candidates in addition to the 50% exclusive allocation granted to in-service category.

(k) The State of Tamil Nadu is the only State in the country to have reserved all the government seats for DNB (Diploma of National Board) courses for in-service candidates. Non-service candidates are not even eligible to apply for DNB courses.

3.2. Learned counsel for the petitioners further submits that



W.P.Nos.18430 and 18431 of 2023

when an administrative action is assailed on the ground of violation of Article 14 of the Constitution of India, such action must necessarily be tested on grounds of proportionality. Reliance is placed on the judgment of the Apex Court in the case of *Om Kumar v. Union of India*, (2001) 2 SCC 386.

3.3. It is further submitted that, in the present case, the challenge is to the quantum of seats earmarked for a certain class of doctors. The judgment in the case of *State of Tamil Nadu v. National South Indian River Interlinking Agricultural Association*, (2021) 15 SCC 534, relied upon by the impleading respondents, makes it clear that when a policy is impugned on the ground of non-classificatory arbitrariness, it would certainly have to conform to principles of proportionality.

3.4. Relying upon the judgment of the Apex Court in the case of *Ramesh Chandra Sharma v. State of Uttar Pradesh*, 2023 SCC OnLine SC 162, wherein it is held that executive action that is alleged to impinge on the right under Article 14 of the Constitution



W.P.Nos.18430 and 18431 of 2023

of India must equally conform to the traditional classification test and the principle of proportionality, learned counsel for the petitioners submitted that the doctrine of proportionality involves a five-pronged analysis:

- (i) the State must show that the basic aim of its policy is legitimate;
- (ii) the State must show that it has adopted the "*least restrictive*" measure possible to achieve its purported objective;
- (iii) the State must establish that there exists a rational nexus between the limitation imposed and its purported aim;
- (iv) the State must show that the policy adopted by it balances the interests of those it seeks to protect and those whose rights are impinged on account of the limitations imposed; and
- (v) the State should provide sufficient safeguards against the possibility of an abuse of its policy.



W.P.Nos.18430 and 18431 of 2023

3.5. It is further submitted that the impugned government order fails the aforesaid five-pronged test at four distinct levels.

- (i) The State Government has not conducted an independent analysis to make a demonstration that it has chosen the least restrictive measure possible to ensure that the interests of in-service candidates are protected. The idea that the earmarking of seats for in-service candidates is the only way to incentivize government service is wholly baseless. The State Government has not considered alternate ways to incentivize service.
- (ii) The State has not demonstrated how in earmarking 50% seats for in-service candidates in Postgraduate medical courses in addition to providing incentive marks in the open category, public health in the State is being benefitted.
- (iii) The data on admissions to the batch of 2021-2022 clearly demonstrates that the impugned



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W.P.Nos.18430 and 18431 of 2023

government order has not balanced the interest of the in-service candidates with those of the non-service candidates and, as such, has acted in an unfair, unjust and arbitrary manner.

(iv) The State has failed to ensure that sufficient safeguards are installed in the policy to make sure that its basic premise is not abused.

3.6. It is further submitted that the impugned government order offends the rights of the petitioners not only under Article 14 of the Constitution of India, but also the rights under Articles 19(1)(g) and 21 of the Constitution of India. According to learned counsel, the Supreme Court in the case of *K.S.Puttaswamy v. Union of India*, (2019) 1 SCC 1, has observed that the rights under Articles 14, 19 and 21 of the Constitution of India must be seen as a part of a trinity and, as such, they take meaning from each other. The law that offends the fundamental right must be demonstrated to be proportionate, by meeting the five-pronged test. The respondents have failed to demonstrate the consideration of any



W.P.Nos.18430 and 18431 of 2023

other measure that might have helped achieve the same objective.

There are several ways in which a robust public health system can be constructed. Good doctors can be encouraged to join service by affording to them pay scales comparative to private hospitals, even if not at par with such doctors. They can also be offered other perquisites and benefits, including enhanced terms of service. The State can also conduct regular examinations for the Medical Recruitment Board to invite applicants to join service. The State can also offer other familial benefits such as free education and health care to children of in-service doctors and other incentives to encourage persons to join service. The State can also conduct medical recruitment tests for postgraduates, which it has until now failed to consider. To suggest that the provision of earmarking of seats is the only means available to ensure robust public health care system is thus a falsity.

3.7. Placing reliance on the judgment of the Apex Court in the case of *Internet and Mobile Association of India v. Reserve Bank of India*, (2020) 10 SCC 274, it is contended by learned counsel for



W.P.Nos.18430 and 18431 of 2023

the petitioners that failure to consider less intrusive alternatives by itself vitiates the test of proportionality. In the present case, not only the State has failed to show that it has conducted any such study, but it has also arbitrarily earmarked seats and has created an unprecedented imbalance in admissions to the State quota.

3.8. The impugned government order offends Article 14 of the Constitution of India as it is manifestly arbitrary. The doctrine of manifest arbitrariness posits that any governmental action when done capriciously, irrationally, without adequate determining principle, excessively and disproportionately, will run counter to the tenets contained in Article 14 of the Constitution of India. The impugned government order is a capricious piece of law that lacks the determining principle. It seeks to accord weightage in the open competition category based on recommendations that were made by a Committee even before the law was settled by the Supreme Court in the case of *Tamil Nadu Medical Officers Association* (supra). The weightage has been accorded based on recommendations that are predicated on a stated position of law



W.P.Nos.18430 and 18431 of 2023

that has since been declared incorrect by a Constitution Bench of the Supreme Court in the case of *Tamil Nadu Medical Officers Association* (supra). The State has not conducted an independent study since the judgment in the case of *Tamil Nadu Medical Officers Association* (supra) to show why weightage for in-service doctors is required in the open competition category or indeed why 50% of seats ought to be earmarked for in-service doctors. The impugned government order leads to wholly inequitable and unjust results and, therefore, it ought to be declared ultra vires the Constitution of India.

4.1. Mr.R.Shunmugasundaram, learned Advocate General appearing on behalf of respondents 2 and 3, submits that Regulation 9(4) of the Regulations, 2000 mandates that a merit list has to be prepared on the basis of the National Eligibility cum Entrance Test (NEET) marks for both All India and State Quotas for the Post Graduate Degree/Diploma Courses. The Constitution Bench in the the case of *Tamil Nadu Medical Officers Association* (supra) declared that separate entry for in-service candidates is



W.P.Nos.18430 and 18431 of 2023

available for the Postgraduate Degree Courses also.

