

(2012) 08 KAR CK 0071

In the Karnataka High Court

Case No : W.A. No's. 2978-86 and 2987-96 of 2012 C/w 3004-3018 of 2012,
3020-34 of 2012 (EDN-RES)

Dr C.M. Hanumantharaju and Others

APPELLANT

Vs

Dr Siddappa and Others
 Dr Sonia J.V. and Others Vs
State of Karnataka Department of Health and Family Welfare
Vikasa Soudha Dr. Ambedkar Veedhi Bangalore and Others

 Dr. Geetha Priya P and Others Vs State of Karnataka
Department of Health and Family Welfare and Others

RESPONDENT

Date of Decision : 06-08-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 309

Karnataka Directorate of Health and Family Welfare Services) (Special) Rules, 2006 —
Rule 3, 3 (2), 5, 5A, 5A (1)

Citation : (2012) ILR (Kar) 6317 : (2012) ILR (Kar) 6267

Hon'ble Judges : Vikramajit Sen, C.J.;B.V. Nagarathna, J

Bench : Division Bench

Advocate : Jayakumar S. Patil assisted with Sri. Nitin, in W.A. Nos. 2978-86 and 2987-96/2012, Sri. M.N. Nanjundareddy and Sri. M.R. Naik For Sri. Reuben Jacob, in W.A. Nos. 3004-3018/2012, Sri. M.N. Nanjundareddy and Sri. M.R. Naik for Sri. Reuben Jacob, in W.A. No. 3020-34/2012, for the Appellant; Uday S. Holla A/W. Smt. Akkamahadevi Hiremath, for C/R1 and R2 to R10, Sri Nataraj, Addl. A.G. A/w. Sri. B. Veerappa, AGA. for R11 to R13 and Sri. N.K. Ramesh for R14 in W.A. Nos. 2978-86 and 2987-96/2012, Sri. Uday S. Holla A/w. Smt. Akkamahadevi Hiremath, for C/R-63, R68 to R71, R73, R82, R86 and R95 in W.A. Nos. 3004-3018/2012, Sri. Jayakumar S. Patil A/w. Sri. Nitin, for R18 and R19 Sri. Uday S. Holla A/w. Smt. Akkamahadevi Hiremath, For C/R63, R68, R69, R70, R71, R73, R32, R86, R95 Sri. M.N. Prasanna, for M/s. P.S. Rajagopal Assts. for C/ r.127 and 159, Sri Dr. N.G. Nagapaj is Not Enters Into the Present W.A. No. 3020/ 12 in W.A. No. 3020-34/2012, for the Respondent

Final Decision : Dismissed

Judgement

Nagarathna, J.—These appeals assail the order of the learned Single Judge dated 03.06.2012, in W.P.Nos.15807-15810/2012 W.P.Nos.15811-15812/2012 and

W.P.Nos.15813- 15816/2012, which were filed by in-service doctors appointed on contract basis and were regularized in the year 2007. W.P.Nos.15417/2012 and 15636-15664/2012 were filed by the in-service doctors assailing the inclusion of respondent Nos.5 to 168 therein in the provisional departmental merit list. Respondent Nos.5 to 66 therein are doctors absorbed as regular doctors under the provisions of Karnataka Civil Service (Absorption of Doctors appointed on Contract Basis in the Karnataka Directorate of Health and Family Welfare Services) (Special) Rules, 2006 (hereinafter referred to as "the Absorption Rules, 2006" for the sake of brevity). Similarly, respondent Nos.67 to 124 in the writ petitions are absorbed under the aforesaid Rules of 2007 (hereinafter referred to as 'the Absorption Rules, 2007') and respondent Nos.125 to 168 in the said writ petitions are doctors appointed by direct recruitment in the years 2007, 2008 and 2009. The learned Single Judge dismissed the said writ petitions, against which Writ Appeal Nos.3004-3018/2012 and Writ Appeal Nos.3020- 3034/2012 have been filed by a batch of thirty petitioners. In view of the dismissal of the aforesaid writ petitions, W.P.Nos.15807-15810/2012 and W.P.Nos.15811-15812/2012 and W.P.Nos.15813-15816/2012 were allowed, wherein the circulars and ranking list issued pursuant to the interim orders granted in W.P. No. 15417/2012 and W.P.Nos.15636-634/2012 and W.P.Nos.15365-66/2012 were assailed. The circulars and the ranking list issued pursuant to the interim orders were quashed by the learned Single Judge.

2. W.P.Nos.16337-16349/2012 were filed by the doctors appointed initially on contract basis and later by direct recruitment in 2007 and 2009. These writ petitions were also allowed by the learned Single Judge. W.P.Nos.15365-15366/2012 also assailed the notification dated 21.02.2012. They were filed by doctors who were initially appointed on contract basis and absorbed by the Absorption Rules, 2006 while W.P. No. 15365/2012 was dismissed as not pressed. W.P. No. 15366/2012 was dismissed on merits. That apart, W.A.Noc.2978-2996/2012 are filed by nineteen doctors who were not parties to the writ petitions, being aggrieved by the order of the learned Single Judge with regard to W.P.Nos.15807-15810/2012, W.P.Nos.15811-15812/2012 and W.P. Nos. 15813-15816/2012.

3. To complete the details of the writ petitions filed and disposed of by the learned Single Judge, it is also necessary to note that W.P. No. 14430/2012 was disposed of with a direction to the respondent authorities to consider the petitioner's representation dated 17.04.2012 and pass appropriate orders thereon within a period of four days. In para 80 of the order, the learned Single Judge has directed as follows:

80. As these petitions are filed by the in-service doctors appointed in different years and from different sources making the claims and counterclaims, the matter required considered hearing. To ward off the confusion and uncertainty, I directed the maintenance of status quo in respect of the counseling, which has already taken place and stayed all further counseling proceedings. The same was

by my interim order, dated 24.5.2012. As the interim order continued to be in force from 24_5.2012 till 8.6.2012, I deem it necessary and just to direct the extension of time for the completion of the counseling process for admission to postgraduate medical courses from the in-service category of doctors till 15.6.2012.

It is in the above circumstances, we have heard these writ appeals together and the same are disposed of by this common judgment.

