

(2021) 07 SHI CK 0207

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 4245, 4423, 4424, 4425, 4427, 4428 Of 2020, 2894 Of 2021

Aakash Srivastava Anf Others

APPELLANT

Vs

State Of HP And Ors

RESPONDENT

Date of Decision : 20-07-2021

Acts Referred:

Indian Medical Council Act, 1956 — Section 13(3)

Citation : (2021) 07 SHI CK 0207

Hon'ble Judges : Sureshwar Thakur, J;Sandeep Sharma, J

Bench : Division Bench

Advocate : Chander Narayan Singh, Rakesh Kumar Dogra, Ajay Vaidya, J.L. Bhardwaj, Sanjay Bhardwaj Ajay Sharma, Amit Jamwal, Jyoitrmay Bhatt, Surinder Sharma, Yogesh Kumar Chandel

Final Decision : Allowed

Judgement

////////

Sandeep Sharma, J"////////

1. Since common questions of facts and law are involved in the above captioned petitions and all the petitioners have prayed for similar relief(s), with"////////

the consent of the learned counsel for the parties, all the cases are taken up together for final disposal."////////

2. In the year, 2016, Government of Himachal Pradesh, decided to open four medical colleges in the State i.e. 1.) Dr. YS Parmar Medical College"////////

Nahan; 2.) Sh. Lal Bahadur Shastri Government Medical College, Mandi; 3.) Pt. Jawahar Lal Government Medical College, Chamba; and 4.) Dr."////////

Radha Krishan Government Medical College, Hamirpur, H.P. Vide notification dated 22.4.2016 (Annexure P-12), Department of Medical Education,"////////

Government of Himachal Pradesh, framed terms and conditions for the appointment of Professor, Associate Professor, Assistant Professor, Tutors," ,,,,,,,

Senior Residents and Junior Residents (on contractual basis), in the newly opened Government Medical Colleges, which reads as under : " ,,,,,,,

â?? Terms and conditions for the appointment of Professor, Associate Professor, Asstt. Professor, Tutors, Senior Residents and Junior" ,,,,,,,

Residents (on contract basis) in the newly opened Government Colleges in the State of Himachal Pradesh ,,,,,,,

1. The Professor/Associate Professor/Asstt. Professor/Tutor/Senior Resident/Junior Resident in the Department of Medical Education, H.P." ,,,,,,,

will be engaged on contract basis initially for one year, which may be extendable on year to year basis." ,,,,,,,

2. The Professor/Associate Professor/Asstt. Professor/Tutor/Senior Resident/Junior Resident appointed on contract basis will be paid ,,,,,,,

consolidated fixed contractual amount as mentioned in Annexure-A (which shall be a fixed amount of pay). An annual increase @ of 3% in ,,,,,,,

contractual emoluments for the subsequent years will be allowed if contract is extended beyond one year and no other allied benefits such ,,,,,,,

as senior/selection scales etc. shall be given. ,,,,,,,

3. The Addl. Chief Secretary/Pr. Secretary/Secretary (Health) to the Government of Himachal Pradesh will be appointing and disciplinary ,,,,,,,

authority. ,,,,,,,

4. He /she will not be governed by the rules, regulations and orders in force from time to time as applicable to other government servants" ,,,,,,,

such as CCS (CCA) Rules, 1965 and CCS (Conduct) Rules, 1964 as are applicable in Himachal Pradesh." ,,,,,,,

5. Before submitting the report to the Government the contract appointee shall sign an agreement as per Annexureâ?"B. ,,,,,,,

6. The service of the Contract Appointee will be purely on temporary basis. The appointment is liable to be terminated in case the ,,,,,,,

performance/conduct of the contract appointee is not found satisfactory. ,,,,,,,

7. During the contract service, no advance will be given to him / her." ,,,,,,,

8. Contractual Appointee Professor/Associate Professor/Asstt. Professor/Tutor/Senior Resident/Junior Resident will be entitled for one ,,,,,,,

dayâ??s casual leave after putting in one month service. However, the contract

employee will also be entitled for 12 weeks Maternity",,,,,,,,,

Leave and 10 day's Medical Leave. He/She shall not be entitled for Medical Reimbursement and LTC etc. No Leave of any other kind,,,,,,,,

except above is admissible to the contractual appointee Professor/Associate Professor/Asstt. Professor/Tutor/ Senior Resident/Junior,,,,,,,,

Resident. Provided that the un-availed Casual Leave and Medical Leave can be accumulated upto the Calendar Year and will not be carried,,,,,,,,

forward for the next Calendar Year.,,,,,,,,,

9. Unauthorized absence from the duty without the approval of the Controlling Officer shall automatically lead to the termination from the,,,,,,,,

contract. Contract Appointee shall not be entitled for contractual amount for the period of absence from duty.,,,,,,,,,

10. Transfer of a contract appointee will be permitted from one place to another after putting three years of service at one place.,,,,,,,,,

11. Selected candidate will have to submit a certificate of his/her fitness from Medical Board, DDU Hospital, Shimla-1. Woman candidate",,,,,,,,,

pregnant beyond 12 weeks will stand temporarily unfit till the confinement is over. The woman candidate will be reexamined for the fitness.,,,,,,,,,

12. Contract appointee will be entitled to TA/DA if required to go on tour in connection with his/her official duties at the same rate as,,,,,,,,

applicable to regular officials at the minimum of pay scale.,,,,,,,,,

13. The candidate engaged on contract basis under these Rules shall have no right to claim for regularization/ permanent absorption as,,,,,,,,

Professor in the Department at any stage.,,,,,,,,,

14. The appointment is provisional and is subject to the educational qualification and other certificates being verified through the proper,,,,,,,,

channels and if the verification reveals that the claim to belong to reserve categories, as the case may be is false, the services will be",,,,,,,,,

terminated forthwith without assigning any further reasons and without prejudice to such further action as may be taken under the,,,,,,,,

provisions of the Indian Penal Code for production of false certificate.,,,,,,,,,

15. He/she will have to give a declaration to the effect that he/she has only one living spouse, if married." ,,,,,,,,,

16. He/she will have to take an oath of allegiance/faithfulness to the Constitution of India or making a solemn affirmation.,,,,,,,,,

17. He/she will have to produce all the certificates in original at the time of joining this appointment.â??,,,,,,,,,

But since adequate qualified medical faculty was not available to be appointed in newly opened Government Medical Colleges, respondents repeatedly",,,,,,,,,

advertised the posts of Assistant Professor, Associate Professor and Professor in leading national newspaper and recruited recognized qualified",,,,,,,,,

medical faculty on contract basis against the sanctioned posts through walk-in-interviews. The respondents recruited the contractual faculty for these,,,,,,,,