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4.2. It is further submitted by learned Advocate General that the Proviso to Regulation 9(4) of the Regulations, 2000 empowers the State to give weightage marks to those in-service candidates serving in difficult, remote and hilly areas. The power of the State to provide separate source of entry for in-service candidates seeking admission and to give weightage marks has been upheld by the Constitution Bench of the Apex Court in the case of *Tamil Nadu Medical Officers Association* (supra). The proviso to Regulation 9(4) of the Regulations, 2000 is held to be a substantive provision by the Constitution Bench in the case of *Tamil Nadu Medical Officers Association* (supra). The judgments relied upon by learned counsel for the petitioners in the cases of *Gopal D.Tirthani* and *K.Duraisamy and another* (supra) were not rendered with regard to Regulation 9(4) of the Regulations, 2000, which was introduced on 15.2.2012.

4.3. Learned Advocate General further submits that the policy



W.P.Nos.18430 and 18431 of 2023

of the State of Tamil Nadu for providing separate source of entry for in-service candidates to the extent of 50% of the seats in Post Graduate/Diploma course was placed before the Apex Court and the same finds reference in paragraph 44 of the judgment. The Apex Court in the case of *Tamil Nadu Medical Officers Association* (supra) has held that Regulation 9(4) of the Regulations 2000 is ultra vires of the Indian Medical Council Act, 1956 and it would be beyond the legislative competence of the Union of India under List I Entry 66. The Constitution Bench judgment in the case of *Tamil Nadu Medical Officers Association* (supra) dealt with the issues in greater detail. All the points available at that time were presumed to have been considered by the Supreme Court while rendering the detailed judgment. No further clarification is required.

4.4. It is further submitted that if weightage marks given as per Regulation 9(4) of the Regulations, 2000 is not allowed to be taken into consideration while competing in the open category, it would result in selecting candidates merely based on the marks obtained in the written examination, namely NEET, alone. The



W.P.Nos.18430 and 18431 of 2023

Nine-Judges Bench in *Indra Sawhney and others v. Union of India*, 1992 Supp (3) SCC 217, held that marks in one time oral or written test do not necessarily prove the worth or suitability of an individual to a particular post, much less do they indicate his comparative calibre. In judging the merits of the individuals for the profession of teaching as for any other profession, it is not the traditional test of marks obtained in examination, but a scientific test based, among other things, on the aptitude in teaching, the capacity to express and convey thoughts, the scholarship, the character of the person, his interest in teaching, his potentiality as a teacher judged on the consideration indicated generally at the outset should be adopted. The mere securing of high marks at an examination may not necessarily make out a good administration.

4.5. It is further submitted that the reply affidavit filed by the fifth respondent/National Medical Commission is contrary to the law declared by the Constitution Bench in the case of *Tamil Nadu Medical Officers Association* (supra). The *inter se* merit, as observed by the Supreme Court in its judgment, is the overall merit



W.P.Nos.18430 and 18431 of 2023

and is not *inter se* seniority. In the case of *Sudhir.N v. State of Kerala*, (2015) 6 SCC 685, the Apex Court disregarded *inter se* seniority. The impugned government order does not offend Articles 14, 19(1)(g) and 21 of the Constitution of India.

5.1. Mrs.Subharanjani Anandh, learned counsel appearing for the fifth respondent/National Medical Commission, submits that the matters pertaining to reservation of in-service candidates will fall within the domain and power of the State Government in view of List III Entry 25 of the Constitution of India.

5.2. The Supreme Court in the case of *Tamil Nadu Medical Officers Association* (supra) held that an interpretation of Regulation 9(4) of the Regulations, 2000 that there can be no reservation or separate source of entry created by the State for in-service doctors is erroneous. Regulation 9(4) of the Regulations, 2000 is an enabling provision. It confers discretion, however does not mandate grant of incentive and/or reservation. The challenge to Regulation 9(4) of the Regulations, 2000 is misconceived because it



W.P.Nos.18430 and 18431 of 2023

is not vague. It provides minimum marks for weightage and ceiling of 30%. Regulation 9(4) of the Regulations, 2000 is within the legislative competence of the Medical Council of India. De hors Regulation 9(4) of the Regulations, 2000, the State always enjoyed power to create separate source of entry. It is further submitted that the present policy of the State of Tamil Nadu amounts to double reservation, dilution of merit and discrimination.

5.3. It is submitted that the the Apex Court in the case of *Dr.Preeti Shrivastava v. State of Madhya Pradesh, (1999) 7 SCC 120*, considered the powers and duties of the erstwhile Medical Council of India and held that the Regulations of the Medical Council of India have statutory force and are mandatory. The judgment also followed the ratio in the case of *State of Kerala v. T.P.Roshana, (1979) 1 SCC 572* and held that the Medical Council of India has been set up as an expert body to control the minimum standards of medical education and to regulate their observance. It has implicit power to supervise the qualifications or eligibility standards for admission into medical institutions. There is, under the Act, an



W.P.Nos.18430 and 18431 of 2023

overall vigilance by the Medical Council to prevent sub-standard entrance qualifications for medical courses. These observations would apply equally to postgraduate medical courses.

5.4. It is submitted by learned counsel for the fifth respondent that the challenge to Regulation 9(4) of the Regulations, 2000 be negatived and the writ petitions be dismissed.

6. W.M.P.Nos.19853, 19861, 19554 and 19556 of 2023 are filed by in-service candidates.

7.1. Mr.P.Wilson, learned Senior Counsel appearing for the applicants in W.M.P.Nos.19853 and 19861 of 2023, submits that the writ petitioners are challenging Regulation 9(4) of the Regulations, 2000 inasmuch as it provides for awarding weightage marks. It is settled law that a subordinate legislation can be challenged only if (i) it is contrary to any provisions of the Constitution of India; and (ii) it is contrary to the parent statute or any other statute. The writ petitioners have not been in a position to demonstrate as to



W.P.Nos.18430 and 18431 of 2023

how the provisions of the Constitution of India have been violated, nor a single ground exists in the pleadings in the writ petitions as to which provisions of the National Medical Commission Act, 2019 are infringed by the impugned Regulation. There is a presumption of constitutionality in favour of the legislation. The writ petitioners have failed to dislodge the said presumption and demonstrate how the National Medical Commission Act, 2019 is infringed by the impugned Regulation.