Factual Matrix:

4. The controversy in general in these writ appeals pertains to the admission to Post-graduate medical and dental degree and diploma courses, (but specifically with regard to medical courses) of doctors working in various Departments of the State Government and other Authorities as in-service candidates. The respondent-Rajiv Gandhi University of Health Sciences (hereinafter referred to as the "respondent-University issued a notification dated 21.11.2011 calling upon the eligible candidates to apply for the Entrance Test for admission to Post-Graduate Medical and Dental Courses. A brochure viz., "PG Entrance Test-2012" containing the details of Post-Graduate Entrance Test for Admission to Medical and Dental Courses for the academic year 2012-13 was also issued. The respondent-University is responsible for conducting the Entrance Test under the provisions of the Karnataka Conduct of Entrance Test for Selection and Admission to Post-Graduate Medical and Dental Degree and Diploma Courses Rules, 2006 (hereinafter referred to as 'the PGET Rules, 2006' for the sake of brevity). As per the said brochure, the in-service candidates were required to submit their applications through proper channel i.e., the Heads of the Department in which they are working to the respondent-University. The last date for receipt of applications was 31.12.2011. The Entrance Test was conducted on 29.01.2012. The results were announced on 13.02.2012. The announcement of the merit list was on 20.02.2012. The Commissioner for Health and Family Welfare Services issued a Circular on 16.05.2012 listing out the candidates eligible to attend the counseling to be conducted by the respondent-University on 17.05.2012. The said Circular was issued pursuant to the interim order dated 15.05.2012 granted in W.P.Nos.15365-15366/2012, W.P.Nos.15417/2012 and W.P.Nos.15636-15664/2012. Being aggrieved by the Circular dated 16.05.2012, W.P.Nos.15807-15810/2012, W.P.Nos.15811-15812/2012 and 15813-15816/2012 were filed assailing the Circular dated 16.05.2012 and also seeking a direction to permit the said petitioners to be counseled in in-service quota in medical stream on 17.05.2012.

5. In fact, even prior to the issuance of the Circular dated 16.05.2012, by notification dated 04_05.2012, the respondent-University had fixed the first round of counseling for admission to Post-Graduate Medical and Dental Courses on the basis of the provisional rank list issued on 11.04.2012. But the final departmental merit list had not yet been published though the date for counseling had been notified. Being aggrieved by the amendment made to the

Absorption Rules 2006, 2007 and 2009 by notification dated 21.02.2012 as well as notification issued on 18.01.2011 and 07.04.2011 whereby an amendment was made to the PGET Rules, 2006, W.P. No. 15417/2012 and connected matters and W. P. Nos,15365- 15366/ 2012 were filed against the inclusion of respondent Ncs.5 to 168 in the writ petitions, in the provisional merit list, in which interim orders were granted by this court. By interim order dated 15.05.2012, the said notifications, giving retrospective effect from 30.12.2011 were stayed until further orders. Similarly, in W.P.Nos.15365- 15366/2012, the notification dated 21.02.2012 (Annexure-B to the writ petition) giving retrospective effect to the notification dated 21.02.2012 and consequential proceedings initiated by the respondent-authorities were stayed by interim order dated 15.05.2012.

6. The grievance of the in-service doctors who filed the subsequent batch of writ petitions was with regard to their exclusion from counseling as a result of the issuance of Circular dated 16.05.2012 in the wake of interim order in W. P. Nos. 15365- 16366 / 2012, wherein the notification dated 21.02.2012 omitting the condition. that the Absorbed doctors could not be deputed for higher studies for a period of six years from the date of absorption was assailed. Annexure-Q is the Circular dated 16.05.2012 in W.P.Nos.15807- 15810/2012 and connected writ petitions.

Relevant Acts and Rules:

7. Having regard to the reliefs sought by various groups of in-service candidates, reference to the relevant Acts and Rules which apply needs to be made at this stage itself, so as to have a clear understanding of the elaborate arguments made by learned counsel on behalf of various categories of in-service candidates.

8. During the last decade and half, the State of Karnataka had appointed a number of doctors on contract basis without resorting to direct recruitment. Though these doctors may have been appointed through a regular process of selection on the basis of merit, they were not doctors regularly appointed in accordance with the Rules of Recruitment of the State Government. Since they were appointed on contract basis and had served for a considerable length of time, the State Government took a decision to absorb them into service in the Department of Health and Family Welfare. Accordingly, the Absorption Rules were notified in the years 2006, 2007 and 2009 i.e., on 16.03.2006, 06.07.2007 and 29.01.2010 respectively. Rules 3 and 5 of Absorption Rules, 2006 read as under:

3. Absorption of Contract Doctors in the Directorate of Health and Family Welfare Services into the State Civil Services:- (1) Notwithstanding anything contained in the Karnataka State Civil Services (General Recruitment) Rules, 1977 or the Karnataka Directorate of Health & Family Welfare Services (Recruitment) Rules, 1965 or any other rules made for deemed to have been made under the provisions of the Karnataka State Civil Services Act, 1978 (Karnataka Act 14 of 1990) every Contract Doctor mentioned in column (2) of the Schedule and continued as such on the date of commencement of these rules, shall with effect

from such date of commencement be absorbed in the corresponding category of post and pay scale specified in columns (5) and (6) thereof respectively, in the Directorate of Health and Family Welfare Services.

Provided that no such person shall be absorbed:

i) if he was disqualified for appointment under the Karnataka Civil Services (General Recruitment) Rules, 1977 on the date of his appointment as Doctor on contract basis;

ii) if he does not possess the minimum academic qualification, specified in the rules of recruitment applicable for recruitment to the said post;

iii) in any post reserved for the persons belonging to the Scheduled Castes and Scheduled Tribes or other Backward Classes to which he was appointed as contract Doctor, if he is found to be not belonging to such Castes, Tribes or Classes, as the case may be otherwise such posts shall be filled by process of special recruitment from among these classes.

(2) The Contract Doctor who are absorbed under these rules, shall after absorption, work at least for the period of six years from the date of commencement of these rules, at first in rural areas and shall not be deputed for higher studies during that period.