Medical Colleges as per regulations framed by the Medical Council of India and Recruitment and Promotion Rules formulated by the respondent-State,,,,,,,,

for the posts in question after having followed all the necessary codal formalities and since then, above named college has undergone various MCI",,,,,,,,,

inspections.,,,,,,,,,

3. In the year, 2016, Director, Medical Education and Research, Himachal Pradesh, issued an advertisement inviting therein applications from",,,,,,,,,

candidates fulfilling the eligibility criteria for selection of Senior Residents in various specialties of Pt. Jawahar Lal Nehru Govt. Medical College,",,,,,,,,

PG (MD/MS)Degree

Marks (in concerned

Speciality)",40 Marks,,,,,,,,

MBBS Marks (Cumulative

total marks of 1st, 2nd and

3rd professional exam.)",40 Marks,,,,,,,,

Gold Medal (in MBBS or

PG degree)",10 Mark,,,,,,,,

Publication of papers in

Journals of reputation to be

decided by the Principal of

the concerned Medical

College","10 Marks (1.0 Marks

for each published

work subject to

maximum of 10 Marks)" ,,,,,,,

vii) Attempt certificate in respect of MBBS 2. P.G.,,,,,,,

Rest of the terms & conditions will apply the same as contained in the new policy issued by the Government vide Notification No: HFW-B(A)2- ,,,,,,,

4/2007- dated 4.1.2012 and addendum dated 4.2.2012, 20.6.2012, 26.9.2012, 4.6.2013 & 29.8.2013 to this effect from time to time.â??" ,,,,,,,

4. All the petitioners herein applied and participated in the interviews and were declared successful in their respective fields. Vide letter dated ,,,,,,,

10.4.2017, the respondent-State gave approval to appoint the petitioners as tutor in different specialties as per their qualification. Copy of appointment" ,,,,,,,

letter issued in case of one of the petitioner namely Akash Srivastava is Annexure P-14. ,,,,,,,

5. Though appointment of the petitioners was initially for six months, but admittedly same came to be renewed year after year. Copy of notifications" ,,,,,,,

dated 24.10.2019 and 27.5.2020 annexed with the petition of Akash Srivastava are placed as P-15 Colly. Vide communication dated 4.5.2017, issued" ,,,,,,,

under the signatures of Under Secretary (Personnel) to the Government of Himachal Pradesh, Government took a policy decision to regularize the" ,,,,,,,

services of contractual appointees in the government departments (P-16), who have completed three years continuous service as on 30.9.2017. Again," ,,,,,,,

in the year, 2019, respondents vide notification dated 21.2.2009 (Annexure P-17), again decided that services of contractual appointees, who have" ,,,,,,,

completed three years continuous service as on 31.3.2019 and 30.9.2019 shall be regularized after 31.3.2019 and 30.9.2019, respectively." ,,,,,,,

6. Careful perusal of aforesaid regularization policy formulated by the Government of Himachal Pradesh, reveals that regularization, if any of the" ,,,,,,,

contractual appointees, who have completed three years continuous service is/ was to be made on the basis of seniority subject to the condition that" ,,,,,,,

eligibility criteria prescribed in the R&P Rules for the post, was adhered to/ observed at the time of their initial recruitment on contract basis. Since" ,,,,,,,

despite there being aforesaid policy decision taken by the respondents, services of the petitioners were not regularized, they applied for information" ,,,,,,,

under RTI, regarding applicability of aforesaid notifications dated 4.5.2017 and dated 21.2.2019. Vide communication dated 13.5.2019, petitioners" ,,,,,,,

were informed that letter dated 21.2.2019, is applicable to all the functionaries

to whom it was sent. Copy of RTI application along information",,,,,,,,,

received stands enclosed as P-18 (Colly) with the writ petition filed by one of the petitioner namely Akash Shrivastava,,,,,,,,

7. During the subsistence of contract of the petitioners, respondent-State in terms of notification dated 22.6.2019 (Annexure P-19), notified Resident",,,,,,,,,

Doctor Policy for regulating the appointment of Senior/Junior Residents in the department of Medical Education, which reads as under :",,,,,,,,,

1. Short Title."This policy may be called "Policy for Residency in the Government Medical Colleges in the State of Himachal,,,,,,,,

Pradesh in short "Resident Doctor Policy".,,,,,,,,

2. Commencement."The Policy shall come into effect from the date of notification.,,,,,,,,,

3. Definitions."Notwithstanding anything to the contrary,,,,,,,,

3.1. "Senior Resident" or "Tutor-Specialist" shall mean the doctors who have completed their Post Graduation in any clinical,,,,,,,,

and non-clinical specialty as recognized by Medical Council of India.,,,,,,,,,

3.2. "Junior Resident -Non Academic" or "Tutor-General" shall mean the doctor who is a MBBS degree holder and is not,,,,,,,,

pursuing a Post Graduation course.,,,,,,,,,

3.3. "Junior Resident -Academic" shall mean the doctor who is a MBBS degree holder and is pursuing a Post Graduation course.,,,,,,,,,

4. Number of Posts."As notified by the State Government from time to time.,,,,,,,,,

5. Classification."Class-I (Gazetted) Tenure Post.,,,,,,,,,

6. Age Limit."45 Years and below.,,,,,,,,,

6.1. Provided that the upper age limit will not be applicable to the candidate already in service of the Government including those who have,,,,,,,,

been appointed on adhoc or on contract basis by the Government.,,,,,,,,,

6.2. Provided further that upper age limit is relaxable for Scheduled Castes/ Scheduled Tribes/Other categories of persons to the extent,,,,,,,,

permissible under the general or special order(s) of the Himachal Pradesh Government.,,,,,,,,,

6.3. Age limit for direct recruitment will be reckoned on the first day of the year in which the post(s) are advertised for inviting application.,,,,,,,,,

7. Senior Residents/Tutor-Specialist:,,,,,,,,

7.1. Essential Qualification(s)/Eligibility :,,,,,,,,

For Clinical Subjects.â?"Post Graduate (MD/MS/MDS) or DNB in the concerned specialty from a University/Institution,,,,,,,,

recognized/permitted by the MCI/DCI; failing which the PG Diploma in the concerned specialty recognized/permitted by the MCI/DCI.,,,,,,,,,

For non-clinical subjects.â?"Recognized MD/MS/DNB in the concerned specialty or qualifications as prescribed in the concerned specialty,,,,,,,,

by the schedule-I of the existing Himachal Pradesh Medical Education Service Rules:,,,,,,,,