7.2. It is submitted that Regulation 9(4) of the Regulations, 2000 was challenged and upheld by the Supreme Court in the case of *Tamil Nadu Medical Officers Association* (supra). Regulation 9 of the Regulations, 2000 has been upheld holding that the States have the power to provide reservation for in-service doctors in PG courses subject to clearing of NEET examination and for that proposition alone overruled the judgment in the case of *Dinesh Singh Chauhan* (supra). Once the Regulations, 2000 have been upheld by the Supreme Court in a matter pertaining to the very same issue, i.e., the provisions for separate source of entry for in-



W.P.Nos.18430 and 18431 of 2023

service candidates and weightage marks, it is not legally tenable to challenge the same provision before this court, as it would amount to reopening an issue settled by the Apex Court. It is incorrect on the part of the writ petitioners to suggest that the weightage marks given to in-service candidates was not considered by the Constitution Bench of the Apex Court in the case of *Tamil Nadu Medical Officers Association* (supra).

7.3. Learned Senior Counsel further submits that the Constitution Bench of the Supreme Court in the case of *Tamil Nadu Medical Officers Association* (supra) has already noticed that at the time of deciding the case in *Gopal D. Tirthani* (supra), Regulation 9(1) as it stood then was differently worded. During *Gopal D. Tirthani* case (supra), two separate lists were drawn up, one for in-service candidates and one for non-service candidates. It is in that context that the Supreme Court observed that weightage marks given to in-service candidates will operate *inter se* in-service candidates. After the enactment of the Regulations, 2000, the decision in the case of *Gopal D. Tirthani* (supra) can no longer be



W.P.Nos.18430 and 18431 of 2023

cited as an authority, since Regulation 9(4) of the Regulations, 2000 contemplates a single merit list. The concept of dual merit list within the State List is alien to the language of Regulation 9(4) of the Regulations, 2000.

7.4. It is further submitted that the language employed in Regulation 9(1) of the Regulations, 2000 that was in force at the time of selections put to challenge in *Gopal D. Tirthani* case (supra) uses the word “academic merit”, whereas in Regulation 9(4) the word “academic” has been consciously omitted by the drafters of the Regulations as it was understood that merit is not only the marks obtained in the NEET examination, but encompasses merit in other aspects as well. For example, a candidate who is in-service would have obtained invaluable practical ability and the inclination of the candidate to provide medical service in rural or difficult areas in the interest of public health care system proves their social outlook, etc.



W.P.Nos.18430 and 18431 of 2023

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7.5. Learned Senior Counsel relies upon the judgment of the Apex Court in the case of *Neil Aurelio Nunes v. Union of India*, (2022) 4 SCC 1 and submits that the merit of a candidate has to be adjudged keeping in mind the background, disadvantages, barriers, difficulties they face while competing against the other categories. In the present case, in-service candidates are employed full time and often work up to 14 to 16 hours a day in difficult areas with no access to libraries, internet, study resources, etc. Such candidates cannot compete in a straight race with an urban non-service student who may not even be working and who may be devoting his entire attention to preparing for the examination. To have one criteria for both these categories would be discrimination in its truest sense. Therefore, the exclusion of incentive marks obtained by an in-service candidate while determining his merit would be unconstitutional, unreasonable and contrary to the objectives of Regulation 9(4) of the Regulations, 2000.

7.6. It is submitted that the challenge to G.O (Ms.) No.463 in W.P.No.18431 of 2023 is not maintainable in view of the fact that



W.P.Nos.18430 and 18431 of 2023

G.O (Ms.) No.463 is only a government order to implement the policy decision already taken in G.O.Ms.No.86, dated 6.3.2019. Pursuant to the direction of a Division Bench of this Court in W.A.No.1051 of 2018 and other appeals, the Government constituted a Committee headed by Hon'ble Mr.Justice A.Selvam, a Retired Judge of this court, to study and identify the remote, rural and difficult areas for awarding the incentive marks. The said Committee recommended that no incentive marks be awarded in urban areas and recommended the percentage of marks to be awarded for service rendered in hills, plains, remote and rural areas. Accordingly, the government took a policy decision to award incentive marks in line with the recommendations of the Committee in the said G.O.Ms.No.86, dated 6.3.2019. The said government order has not been challenged by the writ petitioners. As such, it is not open to challenge the implementation government order alone. The prospectus is also not challenged.

7.7. A policy decision cannot be challenged unless it is



W.P.Nos.18430 and 18431 of 2023

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unconstitutional. Reliance is placed on the following judgments:

- (i) State of Punjab and others v. Ram Lubhaya Bagga and others, (1998) 4 SCC 117;
- (ii) Ugar Sugar Works Ltd v. Delhi Administration and others, (2001) 3 SCC 635;
- (iii) Federation of Railway Officers Association and others v. Union of India, (2003) 4 SCC 289;
- (iv) Directorate of Film Festivals and others v. Gaurav Ashwin Jain and others, (2007) 4 SCC 737;
- (v) Parisons Agrotech Private Ltd and another v. Union of India and others, (2015) 9 SCC 657;
- (vi) Vasavi Engineering College Parents Association v. State of Telangana and others, (2019) 7 SCC 172;
- (vii) Krishnan Kakkanth v. Government of Kerala, (1997) 9 SCC 495;
- (viii) Jacob Puliyeel v. Union of India, 2022 SCC OnLine SC 533;



W.P.Nos.18430 and 18431 of 2023

- (ix) Maharashtra State Board of Secondary and Higher Secondary Education and another v. Paritosh Bhupeshkumar Sheth and others, (1984) 4 SCC 27; and
- (x) Balco Employees Union (Regd.) v. Union of India and others, (2002) 2 SCC 333.

7.8. It is also submitted that the writ petitioners have not discharged the burden that lies on them to challenge the policy decision. It is not sufficient to show that there could have been a better policy or that the petitioners are adversely affected by the policy decision of the State, but the petitioners must plead and prove that the policy is arbitrary, unreasonable or in violation of the Constitution of India or any other law. If there is a challenge based on Article 14 of the Constitution of India, then it is for the person who alleges discrimination to plead and prove that he has been singled out and unfavourably treated. In support of the said submission, reliance is placed on the judgment of the Apex Court in the case of *Deena Dayal v. Union of India*, (1983) 4 SCC 645.