5. Application of other rules: The provisions of the Karnataka Civil Services Rules, the Karnataka Civil Services (Conduct) Rules, 1966 and all other rules regulating the conditions of service of Government Servants insofar as they are not inconsistent with the provisions of these rules, shall apply to persons absorbed under these rules.

The Absorption Rules 2007 are similar to Absorption Rules, 2006 except with regard to sub-rule (2) of Rule 3 which reads as follows:

(2) The Contract Doctors who are absorbed under these rules, shall after absorption, work at least for the period of ten years from the date of commencement of these rules, at first in rural areas. They will not be eligible to be deputed for higher studies for a period of six years from the date of absorption.

In the same vein, sub-rule (2) of Rule 3 of Absorption Rules, 2009 reads as follows:

(2) The Contract Doctors who are absorbed under these rules, shall from the date of absorption, work at least for the period of six years in rural areas and shall not be eligible for deputation for higher studies during that period.

9. When the matter stood thus, the State Government by notifications dated 30.12.2011 published the Draft Amendment Rules to the Absorption Rules, 2006, 2007 and 2009. Sub-rule (2) of Rule 3 of the said Rules were sought to be amended. Further, the amendments were to take effect from 30.12.2011.

Objections were invited to the said Draft Rules. Thereafter, on 21.02.2011, the Amendment Rules were notified. As per the amendment made to the Absorption Rules, 2006, in sub-rule (2) of Rule 3, the following words were omitted viz., "and shall not be deputed for higher studies during that period." In Absorption Rules, 2007, in sub-rule (2) of Rule 3, the following words were omitted viz., "they will not be eligible to be deputed for higher studies for a period of six years from the date of absorption." Similarly, in Absorption Rules, 2009, the amendment was omission of the following words viz., "and shall not be deputed for higher studies during that period."

10. Sub-rule(2) of Rule 3 of the Absorption Rules provided that the contract doctors on being absorbed, had to work at least for a period of six years in rural areas and were ineligible for deputation for higher studies during that period. In fact, under the Absorption Rules of 2006 and 2007, six years of rural service was to be the first six years after absorption. In the 2009 Rules, however, the absorbed doctors had to work at least for six years in rural areas. But in all the three sets of Absorption Rules, the absorbed doctors who were working in rural areas were not to be deputed for higher studies during that period. By virtue of amendments made to the Absorption Rules, 2006, 2007 and 2009 by way of omission in sub-rule (2) of Rule 3, the embargo on the absorbed doctors to be deputed for higher studies for an initial period of six years from the date of absorption, during which period the absorbed doctors were to serve in rural areas was lifted. Therefore, the controversy is as to whether the absorbed doctors under the Absorption Rules have now become eligible for deputation for higher studies.

11. At this stage itself, it is relevant to refer to the Rules Regulating Deputation of or Grant of Study Leave to Government Servants for Prosecution of Special Course of Study consisting of Higher Studies or Specialized Training within India (hereinafter referred to as "Deputation Rules" for the sake of convenience) or which reliance has been placed by the appellants. These Rules are contained in Appendix-II-A to Rule 61 of the- Karnataka Civil Services Rules, 1958 (hereinafter referred to as "KCSR" for the sake of brevity) have been deemed to be enacted as part of the Karnataka State Civil Services Act, 1978 (hereinafter referred to as the "the Act" for the sake of brevity) by virtue of Section 3(3)(iii) of the said Act. The said Act is in force with effect from 30.05.1990. Rule 61 reads as follows:

61. (1)(a) The State Government may, with due regard to the exigencies of public service, depute or grant study leave to a Government servant for prosecution of a special course of study consisting of higher studies or specialized training in professional or technical subjects having a direct and close connection with the sphere of his duty.

(b) The State government may also grant study leave to a Government servant for prosecution of studies which may not be closely or directly connected with his work but which are capable of widening his mind in a manner likely to improve

his abilities as a civil servant and to equip him better to collaborate with those employed in the other branches of public service.

(2) A Government servant who is deputed or granted study leave for higher studies or specialized training shall not be entitled to claim any monetary benefit or seniority by virtue of the higher qualification or training acquired.

(3) The deputation or grant of study leave to a Government servant for prosecution of higher studies or specialized training shall be regulated in accordance with the rules contained in Appendix II-A.

Rules 1, 4 and 5 of Appendix-II-A the Deputation Rules, which are relevant for the purpose of the present case read as follows:

APPENDIX II-A

Rules regulating deputation of or grant of study leave to Government servants for prosecution of special course of study consisting of higher studies or specialized training within India

1. The Government may depute a Government servant, who has rendered not less than five years as regular service and is below [48,1 years of age, for a special course of study, consisting of higher studies of specialized training in a professional or technical subject having a direct and close connection with the sphere of his duty at a recognized institution within the State or outside the State but within India. The restriction in regard to length of service and age will not apply to deputation of Government servants for foundation refresher courses of training or any in-service training of short-term duration not exceeding three months.

xxx

4. the number of Government servants to be deputed at any point of time for higher studies or specialized training shall be kept at the minimum, not exceeding 5% of the sanctioned permanent strength of the concerned cadre.

5. The selection of a candidate for higher studies or specialized training shall be made strictly On the basis of seniority except for reasons to be recorded in writing.

12. The State Government by order dated 29.01.2010 has ordered that the contractual service rendered in the past under the contractual appointment by those doctors working as General Duty]Medical Officers in the Health and Family Welfare Department should be taken into consideration only for in-service deputation to Post-graduate studies. The operative portion of the order reads as follows:

GOVERNMENT ORDER NO.HFW 342 HSH 2008, BASUGALORE, DATED: 29.1.2010

In the background of the circumstances detailed in the preamble, it is hereby ordered that the contractual service rendered in the past under contractual

appointment by those presently working as General Duty Medical Officers/ Dental Health Officers in the Health and Family Welfare Department be taken into consideration only for in-service deputation to post graduate studies. Further, it is hereby ordered that subject to condition that it would be certified that there was no break in service between these two services, the service rendered by some Medical Officers who were appointed under rural weight age quota and who were subsequently continued under contractual basis under rural weight age and another contract basis be taken into consideration while deputing for post graduate studies under in-service quota. It is ordered that there is no provision to consider these contractual service and service rendered under the rural weight age quota for any other service matters.