Provided that the percentage of Tutor-specialists in non-clinical subjects from non-medical backgrounds shall not exceed the limit,,,,,,,,

prescribed as per the norms fixed by Medical Council of India;,,,,,,,,

Further provided that GDOs/Direct Candidates who have furnished bond to serve the State after Post Graduation in lieu of,,,,,,,,

sponsorship/stipend shall be required to serve a period of minimum one year in field posting or any such period which may be prescribed by,,,,,,,,

the PG/SS policy as notified from time to time before being eligible for Senior Residency in the State.,,,,,,,,,

7.2. Method of Recruitment:,,,,,,,,

7.2.1. The Senior Resident/Tutor-Specialist shall be selected on the basis of application invited by the Director, Medical Education &",,,,,,,,

Research, Himachal Pradesh." ,,,,,,,,,

,First Round,Second Round,Third Round,,,,,

Requisi(cid:14)on to be sent by

Principals to DME & R by",End of November,End of March,End of July,,,,,

Vacancies to be sent in

requisition","Vacancies as on date +

vacancies an(cid:14)cipated (on the

basis of comple(cid:14)on of tenure

of incumbents occupying the

posts) till end of January." ,"Vacancies as on date +

vacancies anticipated (on

the basis of completion of
tenure of incumbents
occupying the posts) till
end of May.", "Vacancies as on date +
vacancies anticipated (on
the basis of completion of
tenure of incumbents
occupying the posts)
till end of September." ,,,,,

Advertisement of Post in, Second week of December, Second week of April, Second
week of August, ,,,,,

Personal appearance for

verification of documents to be

conducted in.", First fortnight of January, First fortnight of May, First fortnight of
September, ,,,,,

Senior Resident/Tutor-Specialist need to be discontinued in view of non-
satisfactory performance. The post occupied by the Senior, ,,,,,,

Resident/Tutor-Specialist so will fall vacant only if the tenure is completed OR he/
she tenders resignation OR his/her services are terminated. ,,,,,,

7.3.2. GDOs shall continue to draw the emoluments and pay admissible to him/
her with due allowances and increments during the period of, ,,,,,,

Senior Residency. The direct candidates who join as Senior Resident in any of the
Government Medical Colleges after completion of, ,,,,,,

prescribed mandatory period of field posting as per policy notified vide letter No.
HFW-B(F)4- 9/2017-II, dated 27-02-2019 or any other", ,,,,,,

policy notified in its supersession, shall be eligible to draw the pay as prescribed
for a Senior Resident. Similarly, the candidates who join", ,,,,,,

directly as Senior Resident shall draw the pay as prescribed for a Senior
Resident. ,,,,,,

7. 3.3. The salary of Senior Resident shall be drawn against the sanctioned post
of Senior Resident in that Government Medical College. ,,,,,,

The GDOs selected for Senior Residency will furnish their Last Pay
Certificate (LPC) duly issued by their last establishment for the, ,,,,,,

purpose of drawing salary against the post of Senior Resident.,,,,,,,,,

7.3.4. The Senior Residents shall be entitled to leave as may be notified by the Government from time to time.,,,,,,,,,

7.3.5. GDOs/Direct Candidates who have furnished bond to serve the State after Post Graduation in lieu of sponsorship shall be required.,,,,,,,,,

to serve a period of minimum one year in field posting before being eligible for Senior Residency in the State and for this purpose the last.,,,,,,,,,

date of submission of applications shall be taken as the cut-off date. However, this condition shall not be applicable to the direct candidates",,,,,,,,,

who have not availed sponsorship of the State while doing Post Graduation and who are not bound by conditions of any bond.,,,,,,,,,

7.3.6. The condition of mandatory one year of field posting shall be equally applicable to all the specialties. Candidates of non-clinical.,,,,,,,,,

specialties like Microbiology, Pathology etc. shall be posted at field institutions. Candidates of specialties like Anatomy, Physiology, ",,,,,,,,,

Nuclear Medicine etc., in respect of which there is no sufficient work in field institutions, shall be posted as Medical Officer in Medical",,,,,,,,,

Colleges as per the availability of non-teaching post. Such candidates posted on non-teaching post shall not be clubbed with Senior.,,,,,,,,,

Residents for the purpose of roster etc. and it shall be ensured by the Principals that no teaching responsibility is assigned to them. Such.,,,,,,,,,

candidates shall also not be eligible for the grant of teaching experience.,,,,,,,,,

7.4. Repeat Tenure:.,,,,,,,,,

7.4.1. There will be no repeat tenure for any candidate as Senior Resident/Tutor Specialist in any specialty in a particular Government.,,,,,,,,,

Medical College.,,,,,,,,,

7.4.2. A Senior Resident who has completed his/her tenure in one specialty will however be eligible for Senior Residency in the concerned.,,,,,,,,,

super specialty department; provide that such candidates shall be placed below the fresh candidates while drawing up merit irrespective of.,,,,,,,,,

the marks earned.,,,,,,,,,

7.5. Teaching Experience :.,,,,,,,,,

7.5.1. Senior Residents will be issued teaching experience certificate by the concerned Principal, which will be valid for promotion and",,,,,,,,,

appointment as Assistant Professor in the respective faculty as per R&P Rules notified by the Government.,,,,,,,,,

7. 5.2. Senior Residents who are pursuing Senior Residency in super specialty departments of the Government Medical Colleges of the State.,,,,,,,,,

shall be eligible to be awarded teaching experience in their own specialty; provided that the concerned specialty is the parent department of.,,,,,,,,,

concerned super specialty.,,,,,,,,,

7.5.3. The candidates who have availed maternity/paternity leave during the period of Senior Residency shall be entitled to grant of.,,,,,,,,,

teaching experience for the period of maternity/paternity leave admissible as per rules.,,,,,,,,,

7.6. Inter-transferability:.,,,,,,,,,

7.6.1. No Senior Resident in any institution of the State will be allowed to shift to any other institution without formal resignation from the.,,,,,,,,,

former institution.,,,,,,,,,

7.6.2. However, instances where inter-transferability is sought on couple case grounds may be given consideration subject to the",,,,,,,,,

availability of departmental vacancy of Senior Resident in the institution to which transfer is being sought.,,,,,,,,,

7.6.3. No other exception will be made to clause 7.6.1. However, the State Government reserves the right to transfer/depute a Senior",,,,,,,,,

Resident/ Tutor-Specialist from one Government Medical College to another, if the administrative exigencies demand so.",,,,,,,,,

8. Junior Residents/Tutor-General:.,,,,,,,,,

8.1. Eligibility : Direct candidates and those regularly appointed GDOs who possess a MBBS Degree as recognized by Medical Council of.,,,,,,,,,