W.P.Nos.18430 and 18431 of 2023

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7.9. Learned Senior Counsel further submitted that the writ petitions are barred by the principles of *res judicata*. For the very same contention and relief, other petitioners had filed W.P.Nos.22937 and 25749 of 2021 for the academic year 2021-2022, which were dismissed by this court by order dated 19.1.2022. The petitioners therein filed W.A.Nos.93 and 94 of 2022 and it was dismissed by order dated 27.1.2022. In the judgment passed in the writ appeals, the Division Bench of this court has held that it is open to the State in exercise of its policy making powers to provide for such preferential source of admission (PRESA) and additional incentive marks and that the working of a policy cannot be questioned at the nascent stage of the policy. The said judgment of the Division Bench was carried to the Supreme Court. The Supreme Court disposed of S.L.P.Nos.18225 and 18226 of 2022 observing that *"it would be open to the appellants to move a fresh writ petition before the High Court of Judicature at Madras based on the working out of the policy, as clarified in the judgment of the Division Bench of the High Court dated 27 January 2022. In such an*



W.P.Nos.18430 and 18431 of 2023

event, neither the judgment of the Division Bench dated 27 January 2022 nor the judgment of the Single Judge dated 5 September 2022 will come in the way of a fresh adjudication on merits." The liberty to challenge the policy was granted only to the appellants therein on the basis of the working out of the policy as clarified in the Division Bench order dated 27.1.2022. Thus, only when a challenge is made before this court after working out of the policy with sufficient data, the challenge can be entertained. There are no new data or grounds raised by the petitioners herein to justify invocation of the liberty given in paragraph 6 of the order passed by the Supreme Court.

7.10. It is contended that for the subsequent academic year 2022-2023 a different set of petitioners challenged the same policy before a learned Single Judge of the Madurai Bench and, by order dated 5.9.2022, the challenge was repelled and the SLP arising out of the said order was also before the Supreme Court and was decided vide the order dated 20.3.2023.



W.P.Nos.18430 and 18431 of 2023

7.11. It is further submitted that the applicants seeking impleadment have worked out specialisation-wise allocation of seats in the 2022-2023 counselling session and it clearly shows that even with the 50% PRESA and the weightage marks, the open category students obtain a larger share of the seats. The case projected by the petitioners is illusory when confronted with data.

7.12. It is also submitted that the State of Tamil Nadu has a policy to prefer in-service candidates already working in the government hospitals and primary health centres in admission for Postgraduate Degree/Diploma Courses from the year 1991 onwards. In the year 1991, 60% of the seats were given to the in-service candidates as PRESA and only 40% was for the non-service category. Almost three decades of this policy has made the public health infrastructure in Tamil Nadu the best in the country. In the data released in 2021 by NITI AAYOG, the State of Tamil Nadu is in second place in the health index. Nearly 40-50% medical tourists from abroad and 40% of domestic medical tourists come to Chennai for health care. The government colleges and hospitals in Tamil



W.P.Nos.18430 and 18431 of 2023

Nadu are considered among the premium health care institutions in India as well as globally. The doctor to patient ratio in Tamil Nadu is the best in the country. The State of Tamil Nadu has one doctor for every 253 patients. The Tamil Nadu public health care infrastructure is far ahead of other States in India and this is because of the consistent, conscious policy adopted by successive governments in the State. The Governments in the State of Tamil Nadu have been conscious that in order to have a robust public health care system, it is important to incentivise doctors to serve in government hospitals and not drive them away to the private sector which is unaffordable for the masses. In order to incentivise service in the government hospitals, the Government of Tamil Nadu has adopted various policies. The chief amongst them is to have PRESA for in-service candidates in PG Degree and Diploma courses. The importance of this incentive cannot be overstated. Unlike other States, the in-service candidates who take up this option are bound to government service till their superannuation. This is the key to maintaining the public health infrastructure. The State expends its public resource for the establishment of these seats. Therefore, the



W.P.Nos.18430 and 18431 of 2023

State has a right to make a policy decision to have PRESA in government seats to augment its public health infrastructure. Concluding his arguments, it is submitted that the instant writ petitions do not deserve consideration and, as such, deserve to be dismissed.

8.1. Mr.E.Manoharan, learned counsel for the applicant in W.M.P.Nos.19554 and 19556 of 2023, submits that the weightage marks form part of the merit of the in-service candidates who have provided service in remote and difficult areas. The same finds support in Proviso to Regulation 9(4) of the Regulations, 2000.

8.2. Reliance is placed on the judgment of the Apex Court in the case of *Dinesh Singh Chauhan* (supra) to contend that providing incentive marks is a procedure prescribed under the Regulation for determining merit. The Regulation subserves larger public interest. Incentive marks are awarded in recognition of services rendered in remote and difficult areas of the State and they are provided based on the marks obtained in NEET. This is a legitimate and rational



W.P.Nos.18430 and 18431 of 2023

basis for encouraging doctors to serve in those areas. The academic merit of the candidate must also reckon the services rendered for the common or public good.

8.3. Reliance is placed on the judgment of the Apex Court in the case of *Neil Aurelio Nunes* (supra) to submit that scoring high marks alone cannot be construed as merit.

8.4. It is further submitted that the Constitution Bench judgment in the case of *Tamil Nadu Medical Officers Association* (supra) overrules the judgment in the case of *Dinesh Singh Chauhan* (supra) only with regard to the issue of whether Regulation 9(4) of the Regulations, 2000 affects the right of the States to earmark 50% reservation. It has not overruled the finding in the case of *Dinesh Singh Chauhan* (supra) with regard to the validity of procedure for determining merit prescribed under Regulation 9(4) of the Regulations, 2000.

8.5. It is further contended that since the incentive marks are



W.P.Nos.18430 and 18431 of 2023

the merit of the in-service candidates working in remote and difficult areas, it cannot be said that while competing in open category, the said merit will be taken away from the candidates. Regulation 9(4) of the Regulations, 2000 provides only for one merit list and while preparing this list, weightage marks which form part of merit are also added. The same is also approved in the case of *Dinesh Singh Chauhan* (supra).

8.6. It is submitted that the judgment of the Supreme Court in the case of *Gopal D. Tirthani* (supra) is not applicable to Regulation 9(4) of the Regulations, 2000, as the same was not in force at the time when the said judgment was delivered. The Supreme Court in the case of *Tamil Nadu Medical Officers Association* (supra) has affirmed the decision in *Gopal D. Tirthani* (supra) only with respect to the issue of permissibility of earmarking seats for in-service candidates and not on the point of weightage marks.