By orders and in the name of the Governor of Karnataka S d/- (I. HEMIVATI-I)
Under Secretary to Government Health and Family Welfare Department
(Service-1)

13. The other set of Act and Rules, which call for our consideration is, the Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984 (hereinafter referred to as "the Prohibition of Capitation Fee Act" for the sake of brevity) which regulates admission to educational institutions imparting education in Medicine and Dental Sciences and to curb and prohibit the collection of capitation fee for admission to such educational institutions. The said Act was published on 09.08.1984 in the Karnataka Gazette Extraordinary. Section 4 regulates admission to educational institutions. Section 12 states that the provisions of the Act have the effect notwithstanding anything inconsistent in any other law for the time being in force. Section 14 empowers the State Government to make Rules for carrying out all many of the purposes of the Act. The Karnataka Conduct of Entrance Test for Selection and Admission to Post-Graduate Medical and Dental Degree and Diploma Courses Rules, 2006 (hereinafter referred to as PGET Rules, 2006) have been enacted u/s 14 of the Prohibition of Capitation Fee Act. Section 2 is the definition clause. The relevant clauses read as follows:

2. Definitions:- In these rules, unless the context otherwise requires

(c) "Entrance Test" means the Entrance Test referred to in Rule 3 for selection of candidates for admission to Government Seats in Post-Graduate Medical and Dental Degree and Diploma courses;

xxx

(g) "In-service candidates" means persons belonging to the Health and Family Welfare Services, the Karnataka Medical Education Services of the State Civil Services, Employees State Insurance (Medical) Services, Mahanagara Palike Services, Boards and Corporations Services and Institutions which are granted autonomous status including the persons deputed from such services to any other foreign services;

(h) "Merit" means the order of merit determined on the basis of marks secured in the Entrance Test;

Rule 3 deals with Entrance Test, Rule 4 speaks of eligibility, while Rule 10 deals with the procedure for selection of in-service candidates for admission to Post-graduate Medical and Dental courses. The same read as follows:

3. Entrance Test:- (1) For the purpose of selection of candidates and determination of merit, an Entrance Test shall be conducted by the Entrance Test Committee for the candidates seeking admission to the Post-Graduate degree and Diploma courses in Medical Sciences and Post graduate degree in Dental Sciences including the seats reserved for in-service candidates.

(2) In-service candidate, who has completed three years of regular service and successfully completed the probationary period as on the last date of receipt of applications for the Entrance Test, shall apply through, the proper channel only through concerned Head of the Department i.e., Director of Medical Education/ Director of Health and Family Welfare Services/Director, ESI/ Heads of Autonomous Institutions/ Heads of Boards and Corporations, as the case may be.

4. Eligibility:- (1) A candidate who fulfill the following criteria shall be eligible to appear for the Entrance Test, namely:

(a) He is a citizen of India.

(b) He has studied and passed in the courses leading to the award of MBBS/ BDS Degrees in colleges recognized by Medical Council of India/ Dental Council of India Government of India established by law and located in Karnataka State; or

(c) Candidate must be of Karnataka origin who has studied MBBS/ BDS degrees in colleges outside Karnataka recognized by Medical Council of India/ Dental Council of India and Government of India and affiliated to any University established by law in India.

xxx

10. Procedure for Selection of In-service Candidates for Admission to Post-graduate Medical and Dental Courses:- The procedure for selection of in-service candidates for admission to Post-graduate Degree and Diploma in Medical and Dental courses is as follows:-

(1) No in-service candidates shall be eligible for admission under these rules;

(a) unless he has put in not less than three years of regular service;

(b) unless he has satisfactorily completed the prescribed period of probation.

(2) No in-service candidate shall be eligible for admission to Post-graduate degree and Diploma courses in any subject other than the Specialty in which he is working.

(3) An in-service candidate who is already holding a Post-graduate degree in any specialty shall not be eligible for admission in any other Post-graduate degree or Diploma.

(4) An in-service candidate who is already holding a Post-graduate Diploma in any specialty, through Government deputation, shall be eligible for admission to Post-graduate degree courses in the same specialty and shall not be eligible for any other Post-graduate degree or Diploma courses;

(5) An in-service candidate who is studying in any Post-graduate degree or Diploma course shall not be eligible for admission under these rules;

(6) No candidate who is above forty-eight years of age as on the last date fixed for receipt of application shall be eligible for admission.

Rules 11 and 12 pertain to distribution of seats and reservation of seats for in-service candidates. The same read as follows:

11. Distribution of seats:- (1) Out of total number of Government seats, the Government shall notify the number of seats to be reserved for in-service candidates.

(2) Any seat reserved for in-service candidates which remain unfilled for want of eligible candidates or otherwise shall be added to the non-in-service quota seats.

12. Reservation of seats for in-service candidates:- Out of the total number of seats available for in-service candidates:-

(a) fifteen per cent of seats shall be reserved for persons belonging to the Scheduled Castes;

(b) three per cent shall be reserved for persons belonging to the Scheduled Tribes.

14. By a corrigendum issued on 10.01.2007, sub-rule (2) of Rule 3 has been amended. The corrigendum reads as follows:

GOVERNMENT OF KARNATAKA

No. HFW 399 MPS 2005

Karnataka Government Secretariat. Bangalore, dated 10-01-2007

CORIGENDUM

In the Government Notification. No. HFW 399 MPS 2005, dated 08-12-2006 under Rule 3(2) the word "regular", appearing in the 1st line shall and "2hall always be deemed to have been deleted and after the word "service" appearing in the same line, the following words shall be inserted and read further.

"in the concerned department including candidates appointed under the Rural Weight age Category."