India will be eligible for the post of Junior Resident/Tutor-General. These positions will not be offered to any Post Graduate.,,,,,,,,,

doctor/contractual GDOs.,,,,,,,,,

8.2. Method of Selection:.,,,,,,,,,

8.2.1. These posts will be filled up by the Principal of concerned Government Medical College through walk-in-interviews by prior.,,,,,,,,,

notification of vacancies and inviting applications for the same.,,,,,,,,,

8.2.2.Walk-in-interviews for these posts shall also be conducted thrice a year as

prescribed for the post of Senior Resident.,,,,,,,,,

8.2.3.The applications received will be considered as per the following criteria:,,,,,,,,

(a) First preference would be given to the direct MBBS doctors who are not in the employment of the Government of Himachal Pradesh. The,,,,,,,,

selection will be made purely on the basis of merit of candidate in MBBS examinations.,,,,,,,,,

(b) Second preference would be given to GDOs whose spouses are working, in order of preference, as Senior Resident or Faculty in the",,,,,,,,,

respective Government Medical College or in the State/ Central Government (including semi-governments/autonomous bodies fully or,,,,,,,,

partially funded by the Government). In case there is more than one applicant for particular position, the applicant having higher score in",,,,,,,,,

MBBS examination will be selected.,,,,,,,,,

8.2.4. For the smooth conduct of patient care services, if any post of Senior Resident in any clinical specialty remains vacant despite",,,,,,,,,

advertisement in the last round of recruitment by the Director, Medical Education & Research, Himachal Pradesh and recruitment of",,,,,,,,,

manpower against that post is absolutely necessary in public interest, the Principal of the concerned Government Medical College may fill",,,,,,,,,

up the post by way of Junior Resident through walk-in-interview subject to fulfilment of following conditions:,,,,,,,,

(a) The Principal shall seek prior permission of Director, Medical Education & Research, Himachal Pradesh for advertising these posts of",,,,,,,,,

Senior Resident against which a Junior Resident is proposed to be recruited. The Director, Medical Education & Research, Himachal",,,,,,,,,

Pradesh shall accord permission for the same only if the said post was advertised previously but no suitable candidate could be recruited.,,,,,,,,,

against that post.,,,,,,,,,

(b) It also shall be ensured by the concerned Principal that such Junior Resident who are occupying the posts of Senior Resident shall not.,,,,,,,,,

exceed 20% of the total posts of Senior Resident in that Department.,,,,,,,,,

(c) Such Junior Residents shall be appointed for a term of maximum of six months at a time following which the post shall be advertised as.,,,,,,,,,

Senior Resident in the next round of recruitment.,,,,,,,,,

(d) Such Junior Resident shall be payable pay and allowances as prescribed for their post and not for the post of Senior Resident.,,,,,,,,,

8.3. Terms and conditions:,,,,,,,,

8.3.1. Junior Resident will be appointed for a term of one year at a time. Extension beyond one year will only be allowed in exceptional,,,,,,,,

cases and with the prior concurrence of the State Government.,,,,,,,,,

8.3.2. GDOs appointed on regular basis, on their selection as Junior Resident will continue to draw pay and allowances/increments as",,,,,,,,,

admissible to them in their pay scale. MBBS doctors appointed in the direct category will get emoluments as may be prescribed from time to,,,,,,,,

time by the State Government.,,,,,,,,,

9. Casualty Medical Officers and Blood Bank Medical Officers:,,,,,,,,

The posts of already created Casualty Medical Officers and Blood Bank Medical Officers in Medical Colleges will be filled up separately,,,,,,,,

on tenure basis by the Government by way of transfer from the cadre of GDOs (regular) of the HPHS. Tenure shall normally be for,,,,,,,,

three years.,,,,,,,,,

10. Removal/Resignation from posts of Senior/ Junior Residents/Tutor:,,,,,,,,

10.1. Once appointed, the incumbent can be removed from the post any time after joining in case of misconduct, misbehaviour, acts of",,,,,,,,,

commission/ omission, unbecoming of a public servant. The HOD will make a formal request in writing to the Principal of the concerned",,,,,,,,,

Medical College for removing the delinquent appointee. The Principal of the concerned Medical College will take decision in the matter.,,,,,,,,,

after hearing both the parties. It will be necessary to give due opportunity to the concerned Senior Resident/ Junior Resident to explain,,,,,,,,

his/her position. The Principal shall forward his/her recommendations to the Government, and the final decision shall be taken at the",,,,,,,,,

level of Government, being the appointing authority." ,,,,,,,,,

10.2. Similarly, if the performance is non- satisfactory as reported by the Head of Department during annual performance appraisals, the",,,,,,,,,

Principal shall hear the parties and forward the case to the Government for discontinuation of services, if so required, alongwith his/her",,,,,,,,,

findings and recommendations.,,,,,,,,,

10.3. Any Senior/Junior Resident shall have to give one month's notice or salary in lieu thereof to resign and the concerned Principal,,,,,,,,

will accept the same.,,,,,,,,,

11. Reservation: Reservation roster for direct candidates will be applied as per rules applicable in the State of Himachal Pradesh. However,",,,,,,,,

if candidates of reserved category are not available in any category, then the post will be filled up from General category.",,,,,,,,

12. Power to relax/change/amend the policy: Where the State Government is of the opinion that it is necessary or expedient to do so, it may,",,,,,,,,

for reasons to be recorded in writing relax/change/amend any of the provision(s) of this policy.,,,,,,,,,

8. Terms and conditions contained in the aforesaid Resident Doctor Policy, are para materia same to terms and conditions formulated/prescribed by",,,,,,,,

the respondents at the time of inviting applications for the posts of senior residents of various specialties of Pt. Jawahar Lal Nehru Government,,,,,,,,

Medical College and Dr. Radhakrishnan Government Medical College, Hamirpur, in the year, 2016 save and except condition with regard to",,,,,,,,

Repeat Tenure. Terms and conditions formulated at the time of inviting applications in the year, 2016, provided that there will be no repeat",,,,,,,,

tenure for in-service GDOs (including contractual appointees) as Senior Residents in any specialty and repeat tenure will be available to only,,,,,,,,

direct candidates, but same shall be for six months at a time. In the aforesaid terms and conditions formulated at the time of advertisement issued in",,,,,,,,

the year, 2016, it was also provided that if a direct candidate selected as Senior Resident is unable to complete the term of three years, he/she will be",,,,,,,,

eligible to appear in the interview of Senior Resident and get selected in the same or other specialty. He/she will also be entitled to be selected as Sr.,,,,,,,,,

Resident in a super specialty and if an in-service GDOs is unable to complete the term of three years, he/she shall be debarred from doing Senior",,,,,,,,