8.7. It is argued that when the decision in *Satyabrata Sahoo*



W.P.Nos.18430 and 18431 of 2023

(supra) was rendered, merit was considered to be limited to only marks in the entrance exam. Now, with the introduction of Regulation 9(4) of the Regulations, 2000 and judgment of the Apex Court in the case of *Dinesh Singh Chauhan* (supra), merit includes the weightage marks as well. Therefore, in-service candidates competing in open category on the basis of their merit can be said to be reasonable.

8.8. It is submitted that 50% seats earmarked for in-service candidates is permissible. The same was affirmed by the Apex Court in the judgments rendered in the cases of *Tamil Nadu Medical Officers Association* and *T.Dhilipkumar* (supra).

8.9. It is contended that it is for the appropriate authority/ State to consider how much percentage of seats are to be reserved and it will be in the realm of policy decision. To buttress the said argument, reliance is placed on the judgment of the Apex Court in the case of *Yatinkumar Jasubhai Patel and others v. State of Gujarat*, (2019) 10 SCC 1.



W.P.Nos.18430 and 18431 of 2023

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8.10. Relying upon the judgment of the Apex Court in the case of *National South Indian River Interlinking Agricultural Association* (supra), it is submitted that the test of doctrine of proportionality is not applicable to test the validity of a classification provision, which is not under Article 15 of the Constitution of India. The earmarking of seats for in-service candidates is not reservation under Article 15 of the Constitution, but a separate source of entry. Earmarking of seats for in-service candidates has been held to pass the test of intelligible differentia in the case of *Tamil Nadu Medical Officers Association* (supra) and, therefore, the earmarking done by the government is valid. As such, the writ petitions be dismissed.

9. We have considered the submissions canvassed by learned counsel for the parties.

10. Before we deal with the contentions of the respective counsel, it would be appropriate to refer to Regulation 9(4) of the Regulations, 2000 and the relevant portion of G.O.Ms.No.463, dated



W.P.Nos.18430 and 18431 of 2023

7.11.2020 hereunder:

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Regulation 9(4) of the Regulations, 2000

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

(1) to (3) ...

(4) 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 up to 10% of the marks obtained for each year of service in remote and/or difficult areas or Rural areas up to maximum of 30% of the marks obtained in National Eligibility-cum Entrance Test. The remote and/or difficult areas or Rural areas shall be as



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W.P.Nos.18430 and 18431 of 2023

notified by State Government/Competent authority from time to time."

G.O (Ms.) No.463, dated 7.11.2020:

"8. The Government have examined the proposal of the Director of Medical Education based on the orders the Hon'ble Supreme Court of India in Writ Petition (Civil) No.196 of 2018 and also based on the opinion of the Learned Advocate General of Tamil Nadu, decided to agree with the same and accordingly, the Government hereby issue the following orders:-

- i. The existing method for 50% of seats allocation to Government of India / Director General of Health Services be continued and the remaining 50% of seats be allocated to State Government.*
- ii. Out of 50% of the seats in State Government quota, 50% of the seats will be exclusively allocated to in-service candidates serving in Government health institutions in the State of Tamil Nadu and remaining 50% of seats will be allocated to Open category which will be open to both service and non-service candidates.*



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W.P.Nos.18430 and 18431 of 2023

The seats in above categories will be filled up based on the marks obtained in the NEET-PG Examination along with eligible incentive marks already defined or such criteria to be defined by the Government from time to time as per the decision of the Committee headed by Hon'ble Thiru A.Selvam, High Court Judge (Retd.) constituted based on the orders of the Hon'ble Division Bench of High court of Madras, in W.A.Nos.1051, 1117 to 1124 of 2018 in W.P.Nos.7231, 7857 to 7861, 8116 and 8117 of 2018;

- iii. The Director of Medical Education is directed to obtain a bond from the in-service candidate after completion of their Post Graduate Degree (MD, MS & MDS) courses in the Tamil Nadu Government Medical College with the condition to serve in Government till their superannuation.*
- iv. The Director of Medical Education, the Director of Medical and Rural Health Services and the Director of Public Health and Preventive Medicine are directed to post the above said in-service candidates in hospitals located in rural or remote or difficult areas already defined or*



W.P.Nos.18430 and 18431 of 2023

such criteria to be defined by the Government from time to time to access specialist care for treatment for a minimum two years or the conditions to be fixed by the Government subject to the availability of vacancies in the respective specialities.”

11. The challenge raised by the petitioners in the present writ petitions can be culled out as under:

- (i) Reserving 50% seats for in-service candidates from the State quota does not satisfy the test of proportionality; and
- (ii) The weightage marks given to in-service candidates cannot be applied for admission from the open category (other than seats reserved for in-service candidates).

12. The reservation and/or separate channel of entry for in-service candidates in Postgraduate Degree courses is prevalent in various States. The extent of seats earmarked for in-service



W.P.Nos.18430 and 18431 of 2023

candidates differ from State to State. Since the year 1989, the State of Tamil Nadu had a policy of providing separate source of entry for in-service candidates to the extent of 50%. The same continued uninterruptedly until the decision of the Apex Court in the case of *Dinesh Singh Chauhan* (supra). The same is reintroduced after the decision in the case of *Tamil Nadu Medical Officers Association* (supra).

13. It appears that challenging the policy of the State Government regulating admission to the postgraduate medical courses by Stipulation 29(c) of the Admission Prospectus for the academic year 2021-2022, W.P.Nos.22937 and 25749 of 2021 were filed. The impugned Stipulation 29(c) reads thus:

"Out of 50% of the seats in State Government quota, 50% of the seats will be exclusively allocated to in-service candidates serving in Government health institutions in the State of Tamil Nadu and remaining 50% of seats will be allocated to Open Category which will be open to both service and non-service candidates. The seats in above categories will be filled up based on the marks already defined or



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W.P.Nos.18430 and 18431 of 2023

such criteria to be defined by the Government from time to time as per the decision of the Committee headed by Hon'ble Thiru A.Selvam, High Court Judge (Retd.) constituted based on the orders of the Hon'ble Division Bench of High Court of Madras, in W.A.Nos. 1051, 1117 to 1124 of 2018 in W.P. Nos. 7231, 7857 to 7861, 8116 and 8117 of 2018."