By Order and in the name of the Governor of Karnataka Sd/- (MAAZ AHMED SHARIFF) Joint Secretary to Government, Health and Family Welfare Department, (Medical Education)

15. Rule 5A was inserted by notification dated 18.01.2011. The said Rule reads as follows:

3. Amendment of Rule 5:- After rule 5 the said rules, the following shall be inserted, namely:-

"5A. Merit list of in-service candidates:- (1) Notwithstanding anything contained in these rules, while preparing the merit list of candidates in respect of in-service candidates working under the Directorate of Health and Family Welfare Services, who has secured minimum qualifying marks, a weight age of four marks for each completed year of service beyond five years of service shall be added to the marks secured in the Entrance Test subject to a maximum of thirty marks;

Provided that for each completed year of rural service beyond five years of service, a weightage of eight marks shall be added to the marks secured in the Entrance Test in lieu of four marks subject to a maximum of thirty marks. No weightage shall be added, for the service rendered below five years.

Explanation:- For the purpose of this rule, "rural service" means the service rendered in areas other than the areas falling within the limits of municipal corporation, city municipal council, town municipality, town panchayat established under the Karnataka Municipal Corporations Act, 1976 or the Karnataka Municipalities Act, 1964 as the case may be and upto such distance from these limits as may be notified by the State Government as urban area and includes the service rendered in rural areas under the contract period and rural service rendered under the rural weightage selection..

(2) The in-service candidates working under the Directorate of Health and Family Welfare Services shall not be eligible for Post-graduation or Diploma courses in the disciplines which are not required in the hospitals or institutions coming under the purview of the Director of Health and Family Welfare Services.

The said Rule was withdrawn by notification dated 07.03.2011.. However, the said Rule was revived with effect from 07.04.2011.

Relevant Precedents:

16, At this stage itself, it would be relevant to refer to some of the decisions of the Apex Court as well as this Court having a bearing on the controversy in issue so that when the contentions of the respective parties are epitomized, the reference to the said precedents could be easily comprehended.

17. In K. Duraisamy and Another Vs. The State of Tamil Nadu and Others, the Apex Court has held that "classification could be made as "service quota" and "open quota", for in-service, candidates and other candidates respectively, confining the respective class/cadre candidates to the respective percentages

earmarked for the two of them exclusively.

The Court further held as follows:

(i) The Government. possesses 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;

xxx

(ii) that such exclusive allocation and stipulation of a definite quota or number of seats between in-service and non-service or private candidates provided two separate channels of entry and a candidate belonging to one exclusive quota cannot claim to steal a march into another exclusive quota by advancing a claim based on merit. Inter se merit of the candidates in each quote shall be determined based on the merit performance of the candidates belonging to that quota;

18. In the case of The State of Madhya Pradesh and Others Vs. Gopal D. Tirthani and Others, the Apex Court ruled on the significance of the eligibility test and held as follows:

25. The eligibility test, called the entrance test or the Pre-PG test, is conducted with dual purposes. Firstly, it is held with the object of assessing the knowledge and intelligence quotient of a candidate whether he would be able to prosecute postgraduate studies if allowed an opportunity of doing so; secondly, it is for the purpose of assessing the merit inter se of the candidates which is of vital significance at the counseling when it comes to allotting the successful candidates to different disciplines wherein the seats are limited and some disciplines are considered to be more creamy and are more coveted than the others.

26. The Medical Council of India, for the present, insists, through its Regulations, on a common Entrance Test being conducted whereat the minimum qualifying marks would be 50%.

19. As to whether weightage could be given to doctors for their having rendered specified number of years of service in rural or tribal areas, it has been observed that in-service doctors had been told in advance and knowing that by rendering service in rural/tribal areas, they can capture better prospects of earning higher professional qualifications and consequently eligibility for promotion, acts as a motivating factor and provides incentive to young in-service doctors to opt for service in rural/tribal areas. Therefore, assigning weightage to rural service rendered as Assistant Surgeons and carving out a classification in favour of women candidates conferring them with eligibility for seeking admission in post-graduate courses by rendering three years" consecutive service in rural areas satisfy the twin tests of Article 14 of the Constitution. Thus, the Apex Court held that it is permissible to assign a reasonable weightage to services rendered in rural/tribal areas by the in-service candidates for the purpose of determining

interse merit within the class of in-service candidates who have qualified in the pre-PG test by securing the minimum qualifying marks as prescribed by the Medical Council of India.

20. With regard to the academic year 2008-09, certain in-service candidates in the State (Dr. Ranganath and others) questioned the action of the State in not allowing them to appear for counseling as per a single merit list, in terms of Rule 2(h) of the PGET Rules 2006 in W.P.Nos.9397- 9399/2009. By an order dated 03.04.2009 issued by the State Government, three separate merit lists were prepared based on the length of service of the in-service candidates i.e., preference to be given to the first slab (i.e., those who had completed five years of regular service), then to the second slab (i.e., those who had completed four years of service) and then to the third slab (Le., those who had completed three years of service). The said order was issued by the State Government on 08.04.2009 purportedly under Rule 61(1)(a) read with Appendix-H-A of the KCSR. A learned Single Judge of this court by order dated 27.07.2009 sought to harmoniously interpret Rule 61 read with Appendix II-A of the KCSR and PGET Rules, 2006 and held as follows:.

2006 and Rule 61 r/ w. Appendix II-A of the KCSRs operate simultaneously in such matters. Therefore, they will have to be harmoniously construed. One cannot be ignored in preference to the other. The object of the State appears to give preference to the seniors in service who have passed the Common. Entrance Test examination along with the juniors. By this process, juniors will also not get effected, inasmuch as, they may get seat under in-service quota in the coming years. Such a procedure will not violate the principles of law laid down by the Apex Court in the case of State of Madhya Pradesh Vs- Gopal D. Thirthani (cited supra), inasmuch as, the seniors in-service also will have to get through the entrance examination for getting the Postgraduate seat

9. In view of the above, this court does not find any error in the Government Order dated 8.4.2009 giving preference to the candidates who have completed 5 years of service in the department. As aforementioned, Rules of 2006 will have to be read harmoniously with Rule 61(1) r/ w. Appendix 11.-A of the KCSRs. Accordingly, the State Government is justified in issuing the Government Order dated 8.4.2009.