Residency for a period of three years.,,,,,,,,,

9. However, aforesaid condition of repeat tenure came to be completely modified in Resident Doctor Policy circulated in the year, 2019. Repeat",,,,,,,,

tenure, as provided in aforesaid Resident Doctor Policy, reads as under:",,,,,,,,

7.4. Repeat Tenure:,,,,,,,,

7.4.1. There will be no repeat tenure for any candidate as Senior Resident/Tutor-

Specialist in any specialty in a particular Government,,,,,,,,

Medical College,,,,,,,,

7.4.2. A Senior Resident who has completed his/her tenure in one specialty will however be eligible for Senior Residency in the concerned,,,,,,,,

super specialty department; provide that such candidates shall be placed below the fresh candidates while drawing up merit irrespective of,,,,,,,,

the marks earned.â??,,,,,,,,,

10. As per the aforesaid clause, no candidate can have a repeat tenure as a senior resident/tutor specialist in any specialty, particularly, in GMC,",,,,,,,,

however, a senior resident, who has completed his/her tenure in one specialty will be entitled for Senior Residency in the concerned super specialty",,,,,,,,

department, but he/she shall be placed below the fresh candidates while drawing up merit irrespective of the marks earned. In the aforesaid",,,,,,,,

background, all the petitioners herein after having completed three years as senior residents/tutor approached the respondents for their regularization",,,,,,,,

against the post(s) they were appointed on contractual basis, but fact remains that respondents did not accede to the request of the petitioners herein,",,,,,,,,

whereas in terms of Regularization Policy framed from time to time, proceeded to regularize the contractual service of Medical Officers in the",,,,,,,,

Directorate of Health Service over and above the R&P Rules. Copies of the notifications dated 5.8.2017 and 17.2.2018, regularizing the services of",,,,,,,,

the Medical Officers in the Directorate of Health Services are annexed as Annexure P-21. Respondents instead of considering the claim of the,,,,,,,,

petitioners for regularization issued fresh advertisement qua the post of senior residents/tutor specialist, against which, petitioners had already rendered",,,,,,,,

three years continuous service on contract basis (Annexure P-21). Petitioners besides making comprehensive representation dated 28.9.2020 to,,,,,,,,

respondent No.1 (Annexure P-23) also applied for the post in question in terms of fresh advertisement. Though, all the petitioners herein, stood",,,,,,,,

selected against the post in question in their specialty, but since they were not given appointment at Pt. Jawahar Lal Nehru Government Medical",,,,,,,,

College, Chamba, where they were earlier working, they filed representation, to the Secretary (Health) to the Government of Himachal Pradesh,",,,,,,,,

praying therein to allow them to continue in the same college again. Since no heed, if any, was paid to the aforesaid request made by the petitioners,",,,,,,,,

they have approached this in the instant proceedings praying therein for following main reliefs:,,,,,,,,

â??i) Issue a writ of Certiorari, Mandamus or other appropriate writ or direction quashing Notification dated 22.06.2019 Clause 7.4 (Repeat Tenure)" ,,,,,,,,,

under 7.4.1. which forbids repeat of tenure from any candidate as Senior Resident/Tutor-Specialist in any specialty in a particular Government,,,,,,,,

Medical Collage, for all intents and purposes." ,,,,,,,,,

ii).Â Issue a writ of Certiorari, Mandamus or other appropriate writ or direction quashing the advertisement,(Annexure P-21) qua one post of Sr." ,,,,,,,,,

Resident/Tutor-Specialist (Physiology) against which the Petitioner is already working) at Pt. Jawahar Lal Government Medical College, Chamba ,",,,,,,,,,

for all intents and purposes.,,,,,,,,,

iii). Issue a writ of Certiorari, Mandamus or other appropriate writ or direction in case the result card/merit list is prepared in reference to the" ,,,,,,,,,

advertisement,(Annexure P-21) ,the same may kindly be quashed for all intents and purposely accordingly." ,,,,,,,,,

iv). Issue a writ of Certiorari, Mandamus or other appropriate writ or direction ,directing the respondents to regularize the contractual services of the" ,,,,,,,,,

petitioner after completion of his three years of Contractual services, in terms of the regularization policy of the respondent State against the post of" ,,,,,,,,,

Sr. Resident/Tutor-Specialist (Physiology) at Pt. Jawahar Lal Government Medical College, Chamba on= which petitioners is presently working, for" ,,,,,,,,,

all intents and purposes.,,,,,,,,,

v). Issue a writ of Certiorari, Mandamus or other appropriate writ or direction quashing the action of the respondents i.e. the respondent no.5 from" ,,,,,,,,,

replacing one contractual employee(i.e. the Petitioner) by another contractual employee.â??" ,,,,,,,,,

11. We have heard the learned counsel for the parties and perused the material available on record.,,,,,,,,,

12. Precisely, in the petitions at hand, this Court needs to decide two following questions; 1.) whether the petitioners, who being duly qualified and" ,,,,,,,,,

eligible were appointed as tutors in the department of Anatomy, physiology, pharmacology and microbiology on contract basis, can claim regularization" ,,,,,,,,,

against the post of Tutors and Senior Residents in terms of regularization policies

framed by the state of Himachal Pradesh; 2.) Whether condition of repeat tenure provided under clause 7.4 of the Resident Doctor Policy notified vide notification dated 22.6.2019, is unfair, unlawful, unconstitutional and defeats the purpose of regularization policy.

13. Having heard learned counsel for the parties and perused material available on record, this Court sees no dispute inter-se parties qua the fact that respondents after having failed to appoint the qualified medical faculty in newly opened Medical Colleges, framed terms and conditions for appointment of the Professors, Associated Professors, Assistant Professors, Tutors, Senior Residents and Junior Residents (on contractual basis) vide notification dated 22.4.2016 (Annexure P-12). As per aforesaid terms and conditions, Professors, Associate Professors and Assistant Professors in the department of Medical Education are/were to be engaged on contractual basis initially for a period of one year, which could be extended on year to year basis. Appointment made if any, in terms of aforesaid terms and conditions formulated vide notification dated 22.4.2016 is to be made purely on temporary basis and candidate shall not have any right to claim for regularization/permanent absorption as Professor in the Department at any stage. Condition No. 13 of aforesaid terms and conditions specifically provides that they are barred for claiming regularization/permanent absorption against the post of Professors in the Department of Medical Education, but definitely not against other posts of Associate Professors, Assistant Professors, Tutors/Senior Residents and Junior Residents. Rather R&P Rules notified in Rajpatra vide department notification No. Health-A(A)(3) 68 dated 2.12.1999, which came to be amended vide notification dated 10.1.2006 clearly provides that post of Assistant professors shall be filled up (i) 50 % by promotion, failing which by recruitment or on contract basis; and (ii) 50% by direct recruitment or on contract basis, in the manner specified in Appendix-D appended with the aforesaid notification.