14. A learned Single Judge dismissed the writ petitions under the judgment and order dated 19.1.2022. The writ petitioners therein filed appeals bearing W.A.Nos.93 and 94 of 2022 before the Division Bench. The Division Bench disposed of the appeals by concluding that no interference is required in the impugned Stipulation 29(c). The Division Bench observed that no material is placed on record either by the appellants or the State. It also observed that this being the first year of implementation of the impugned policy, it did not question the wisdom of the State as translated in its policy decision, i.e., Stipulation 29 (c). It further clarified that in the event the said policy ultimately turns out to be impermissible in any of the parameters of judicial scrutiny, including



W.P.Nos.18430 and 18431 of 2023

on the test of doctrine of proportionality, and if any material is produced before the Court by the aggrieved party, this question will be examined by the court and, in that event, it would not be open to the State and/or to in-service doctors to contend that the said issue is concluded by this judgment. The Division Bench of this court which was dealing with the appeal has observed that G.O (Ms.) No.463, dated 7.11.2020 was not subject matter of challenge.

15. The aforesaid order of the Division Bench was assailed before the Apex Court. The Apex Court clarified that it will be open to the appellants to move a fresh writ petition before the High Court of Judicature at Madras based on the working out of the policy, as clarified in the judgment of the Division Bench dated 27.1.2022, and in such event, neither the judgment of the Division Bench dated 27.1.2022, nor the judgment of the learned Single Judge dated 5.9.2022 will come in the way of a fresh adjudication on merits. All the rights and contentions of the appellants and of the State of Tamil Nadu were kept open to be urged before the High Court on



W.P.Nos.18430 and 18431 of 2023

the validity of the policy, if it is questioned.

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16. In the light of the aforesaid, in our opinion, the judgments delivered in the earlier round of litigation would not come in the way of either of the party to canvass their contentions.

17. The subject matter of consideration in the earlier judgments in the cases of *Satyabrata Sahoo and Dinesh Singh Chauhan* (supra) was Regulations 9(4) of the Regulations, 2000, as it stood then, much prior to the amended provision impugned herein.

18. In the case of *K.Duraisamy and another* (supra), the Apex Court observed that the government possess the right and authority to decide from what sources the admissions in educational institutions or to particular disciplines and courses therein have to be made and, that too, in what proportion.



W.P.Nos.18430 and 18431 of 2023

19. In a catena of judgments such as *K.Duraisamy and another, Gopal D. Tirthani*; and *Sudhir.N* (supra), the policy of the State Government in creating a separate channel of admission for in-service candidates has been upheld observing that there is a legitimate and rational basis in providing a separate channel/source of entry for in-service candidates in order to encourage them to offer their services and expertise to the State.

20. The Constitution Bench of the Apex Court in the case of *Tamil Nadu Medical Officers Association* (supra) has held that there is a legitimate and rational basis in providing a separate channel/source of entry for in-service candidates in order to encourage them to offer their services and expertise to the State. It also held that when the States create a separate source of entry for in-service candidates, the standards of medical education are not impinged. Providing a separate source of entry and/or a separate channel for in-service candidates is not a reservation. The Constitution Bench, in the said case, was not called upon to decide the percentage of seats to be earmarked for in-service candidates.



W.P.Nos.18430 and 18431 of 2023

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21. The Apex Court in the said judgment further held that there is no bar in Regulation 9 of the MCI Postgraduate Medical Education Regulations, 2000, as it prevailed on 15.2.2012 and subsequently amended on 5.4.2018, of individual States in providing for reservation for in-service doctors for admission into Postgraduate Degree Medical Courses. The Apex Court further observed that to take benefit of such a separate channel, the aspiring in-service doctors must clear NEET Examination with the minimum prescribed marks as stipulated in the Regulation. In the said case, the Apex Court held that the view taken by the Apex Court in the case of *Dinesh Singh Chauhan* (supra) to the extent it has held in the said decision that reservation for the said category of in-service doctors by the State would be contrary to the provisions of the Regulations, 2000, is not the correct view.

22. The bone of contention of learned counsel for the petitioners is that 50% of the State quota seats earmarked for the in-service candidates is disproportionate and is arbitrary.



W.P.Nos.18430 and 18431 of 2023

Arbitrariness certainly has no role in the society governed by rule of law. Arbitrariness is antithesis to the rule of law, justice, equity and fair-play and arbitrary action cannot be sustained.

23. The question would be whether reserving and/or earmarking 50% of the State quota seats for in-service candidates is disproportionate and does not conform to the theory of proportionality.

24. The Apex Court in the case of *Tamil Nadu Medical Officers Association* (supra) expected that the statutory instruments of the respective State Governments providing for a separate channel of entry should make a minimum service in rural, remote or difficult areas for a specified period mandatory before a candidate could seek admission through such separate channel and also subsequent to obtaining the degree and on completion of the course. To ensure the successful candidates serve in such areas, the State shall formulate a policy of making the in-service doctors, who obtain entry in postgraduate medical degree courses through



W.P.Nos.18430 and 18431 of 2023

independent in-service channel, execute bonds for such sum the respective States may consider fit and proper. The impugned Government Order mandates that a candidate seeking admission from in-service quota has to serve till his superannuation with the government, throughout the State. There is no contra material placed on record by the petitioners to suggest that 50% of the seats earmarked for in-service candidates is arbitrary or disproportionate.

25. In the case of *K.Duraisamy and another* (supra), the State had earmarked 50% seats for in-service candidates. The Apex Court upheld the policy of earmarking 50% of seats for in-service candidates to be valid and observed that the percentage of seats for in-service candidates can be changed depending upon the facts and circumstances. In the case of *AIIMS Students' Union v. AIIMS, (2002) 1 SCC 428*, the Apex Court observed that there is nothing wrong in the State Government setting apart a definite percentage of seats at postgraduation level consisting of degree and diploma courses exclusively for in-service candidates. To the extent of the seats so set apart, there is a separate and exclusive source of entry



W.P.Nos.18430 and 18431 of 2023

or channel for admission. It is not reservation. It was further observed that in-service candidates and the candidates not in the service of the State Government are two classes based on an intelligible differentia. There is a laudable purpose sought to be achieved. The Apex Court in the case of *Tamil Nadu Medical Officers Association* (supra) finally observed as under:

"17. The object and purpose of providing separate source of admission for in-service candidates is noted by this Court in K. Duraisamy v. State of T.N., (2001) 2 SCC 538; State of M.P. v. Gopal D. Tirthani, (2003) 7 SCC 83 and Sudhir N. v. State of Kerala, (2015) 6 SCC 685. Even the same is noted by this Court in Dinesh State of U.P. v. Dinesh Singh Chauhan, (2016) 9 SCC 749 while upholding the reservation for in-service doctors in postgraduate diploma courses. It has been consistently held by this Court that there is a legitimate and rational basis in providing a separate channel/source of entry for in-service candidates in order to encourage them to offer their services and expertise to the State. There is a sufficient nexus with the larger goal of equalisation of educational opportunities and to sufficiently prefer the doctors serving in the various



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W.P.Nos.18430 and 18431 of 2023

hospitals run and maintained out of public funds, in the absence of which there would be serious dearth of qualified postgraduate doctors to meet the requirements of the common public. It is stated that the Government is facing public health crisis. The effective and competent medical treatment is not available in the rural and difficult areas. In-service doctors who pursue higher studies would naturally serve in rural and difficult areas if such incentive in the form of reservation is provided.”