10. In the matter on hand, however, the petitioners are selected and are already admitted to the Post-graduation courses as in-service candidates by virtue of the interim order granted by this Court. They are continuing their course of study. It is also brought to the notice of the court by learned counsel for the petitioners that the petitioners herein have also completed 5 years of service in the department by now. Respondents 6 to 17 are also admitted to Post-graduation course as in-service candidates. In view of the above, this court does not propose to disturb the academic career of the petitioners as well as respondents 6 to 17, more so, when the period prescribed for counseling is already over. Accordingly, the following order is made:

The prayers as sought for in the writ petitions cannot be granted.

The Government Order dated 8.4.2009 bearing No., Aakuka 86 HSH 2009, is declared valid. However, the petitioners who are already selected and admitted to the Post-graduation course shall not be disturbed in view of the peculiar facts and circumstances of this case.

Writ petitions are accordingly dismissed with the said observations.

21. As far as the academic year 2011-2012 is concerned, W.P. No. 15539/2011 was filed assailing the provisional merit list, whereby, according to the petitioners therein, 34 candidates who were working on contract basis and whose services were absorbed under the Absorption Rules, 2006 and Absorption Rules 2007 and who had not completed six years of regular service and were, therefore, ineligible to apply for PGET-2011 under in-service quota had found a place in the provisional merit list. By an interim order dated 01.05.2011, a learned Single Judge held that the 34 candidates who had been absorbed under the aforesaid two Rules had not completed six years from the date of their Absorption and prima facie, were ineligible to apply for PGET-2011 under in service quota. Rejecting the contention of the private respondents therein, the learned Single Judge further observed as follows:

It is clear that the aforesaid 34 candidates, who are absorbed under the aforesaid two Rules had not completed six years from the date of their absorption. Therefore, prima facie, I am of the view that they were ineligible to apply for PGET-2011 under in-service quota. There is no merit in the contention of the private respondents that there is no bar for them to appear for the examination and the only bar is for deputing them for higher studies. The very object of appearing in the PGET examination, 2011 and counseling them is to depute them for higher studies. There is no point in selecting them and not deputing them for higher studies. Therefore, inclusion of respondent Nos. 5 to 36 in the final list of in-service candidates for PG Degree/ Diploma selection for the year 2011 published by the respondents vide Annexure J is contrary to law. Their names should not have been cleared by the third respondent for their appearance in the PGET-2011 examination until they complete six years of service from the date of absorption.

22. Accordingly, a direction was given to the respondent-authorities to re-do the final merit list of in-service candidates by omitting the 34 ineligible candidates. The said order was assailed in W.A.Nos.4457-4461/2011 and connected matters. By order dated 07.06.2011, the writ appeals were dismissed. Special Leave Petitions were filed against the order of the Division Bench. Initially the Apex Court by order dated 22.06.2011 issued an order of status quo, but by order dated 01.08.2011, the same was vacated and a direction was also given to give effect to the order of the High Court subject to final decision in the SLP which we are told is pending.

23. What is significant as far as the academic year 2012-13 is concerned is the

controversy with regard to the amendment made to the Absorption Rules, 2006, 2007 and 2009, whereby there is an omission of the embargo with regard to prosecuting Post-graduate studies for a period of six years after the date of absorption. Therefore, one of the considerations that would have to be made is as to the binding effect of the orders dated 07.06.2011 of the Division Bench of this Court affirming the interim order of the learned Single Judge dated 01.05.2011.

24. One other aspect that has to be stated at this stage except appellants Nos. 12 and 14, were appointed by way of direct recruitment in the years 1997, 2000, 2002 and 2004. Appellants Nos. 12 and 14 were appointed under the Absorption Rules, 2003. They have placed reliance on notification dated 18.12.2007, 08.02.2008 and 09.01.2009 whereby certain doctors were appointed by direct recruitment with a condition that every candidate so appointed had to compulsorily serve at least for six years in rural areas.

25. That apart, by government Order dated 29.01.2010, it was ordered that the contractual service rendered in the past under contractual, appointment by those doctors working under the Department of Health and Family Welfare be taken into consideration only for in-service candidates to Post-graduate studies. The contractual service was not to be considered for any other service condition. The said Government Order was questioned by certain doctors in W.P.Nos.8544-8550/2010 and connected matters, which were dismissed by order dated 26.04.2010.

26. Against the aforesaid order, W.A.Nos.1922-1923/2010 and connected matters were filed. A Division Bench of this court, by order dated 31.05.2010 allowed the appeals in part. Against the said order, Special Leave Petitions were filed before the Apex Court which initially passed an order 21.06.2010, stating that the admission list shall not be finalised until the next date of hearing. Thereafter, by order dated 28.06.2010, the operation of the order of the Division Bench was stayed until further orders. The Special Leave Petitions are pending adjudication before the Apex Court.

27. The recent order of the Apex Court in the case of Priya Gupta -V/s- State of Chattisgarh, dated 08.05.2012 (C.A. No. 4318/2012) has also been brought to our notice with regard to compliance of admissions in terms of the prescribed time schedule. In the said decision, the Apex Court has observed that the High Court should ensure strict adherence to the prescribed time schedule, process of selection and to the rule on merit. Further, that the High Court may, except in exceptional cases, should consider it appropriate to decline interim orders and hear the main petitions finally subject to the convenience of the court.

Contentions and submissions:

28. We have heard the learned counsel for the parties.

29. Learned Senior Counsel appearing for the appellants in Writ Appeal

Nos.2978-86/2012 & 2987-96/2012 contended that these appellants were not parties to the writ petitions. However, they are aggrieved by the order of the learned Single Judge in holding that the PGET Rules 2006 prevail over the Deputation Rules made under the KC,SR, thereby permitting those in-service doctors who are regularized in the year 2007 as well as 2009 to be considered for admission to Postgraduate Courses. That these appellants were absorbed under the Absorption Rules of 2006. In view of the amendments made to the Absorption Rules of 2006, 2007 and 2009, the in-service doctors are governed by the KCSR pertaining to deputation. Therefore, the in-service doctors who were absorbed in the year 2007 and 2009 were not eligible to take the Entrance Test under the PGET Rules 2006 as they have not completed five years of regular service. Similarly, the directly recruited in-service doctors who have not completed five years of regular service were not entitled to take the Entrance Test. That Rule 61 read with Appendix-HA of the KCSR pertain to regulating deputation of or grant of study leave to Government Servants for prosecution of special course of study consisting of special study or specialized training within India. The said Rules have the force of the Act, having regard to Section 3(1)(b) read with Section 3 (3) (iii) of the Act, that the said Act prevails over all other laws as it has effect notwithstanding anything inconsistent contained in any other law with respect of matters for which provision is made in the Act or for which Rules have been made under the Act. Therefore, when once the amendments were made by virtue of notification dated 21.02.2012, omitting the embargo placed on the contract doctors who were regularized under the Absorption Rules from being considered for Post-graduate courses, the Deputation Rules in terms of the KCSR have come into operation.