14. Similarly, clause 10 of aforesaid terms and conditions provides for transfer of a contract appointee from one place to another after putting three years service at one place, meaning thereby, condition of repeat tenure as contained in clause 7.4 of the Resident Doctor Policy is/was not binding on

the candidates, who immediately after promulgation of terms and conditions vide notification dated 22.4.2016 applied for the appointment against",,,,,,,,,

various posts in the department of Medical Education on contract basis. Similarly, it is undisputed that after framing of aforesaid terms and conditions",,,,,,,,,

vide notification dated 22.4.2016, respondents invited applications by way of an advertisement from candidates fulfilling the eligibility criteria for",,,,,,,,,

selection of Senior Residents in various specialties of Pt. Jawahar Lal Nehru Government Medical College, Chamba and Dr. Radhakrishnan",,,,,,,,,

Government Medical College, Hamirpur H.P., on tenure basis initially for a period of six months, but same could be extended upto three years as per",,,,,,,,,

performance. Terms and conditions provided alongwith aforesaid advertisement though provided for "repeat tenure" regulation, but it categorically",,,,,,,,,

provides that the repeat tenure will be available to only direct candidates, but for six months at a time. However, in-service GDOs including",,,,,,,,,

contractual appointees are not held entitled for "repeat tenure". Material available on record clearly reveals that all the petitioners herein though",,,,,,,,,

were initially appointed on tenure basis for six months, but they were given extension on year to year basis and as of today have served the respondent",,,,,,,,,

department for more than three years uninterruptedly.,,,,,,,,,

15. During proceedings of the case, Mr. Ajay Vaidya, learned Senior Additional Advocate General, representing the State, while refuting the claim of",,,,,,,,,

the petitioners for regularization in terms of Regularization Policy(s) framed by the Government of Himachal Pradesh , argued that since there are no",,,,,,,,,

substantive posts of Senior Residents/tutor specialists in the Department of Medical Education, benefit, if any, of regularization in terms of aforesaid",,,,,,,,,

Sr.

No.",Name of the Department,Professor,"Associate

Professor", "Assistant

Professor",Tutor,Sr. Resident,Jr. Resident,Other Faculty

1,Anatomy,01,01,02,04,.....

2,Physiology,01,01,02,04,.....

3,Biochemistry,01,01,01,04,.....

4,Pharmacology,01,01,02,.....

5,Pathology,01,03,03,,,02,..

6,Microbiology,01,01,01,03,..,04,..

7,Forensic Medicine,01,..,01,02,..,....

8,Community Medicine,01,02,02,04,..,..,"1 Post each of
Epiderolo
gist-cumAsst.
Professor and
Statisticia n-
cumAsst,
Professors
2 post
LMO=2
posts

9,General medicine,01,03,04,..,06,12,..

10,Pediatrics,01,01,02,..,03,06,..

11,"Tuberculosis & Respiratory
Diseases",01,â?!,01,..,02,03,..

12,"Dermatology, Venereology
and Leprosy",01,..,01,..,02,03,..

13,Psychiatry,01,..,01,..,02,03,..

14,General Surgery,01,03,04,..,06,12,..

15,Orthopedics,01,01,02,..,03,06,..

16,Oto-RhinoLaryngology,01,..,01,..,02,03,..

17,Ophthalmology,01,..,01,..,02,03,..

18,Obstetrics & Gynecology,01,02,03,..,03,06,"ANMC Post
MWOs Post

19,Anaesthesiology,01,02,03,..,08,..,..

20,Radio-Diagnosis,,01,01,..,05,..,..

21,Dentistry,01,..,01,..,02,..,..

22,"Physical medicines &

Rehabilitation",01,..,01,..,02,01,00

23, Radio Therapy,01,01,01,03,..,..,..

,Total,23,24,43,30,48,58,06

Residents in the Medical Education Service Rules, but once they framed â?? Resident Doctor Policyâ?, regulating/governing the services of the",,,,,,,,,

aforesaid category of doctors and thereafter, made appointments on the basis of terms and conditions contained in Resident Doctor Policy as well as",,,,,,,,,

terms and conditions contained in notification dated 22.4.2016, it cannot be said that Eligibility Criteria prescribed in the R&P Rules for the aforesaid",,,,,,,,,

posts was not applied at the time of initial recruitment of the petitioners on contract basis. Interestingly, doctors possessing same and similar",,,,,,,,,

qualification as is/was possessed by the petitioners herein, after being selected as Medical Officers (General Wing) on contract basis, have been",,,,,,,,,

accorded benefit of regularization in terms of aforesaid policies framed by the Government from time to time. No doubt, R&P Rules for the post of",,,,,,,,,

Medical Officers, Class-I gazetted (General Wing), in the department of Health and Family Welfare stand framed vide notification dated 9.3.2012, but",,,,,,,,,

if, condition of essential qualification/ eligibility provided in the aforesaid R&P Rules framed for regulating the service of General Duty Officers",,,,,,,,,

(GDOâ??s) is perused vis-Ã -vis condition of essential qualification/eligibility prescribed for Tutors, Senior Residents and Junior Residents, it cannot",,,,,,,,,

be said that petitioners herein do not possess requisite qualification, rather they are equally qualified and possess qualification as framed by MCI, as",,,,,,,,,

provided under R&P Rules framed for governing the service of GDOs.,,,,,,,,,

22. Since despite there being creation of posts of Tutors, Senior Residents and Junior Residents, respondents failed to include such posts in the",,,,,,,,,

Himachal Pradesh Medical Education Service Rules, coupled with the fact that petitioners possess requisite qualification as prescribed by MCI and",,,,,,,,,

Resident Doctor Policy, they cannot be denied the benefit of regularization on the pretext that they do not qualify eligibility criteria prescribed in the",,,,,,,,,

R&P Rules. At this stage, Mr. Ajay Vaidya, learned Senior Additional Advocate General, argued that since the petitioners came to be appointed in",,,,,,,,,

terms of notification dated 22.4.2016, wherein it has been specifically provided that candidates engaged on contract basis under these rules shall have",,,,,,,,,

no right to claim regularization/permanent absorption, petitioners cannot seek

regularization in terms of the regularization policy formulated by the" ,,,,,,,
Government after their initial appointment, however, having carefully perused terms and conditions provided vide notification dated 22.4.2016," ,,,,,,,
(Annexure P-12), this Court finds no force in the afore submissions made by learned Senior Additional Advocate General, because in the terms and" ,,,,,,,
conditions as referred herein above, though it has been provided that services of the appointees will be purely on contract basis, but in clause 13 of the" ,,,,,,,
terms and conditions, it has been categorically provided that candidate engaged on contract basis under these rules, shall have no right to claim for" ,,,,,,,
regularization/permanent absorption as â??Professorâ?? in the Department at any stage.,,,,,,,