26. The respondents have placed on record the data about the number of public health centres and government hospitals available in the State of Tamil Nadu. The number of such public health centres and government hospitals is certainly large in the State of Tamil Nadu as per the statistics provided. As per the data provided, the State of Tamil Nadu has 2266 public health centres and 330 government hospitals. Naturally, more doctors are engaged in such government hospitals and primary health centres. In view of that, it would not be appropriate to compare the number of seats that are reserved for the in-service candidates by other States. It was



W.P.Nos.18430 and 18431 of 2023

suggested that the State of Kerala so also the State of Haryana reserve 40% of the seats for in-service candidates and the State of Maharashtra reserves 20% of the seats for in-service candidates. No effective material is placed on record to conclude about the disproportionality in earmarking 50% of the seats for in-service candidates.

27. This takes us to another issue raised in the present writ petitions, viz., the in-service candidates carrying weightage marks given to them while seeking admission for the seats in open quota category.

28. The Government constituted a Committee headed by Hon'ble Mr.Justice A.Selvam, a Retired Judge of this court, to study and identify the remote, rural and difficult areas for awarding the incentive marks. The said Committee was constituted pursuant to the judgment of a Division Bench of this court in the case of *The State of Tamil Nadu & Ors. vs. Dr.P.Pravin & Ors.* in *W.A.Nos.1051, 1117 to 1124 of 2018* in *W.P.Nos.7231, 7857 to*



W.P.Nos.18430 and 18431 of 2023

7861, 8116 and 8117 of 2018, to which, one of us (P.D.Audikesavalu,J.) was a member. The said Committee conducted the survey and categorized the hilly, difficult and remote areas and advised the government to give marks to the different categories for each year, subject to maximum ceiling of 30 marks. The government, it appears, has accepted the same. Accordingly, weightage marks are allotted to the in-service candidates for each year of service rendered in the area as under:

Sl.No.	Area		% of marks to be awarded
1	Difficult Areas in Hills	-	10% of marks per year
2	Difficult Areas in Plains	-	9% of marks per year
3	Remote Area	-	8% of marks per year
4	Rural Areas	-	5% of marks per year
5	Urban Areas (Municipal/ Corporation Area	-	No incentive marks.

29. As far as the weightage marks for computing the merit while dealing with the seats reserved for in-service candidates is concerned, there is no dispute.



W.P.Nos.18430 and 18431 of 2023

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30. It is a fact that only one merit list is prepared. The merit list is prepared keeping in mind the weightage marks for in-service candidates also. The grievance of the petitioners is that because of the weightage marks, the merit is diluted and though a non-service candidate has secured more marks in the examination, the in-service candidate, because of the weightage marks given for having worked in a particular area, is placed above the more meritorious non-service candidate.

31. According to the respondents, obtaining marks in the examination is not only the merit, but the experience gained by working in the hospitals situated in difficult, remote and rural areas will also add to the merit. It would be within the realm of the State Government to provide 50% of seats for in-service candidates.

32. In the case of *Gopal D. Tirthani* and *Satyabrata Sahoo* (supra), it has been held that the weightage of marks to in-service



W.P.Nos.18430 and 18431 of 2023

candidates is to be provided while competing in the 50% seats meant for in-service candidates and those weightage marks cannot be carried while competing in the open category (seats not reserved for in-service candidates). Regulation 9 of the MCI Postgraduate Medical Education Regulations, 2000, as it stood then, is not couched in similar words as amended in 2018. Regulation 9, as it stood then, provided admission on the basis of academic merit. Regulation 9, as it stood then, is reproduced as under:

"9.(1)(a) Students for postgraduate medical courses shall be selected strictly on the basis of their inter se academic merit.

(b) 50% of the seats in postgraduate diploma courses shall be reserved for medical officers in the government service, who have served at least three years in remote and difficult areas. After acquiring the PG diploma, the medical officers shall serve for two more years in remote and/or difficult areas."

"9.(2) For determining the 'academic merit', the university/institution may adopt the following methodology—



W.P.Nos.18430 and 18431 of 2023

- (a) on the basis of merit as determined by a 'competitive test' conducted by the State Government or by the competent authority appointed by the State Government or by the university/group of universities in the same State; or
- (b) on the basis of merit as determined by a centralised competitive test held at the national level; or
- (c) on the basis of the individual cumulative performance at the first, second and third MBBS examinations provided admissions are university-wise; or
- (d) combination of (a) and (c).

Provided that wherever 'entrance test' for postgraduates admission is held by a State Government or a university or any other authorised examining body, the minimum percentage of marks for eligibility for admission to postgraduate medical course shall be 50 per cent for general category candidates and 40 per cent for the candidates belonging to the Scheduled Castes, Scheduled Tribes and Other Backward Classes.

Provided further that in non-governmental institutions fifty per cent of the total seats shall be



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W.P.Nos.18430 and 18431 of 2023

filled by the competent authority notified by the State Government and the remaining fifty per cent by the management(s) of the institution on the basis of inter se academic merit."

33. Referring to the aforesaid provisions, the Apex Court in the case of *Satyabrata Sahoo* (supra) observed that weightage marks could be given for doctors who have rendered service in rural/tribal areas, but that weightage is available only in in-service category to which 50% seats for Postgraduate admission have already been earmarked. In the said case, the Apex Court further observed as under:

"The question is whether, on the strength of that weightage, can they encroach upon the open category i.e. direct admission category. We are of the view that such encroachment or inroad or appropriation of seats earmarked for open category candidates (direct admission category) would definitely affect the candidates who compete strictly on the basis of the merit."