30. It was emphasized that though the contract doctors Absorption Rules with an embargo that they shall not be eligible for higher studies within a period of six years from the date of regularization. Once the said embargo is omitted in the Absorption Rules, by virtue of the amendment notified on 21.02.2012, though with retrospective effect from 30.12.2011, Rule 61 of the KCSR at once became applicable to the contract doctors who are absorbed into regular service. Rule 1 to Appendix-IIA to Rule 61 of the KCSR (Deputation Rules) categorically states that a person who has not rendered less than five years regular service or who is not below 48 years of age would not be eligible for deputation for higher studies.

31. Therefore, having regard to Rule 61 of KCSR and keeping in mind left over seats in in-service quota, the State Government had devised an order of priority on the basis of three merit lists based on the number of years of regular service completed by in-service doctors. The said order of priority was upheld by this Court in the case of D1-,N. Ranganath and others. According to these appellants, the KCSR are applicable to all in-service doctors and the PGET Rules 2006 are only procedural in nature and do not operate in the field of deputation, which is a condition of service. According to the learned Senior Counsel, the PGET Rules 2006 only speak of eligibility for taking the exam. Therefore, the PGET Rules 2006 cannot over-ride the provisions of the Deputation Rules. That infact, as a

result of the amendment made to the Absorption Rules, there has been uniformity brought about between the directly recruited and absorbed doctors. Moreover, the PGET Rules 2006 are made under the Capitation Fee Act, which has nothing to do with the deputation or service conditions of the in-service doctors. Therefore, the PGET Rules 2006 cannot have an over-riding effect over the Deputat on Rules. Reference was also made to an interim order of the learned Single Judge dated 01.05.2011 in W.P. No. 15539/2011 wherein it has been categorically held that these in-service doctors who have not completed six years of service from the date of absorption, would riot be entitled to appear for PGET examination. That the said order dated 01.05.2011, has been upheld by a Division Bench of this Court and in the SLP prefixed against the said order, the Supreme Court has vacated the earlier order of status-quo granted on 22.06.2011. Consequently, the order of this court has to be given effect to subject to the final decision in SLP. It was, therefore, contended that the learned Single Judge in these cases was not right in holding that the PGET Rules 200t; prevail over the rules pertaining to deputation with regard to Post-graduate studies.

32. Learned Senior Counsel appearing for the appellants in W.A.Nos.3020/2012 contended that except appellant Nos.4, 9, 13 and 14, the other appellants are doctors who were appointed by direct recruitment. During the period 1997 to 2003, the aforesaid four appellants were initially appointed on contract basis, but they were subsequently absorbed, but there was no condition or an embargo on deputation in their Absorption Rules. That pursuant to the decision of the Supreme Court in Gopal Thirthani's case, PGET Rules 2003 were framed and later PGET Rules 2006 have been re-framed. That as far as the present admissions are concerned, the last date for receipt of applications was 31.12.2011. The common Entrance Test was held on 29.02.2012. That these appellants are aggrieved by the retrospective operation given to the amendments made to the Absorption Rules dated 21.02.2012, with effect from 31.12.2011. The appellants are also aggrieved by the grant of eight marks as weightage to those doctors who have served in the rural areas in terms of Rule 5A of the PGET Rules 2006. That by interim order dated 15.05.2012 granted by this Court, the amendments made to the Absorption Rules were stayed. As a consequence, the doctors absorbed under the Absorption Rules, 2006 were included in the merit list. But the doctors absorbed in the subsequent rules were excluded. As a result, the doctors absorbed in the year 2007 and 2009 have challenged the merit list. But since the appellants' challenge to the amended Absorption Rules has remained ineffective on account of learned Single Judge holding that the Absorption Rules cannot be challenged in a writ petition filed before the High Court, but could only be challenged before the Karnataka Administrative tribunal, which has the jurisdiction to deal with service matters of Government Servants, the eligibility of the batch of absorbed doctors in the year 2007 and 2009 to take up the Entrance Test has been recognized by the learned Single Judge, contrary to the provisions of Rule 61 read with Appendix-IIA of the

KCSR. As far as the Writ Petitions filed by direct recruits are concerned, their exclusion from the merit list has been held to be bad in law, since they had also challenged the condition in the appointment order that they should work for a period of five years in rural areas.

33. On the basis of the above factual matrix, learned Senior Counsel contended that the retrospective effect given to the amendments made to the Absorption Rules is arbitrary, contrary to the spirit of the rules of absorption and unreasonable and hence, violative of Articles 14 and 16 of the Constitution of India. That the amendment made to the Absorption Rules takes away the vested rights which have accrued in favour of the direct recruits and therefore, the said amendments should be struck down or in the alternative at least be read down by holding that they do not take away the right of the direct recruits who are bound by the Deputation Rules (Rule 61 read with Annexure-IIA of the KCSR) for this academic year and that they are prospective in nature. That the amendment to the Absorption Rules made after the commencement of the proceedings of selection for admission to the Post-graduate courses has been made in order to favour the absorbed doctors and so as to make them eligible when initially under the rules of absorption they were ineligible. That in terms of the Absorption Rules, the absorbed doctors became regular employees from the date of absorption and an additional condition of absorption was imposed on the absorbed doctors inasmuch as they were barred from proceeding for higher studies during their initial period of service in the rural areas. Also under the terms of the Absorption Rules, the previous service of the contract doctors cannot be counted for the purpose of seniority. That the absorbed doctors accepted these conditions and were absorbed into regular service on the basis of the Absorption Rules. That as, on the last date fixed for receipt of applications for taking the Entrance Test for Post-graduation courses, the absorbed doctors were ineligible to apply for the Entrance Test as the notification for making the amendment to the Absorption Rules had been published only on 21.02.2012. That the object of the retrospective amendment made to the Absorption Rules has been, to favour the absorbed doctors to the detriment of the directly recruited doctors. It was contended that pursuant to the amendment made to Absorption Rules all in-service doctors belong to one class, irrespective of whether they are direct recruits or contract doctors absorbed into service and thereby regularized. In respect of both category of doctors, now it is only the Deputation Rules made under the KCSR which are applicable and not the PGET Rules 2006 in the matter of deputation of the doctor: for Post-graduate courses is concerned. Therefore, a vested right, which had accrued to the directly recruited doctors owing to their seniority in service has been taken away by the amendments made to the Absorption Rules particularly, after the last date for submitting the application has lapsed. Therefore, it was preferred that the retrospective amendment to the Absorption Rules is illegal or at any rate they have to be read down to have only a prospective operation and cannot be applied to the present admissions.