23. In the case at hand, petitioners are not seeking their regularization against the post of Professor, rather against the posts of Tutors, Senior" ,,,,,,,
Residents and Junior Residents, respectively. Though, in the Resident Doctor Policy, it is provided that there will be no repeat tenure for any candidate" ,,,,,,,
as Senior Resident/Tutor-Specialist in any specialty in a particular Government Medical College, but right has been reserved to him or her to apply for" ,,,,,,,
senior residency in the concerned super specialty irrespective of the marks earned. If the Resident Doctor Policy for the year, 2019 is perused in its" ,,,,,,,
entirety, it nowhere debars a candidate from seeking regularization against the post of Tutors, Senior Residents and Junior Residents after completion" ,,,,,,,
of their contract.,,,,,,,

24. Mr. Vaidya, further argued that keeping in view the nature and responsibility attached to the post in question, benefit of regularization in terms of" ,,,,,,,
regularization policy framed by the Government of Himachal Pradesh cannot be extended to the petitioners. He argued that regularization policy, ,,,,,,,
framed by the Government from time to time, does not apply to the Department of Medical Education, but aforesaid argument of him, is totally devoid" ,,,,,,,
of any merit. Bare perusal of Regularization Policy dated 30.3.2021, clearly reveals that same is addressed to all heads of the departments of" ,,,,,,,
Himachal Pradesh and it has been nowhere mentioned in the notification that same shall not apply to the Department of Medical Education. Otherwise, ,,,,,,,
also, aforesaid argument advanced by Mr. Vaidya, learned Senior Additional Advocate General, is total contrary to the record, because Medical" ,,,,,,,
Officers 1st Class Gazetted (General Wing) in the department of Health and

Family Welfare, who were also eligible to be appointed as Tutors, Senior" ,,,,,,,

Residents and Junior Residents in various Medical Colleges have been already given benefit of the aforesaid policy of regularization framed by the ,,,,,,,

government from time to time. Since aforesaid Medical Officers have been already extended the benefit of regularization in terms of regularization ,,,,,,,

policy framed by the Government, prayer made on behalf of the petitioners for regularization cannot be denied on the pretext of onerous" ,,,,,,,

responsibility(ies) and duties attached to the post in question. Medical Officers working in the department of Health And Family Welfare and tutors, " ,,,,,,,

Junior Residents and Senior Residents working in Medical Colleges have same nature of job with same responsibilities and as such, there cannot be" ,,,,,,,

any discrimination inter-se both the categories as referred herein above. Recruitment and Promotion Rules, prescribed for the post of Medical Officer," ,,,,,,,

General Wing, if perused in its entirety, clearly suggest that service of candidates on contract will be purely on temporary basis and candidates" ,,,,,,,

engaged on contract basis under these rules, shall have no right to claim regularization/permanent absorption in the department at any stage. However," ,,,,,,,

as has been taken note herein above, respondents despite there being aforesaid condition contained in the R&P Rules framed for the category of" ,,,,,,,

Medical Officers 1st Class Gazetted (General Wing) in the Department of Health and Family Welfare, have regularized the services of some of the" ,,,,,,,

doctors belonging to this category in terms of regularization policy framed by the State Government. Hence, argument advanced by the learned Senior" ,,,,,,,

Additional Advocate General, that petitioners and other similarly situate persons are bound by terms and conditions contained in the notification," ,,,,,,,

wherein it has been specifically provided that persons appointed on contract basis shall not have any right to seek regularization /permanent absorption," ,,,,,,,

is otherwise bound to fail on the ground of discrimination. Once such condition provided under R& P Rules framed for the Medical Officers 1st Class ,,,,,,,

Gazetted (General Wing) in the Department of Health and Family Welfare, has not been enforced by the Government while regularizing their services," ,,,,,,,

same also cannot be pressed while considering claim of the petitioners for regularization in terms of Regularization Policy. ,,,,,,,

25. Since the State of Himachal Pradesh has accorded the benefit of regularization of the services, to, persons, similarly situate to the petitioners," ,,,,,,,

therefore, any stipulation in the R&P Rules barring the contractual appointee(s) to stake any claim for regularization is deemed to be waived and" ,,,,,,,

abandoned. Even otherwise, when the petitioners were recruited though theirs undergoing the requisite processes, as, stipulated in the R&P Rules," ,,,,,,,

and, their induction did occur against the substantive posts concerned, they are entitled to regularization in terms of regularization policy. Furthermore," ,,,,,,,

since in contemporaneity with their induction into service, even on a contractual capacity, the State of Himachal Pradesh, has sanctioned the relevant" ,,,,,,,

posts against which they were appointed in a substantive capacity, through, on a contractual basis, therefore, the barring stipulation in the R&P Rules" ,,,,,,,

against their staking any claim for regularization, appears to be flawed, irrational, as well as arbitrary. Moreover, the benefit of regularization cannot be" ,,,,,,,

denied to the petitioners, especially when similarly situate persons rendering their services in the medical department have been extended the benefit" ,,,,,,,

of regularization.,,,,,,,

26. Clause 7.4 of Resident Doctor policy, lays down the rule that there will be no repeat tenure for any candidate as Senior Resident/Tutor-Specialist" ,,,,,,,

in any speciality in a particular Government Medical College, however, clause 7.4.2 provides that a Senior Resident, who has completed his/her tenure" ,,,,,,,

in one speciality will however be eligible for Senior Residency in the concerned super speciality department provided that such candidates shall be ,,,,,,,

placed below the fresh candidates while drawing up merit irrespective of the marks earned.,,,,,,,

27. Mr. C.N. Singh, learned counsel appearing for the petitioners argued that aforesaid condition imposed/incorporated in the Resident Doctor Policy" ,,,,,,,

is unfair, unlawful, unconstitutional and defeats the purpose of Regularisation policy. He furthered argued that aforesaid provision has been notified" ,,,,,,,

with the mala-fide motive to throw the petitioners from the job and stop them from pursuing their Ph.D., so that subsequently, they do not claim" ,,,,,,,

regularization against the posts. Mr. Ajay Vaidya, learned Senior Additional Advocate General, while justifying incorporation of aforesaid provision of" ,,,,,,,

â??repeat tenureâ? contended that very purpose and object to provide posts of

Senior Residents/Tutor Specialists in different specialties is to provide,,,,,,,,,adequate experience to the postgraduate doctors so that subsequently, they become entitled to be appointed as Assistant Professor in the different",,,,,,,,,medical colleges,,,,,,,,,