W.P.Nos.18430 and 18431 of 2023

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34. In the said judgment, the Apex Court observed that the seats earmarked for the open category by way of merit are few in number and encroachment by the in-service candidates into that open category would violate Regulation 9(1)(a) of the MCI Postgraduate Medical Education Regulations, 2000, which says that students for postgraduate medical courses shall be selected strictly on the basis of the inter se academic merit, i.e., on the basis of the merit determined by the competent test. Direct category or open category is a homogeneous class which consists of all categories of candidates who are fresh from college, who have rendered service after MBBS in government or private hospitals in remote and difficult areas like hilly areas, tribal and rural areas and so on. All of them have to compete on merit being in the direct candidate category, subject to rules of reservation and eligibility. However, in the case of *Dinesh Singh Chauhan (supra)*, the Apex Court observed that there cannot be separate entry for in-service candidates, but incentive marks can be allotted to them and with addition of the incentive marks, they can compete with other non-service candidates. The said judgment of the Apex Court was



W.P.Nos.18430 and 18431 of 2023

set aside by the Constitution Bench judgment of the Apex Court in the case of *Tamil Nadu Medical Officers Association (supra)* to the extent it held that there cannot be separate channel of entry to the in-service candidates for admission to P.G. Degree course. The Constitution Bench, in the said case, did not set aside the other part of the judgment in *Dinesh Singh Chauhan (supra)* case wherein it was held that adding incentive marks for in-service candidates while seeking admission to the P.G. course is permissible.

35. Regulation 9(4), so also the Proviso to Regulation 9(4) of the Regulations, 2000, as amended in the year 2018, has omitted the word “academic merit” that was prevalent in the Regulation 9 of the MCI Postgraduate Medical Education Regulations, 2000 when the Apex Court delivered the judgments in *Gopal D. Tirthani* and *Satyabrata Sahoo (supra)*. The Proviso to the current Regulation 9(4) of the Regulations, 2000 specifically provides 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 up to 10%



W.P.Nos.18430 and 18431 of 2023

of the marks obtained for each year of service in remote and/or difficult areas or rural areas up to maximum of 30% of the marks obtained in National Eligibility-cum Entrance Test.

36. If Regulation 9 of the the MCI Postgraduate Medical Education Regulations, 2000, as it stood then, and Regulation 9(4) of the Regulations, 2000 as amended in 2018 are read in juxtaposition, it would appear that the phrase “academic merit” has been done away with and the requirement is only “merit”. This deviation in the amended Regulation 9(4) and its Proviso is required to be considered. Proviso to Regulation 9(4) of the Regulations, 2000 makes it abundantly clear that in determining the merit of candidates who are in service, weightage in the marks may be given by the government/ competent authority as incentive. Those weightage marks as incentive become an integral part of merit. The incentive marks cannot be disassociated while competing from the open category.



W.P.Nos.18430 and 18431 of 2023

37. The aspect of merit is considered by the Apex Court in the case of *Neil Aurelio Nunes* (supra), wherein the Apex Court observed that the merit of a candidate has to be adjudged keeping in mind the background, disadvantages, barriers, difficulties they face while competing against the other categories. The Apex Court in the said case held that merit cannot be reduced to narrow definitions of performance in an open competitive examination which only provides formal equality of opportunity. Competitive examinations assess basic current competency to allocate educational resources, but are not reflective of excellence, capabilities and potential of an individual which are also shaped by lived experiences, subsequent training and individual character. Crucially, open competitive examinations do not reflect the social, economic and cultural advantage that accrues to certain classes and contributes to their success in such examinations. In the aforesaid judgment, the Supreme Court was dealing with reservation within All India Quota seats for OBCs (non-creamy layer). Of course, in the said case, the Apex Court was dealing with social reservation.



W.P.Nos.18430 and 18431 of 2023

38. The object is laudable and benevolent. 50% of the seats are surrendered for All-India Quota. In the said 50% All India Quota seats, no seats are earmarked for the in-service candidates. 50% seats are earmarked only in the 50% seats reserved for the State Quota. The in-service candidates are to be encouraged to offer their services and expertise to the State. The Government faces public health crisis. The effective and competent medical treatment is required to be made available in rural, hilly and remote areas. In-service Doctors, who pursue higher studies, would naturally have to serve in Government Hospitals till superannuation. Another object of giving incentive marks is to bring them on par with the non-service candidates and candidates working in urban areas. These in-service Doctors, serving in rural, remote and hilly region do not have appropriate facilities and time. They gain practical experience and that also can form part of merit.

39. The very purpose and object of giving weightage to the candidates who have served in rural, remote or hilly areas is to overcome the disadvantage they suffered because of working in



W.P.Nos.18430 and 18431 of 2023

such difficult conditions and to enable them compete with the candidates who have directly, after their MBBS course, appeared for the NEET Postgraduate examination. It needs to be considered that those candidates who have rendered service in urban area are not given any weightage marks. They are kept on par with other open category candidates. The weightage marks are only accorded to those who have worked in such rural, remote and hilly areas. The intent and object is clear, i.e., to bring them on par with the candidates who were not in service. The intent is bona fide.

40. The Courts would be extremely slow in interfering with the policy decision, that too, concerning the academic and educational field, unless it is shown that the policy decision is against the statutes or is manifestly arbitrary. The aforesaid discussion would demonstrate that the policy of providing incentive marks to the in-service candidates and adding the incentive marks for competing with the open category candidates is not barred by any statute, Rules or Regulations. Regulation 9(4) of the Post Graduate Medical



W.P.Nos.18430 and 18431 of 2023

Education Regulations, 2000 and G.O.(Ms.) No.463, dated 07.11.2020 do not suffer from the vice of arbitrariness.

41. In light of the above, we are not inclined to accept the contention of the petitioners. The writ petitions are disposed of. There will be no order as to costs. Consequently, W.M.P.Nos.17650, 17652, 17654, 19853, 19861, 19554 and 19556 of 2023 are closed. W.M.P.Nos.17649 and 17651 of 2023 filed to permit the petitioners to file single writ petitions are allowed and disposed of, inasmuch as they have paid separate sets of court-fee.

(S.V.G., CJ.)

(P.D.A., J.)

14.08.2023

Index : Yes
Neutral Citation : Yes
sasi



W.P.Nos.18430 and 18431 of 2023

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W.P.Nos.18430 and 18431 of 2023

THE HON'BLE CHIEF JUSTICE
AND
P.D.AUDIKESAVALU,J.

(sasi)

W.P.Nos.18430 and 18431 of 2023

14.08.2023