1,2,3,4,5,6,7,8,

,"Assistant

Professor",90,"Class-I

Gazetted

(Technical)",16350- 20100,Selection,"45 years &

below","As given in

Appendix

â??Bâ?? of

this

Annexure",

,"Assistant

Professor

(Super

Speciality)",12,"Class-I

Gazetted

(Technical)",163500- 20100,Selection,"45 years and

Below","As given in

Appendix

â??Bâ?? of

this

Annexure",

,8,9,10,11,12,12,,

,"Age: Not

applicable

E.Q:yes","applicable

E.Q:yes (i)

50% by
appointment
(by selection)
failing which
by direct
recruitment.
(ii) 50% by
direct
recruitment in
the manner
specified in
Appendix
â??Bâ??", "By promotion
from amongst
the Lecturer
who possess
Three years
regular service
or regular
combined with
continuous ad
hoc (rendered
upto 31.3.1998)
service, if any in
the grade which
by appointment
(by selection
from amongst
members of
H.P. Civil

Medical Service
(General Wing)
having
recognized
postgraduation
degree or its
equivalent
qualification, in
the concerned
speciality and
possess as last
three years
teaching
experience as
Lecturer/Registr
ar/Demonstrat
or/Tutor/Sr.
Resident/Chief
Resident in the
concerned
speciality after
doing post
graduation in the
concerned
speciality failing", "As may be
constitut ed by
the Govt. From
time to time", "As require under the
Law",,,
,"Age: Not

Applicable", "50% by
appointment
(by selection)
failing which
by direct
recruitment.
(i) 50% by
direct
recruitment in
the manner
specified in
Appendix
â??Bâ??", "By appointment
(by selection
from amongst
the member of the
Himachal
Pradesh Civil
Medical
Services
(General Wing)
having post
Graduate
Degree or Post
Doctoral degree
its equivalent
qualification
concerned
super-speciality
and possess at

least three year
teaching
experience as
Lecturer/Registr
ar/Demonstrat
or/Tutor/Sr.
Resident/Chief
Resident in the
concerned
Speciality after
doing
postGraduation
in the concerned
speciality failing
which by direct
recruitment.", "As may be
constitut ed by
the Govt from
time to time", "As require undue law.,,,

4. Assistant Professor (Super-Speciality). Essential qualifications-,,,,,,,,

(i) A recognized medical qualification included in the first or second Schedule or Part-II of the third Schedule (other than licentiate,,,,,,,,

qualifications) to the Indian Medical Council Act, 1956. Holders of Educational qualification(s) included in Part-II of the third Schedule",,,,,,,,,

should also fulfil the conditions stipulated in subsection (3) of Section 13 of Indian Medical Council Act. 1956.,,,,,,,,,

(ii) Post-graduate and post-doctoral degrees as mentioned in part-A of Annexure â?"II or its equivalent qualifications in the concerned,,,,,,,,

Super-speciality.,,,,,,,,,

(iii) Atleast 3 years teaching experience as Lecturer/Registrar/Demonstrator/ Resident after doing post-graduation in the concerned,,,,,,,,

speciality in any recognized Medical College.,,,,,,,,,

Note-Two/Three Years degree course while doing D.M./M.Ch. shall be counted as teaching experience for the purpose of appointment as.,,,,,,,,,

Assistant Professor (Super-Speciality).,,,,,,,,

Desirable qualifications- (i) Knowledge of customs, manners and dialects of Himachal Pradesh and suitability for appointment in the",,,,,,,,,

peculiar conditions prevailing in the Pradesh.,,,,,,,,,

(ii) Publication of research papers in Index Journals.â??.,,,,,,,,,

31. In the aforesaid clause of essential qualification, a candidate aspiring to be recruited against the direct quota besides having basic qualification also",,,,,,,,,

needs to have three years teaching experience as Lecturer, Registrar and Demonstrator and Resident after doing post graduation in the concerned",,,,,,,,,

speciality in any recognised medical college. Had the respondent included category of Sr. Residents/tutors in the aforesaid clause, Sr. Resident/tutor",,,,,,,,,

after having completed their three years period would have otherwise become eligible to be appointed against the post of Assistant Professor.,,,,,,,,,

However, in the case at hand, neither Sr. Resident/Tutor have been held entitled to be considered to be appointed against the post of Assistant",,,,,,,,,

Professor under direct quota nor they have been kept as one of the feeder category among other two feeder categories for their being considered for.,,,,,,,,,

promotion to the post of Assistant Professor against 50 % quota and as such, condition of â??repeat tenureâ? provided under clause 7.4 cannot be",,,,,,,,,

said to be lawful, rather existence of such rule in the Doctor Resident Policy would be totally unfair and unlawful. Allowing the respondents to bar the",,,,,,,,,

â??repeat tenureâ? against the post of Sr. Resident/tutor in the apposite feeder channel, would render all the previous service rendered by the",,,,,,,,,

petitioners and other similarly situate persons redundant/effaced. Moreover, petitioners, despite falling in the relevant point of roster, as meant for them",,,,,,,,,

vis-Ã -vis the promotional post of Assistant professor would be completely ousted from the categories, who, otherwise are eligible to be promoted",,,,,,,,,

against post of Assistant Professor under 50 % quota mentioned for promotion. As a corollary, this Court finds illegality and infirmity in the afore",,,,,,,,,

condition barring the â??repeat tenureâ? to the petitioners, against the contractual post of Residents/tutors/tutor specialist and as such, same is",,,,,,,,,

declared arbitrary and unjust and accordingly, same deserves to be quashed and

set-aside, as a consequence of which, selected candidates against the" ,,,,,,,
post concerned are required to be offered letters of appointment forthwith by the
respondents provided the initial selection of the candidate concerned,,,,,,
is /was in complete adherence of the relevant norms.,,,,,,,
32. Consequently, in view of the detailed discussion made herein above, all the
petitions are allowed and respondents are directed to regularize the" ,,,,,,,
service of the petitioners against the posts of Senior Resident/tutor in their
respective specialties forthwith. Similarly clause 7.4 of Doctor Resident,,,,,,
Policy is declared to be arbitrary and unjust and as such, same is also quashed
and set-aside, as a consequence of which, respondents are directed to" ,,,,,,,
permit the petitioners to continue serving as Senior Residents/tutor specialists, in
the medical college, where they were appointed. Needful shall be" ,,,,,,,
done by the respondents expeditiously, preferably, within one week. Secretary
(Medical Education) shall ensure the aforesaid compliance and affidavit" ,,,,,,,
of compliance be filed on or before 12.8.2021.,,,,,,,