34. Learned Senior Counsel who has appeared for the appellants in Writ Appeal Nos.3004-3018/2012 contended that the grant of eight marks by way of weightage to candidates who have served beyond five years in the rural areas on completion of each year of service is unreasonable. No doubt, in Gopal Thirthani, the Apex Court has held that weightage for rural service is permissible, but it should be reasonable. That proviso to Rule 5A is contrary to the dictum in Gopal Thirthani. That as far as State of Karnataka is concerned, service in rural areas for doctors is not compulsory, but is a matter of chance. Therefore, the proviso to Rule 5A of the PGET Rules 2006 are unreasonable and legally invalid.

35. It was also brought to our notice that pursuant to the dictum in Gopal Thirthani, and in terms of Regulation 9 of the Post-graduate Medical Education Regulation, 2000 (hereinafter referred to as "the PGME Regulations"), the PGET Rules 2006 were enacted including in-service candidates in the State of Karnataka. The said Rules are only procedural in nature and cannot have an overriding effect on the Deputation Rules made under the KCSR. That ultimately, there has to be a harmonious interpretation of the KCSR and PGET Rules 2006 and if that is not possible, then the Deputation Rules would apply. Also the doctors who qualify for the Post-graduate course are called specialists, whereas it is only general duty doctors who are posted in rural areas. As a result of the amendment made to the Absorption Rule 8, the absorbed doctors who qualify as Post-graduate doctors would not complete their rural service, whereas doctors appointed by direct recruitment have to put in atleast five years of rural service which is an aspect of discrimination against the directly recruited doctors. Learned Senior Counsel, therefore, summarized his contentions by saying that as a result of the weightage given to doctors who have served in the rural areas, merit has been redefined, which is contrary to the merit secured by the candidates in the Entrance Test. Further, as a result of the amendment made to the Absorption Rules, the insistence on rural service for the absorbed doctors has been negated.

36. Per contra, learned Additional Government Advocate General contended that there are two classes of in-service doctors i.e., i) doctors appointed by direct recruitment and ii) doctors appointed on contract basis and thereafter absorbed under the respective Absorption Rules. That the Absorption Rules are special rules regularizing the services of contract doctors. That Rule 3(2) of the Absorption Rules made a condition of compulsory rural service for an initial period of six years pursuant to absorption, during which period the absorbed doctors were not permitted to seek deputation for higher studies. However, such an embargo was not placed on the directly recruited doctors. In order to remove the discrimination between the two categories of in-service candidates that amendments were brought about to the Absorption Rules 2006, 2007 and 2009 with retrospective effect from 30.12.2011. The Draft Rules were published on 30.12.2011 and after inviting objections, the amended rules were notified. As a result, the embargo placed on the absorbed doctors was removed and discrimination has been eliminated.

37. It was further contended that insofar as Post-graduate courses in medical and dental sciences are concerned, it is the PGET Rules, 2006 that would apply in the matter of admission to such courses. That the Deputation Rules (Rule 61 read with Appendix-IIA of the KCSR) which are general rules applicable to all Government Servants, but as far as Post-Graduate medical and dental courses are concerned, it is only the PGET Rules, 2006 which are applicable. These Rules are framed pursuant to the direction of the Medical council of India as well as keeping in mind the Supreme Court dicta in various judgments for determining merit. Therefore, the general rules for deputation framed under the KCSR would have to be yield to the special rules in the matter of admission to Post-graduate medical and dental courses. That Rule 2(g) of the PGET Rules, 2006 defines in-service candidates and in terms of the said definition doctors in Government service who are appointed by direct recruitment or regularized under the Absorption Rules are treated at par as there can be no discrimination between the doctors appointed from the said two sources once the contract doctors are regularized by the State Government. Therefore, it was contended that where admission to Post-graduate medical or dental courses are concerned under the PGET Rules, 2006 the KCSR are not applicable. On the other hand, the PGET Rules 2006 are equally applicable to both directly recruited doctors as well as absorbed doctors. The amendments made to the 2006, 2007 and 2009 Rules is with the object to bring it in consonance with the PGET Rules 2006. It is under those circumstances, the amendments have been made to Rule 3(2) of the Absorption Rules giving it a retrospective effect so that the Rules could be applicable for the admission made in the current academic year. There is no malafides alleged against the State Government as no particular group of doctors have been favoured. On the other hand, to remove discrimination within the in-service candidates, the amendments were made to the rules of absorption. The directly recruited doctors have no vested right to seek admission to the Post-graduate courses, except by way of merit obtained in the Entrance Test. The directly recruited doctors cannot, therefore, challenge the amendment made to the Absorption Rules. The object and purpose of the amendment is to bring about a level playing field between the doctors, so that merit is the foremost consideration for admission to Post-graduate courses subject to fulfilling other conditions in the PGET Rules of 2006.

38. It was also contended that there is no substance in the challenge made to the Amendment Rules as the said amendments do not violate the Fundamental Rights of the petitioner nor its parent Act. Learned Addl. Advocate General, therefore, contended that merit being the most important criterion for admission to Post-graduate medical and dental courses, PGET Rules 2006 would be applicable and they have an over-riding effect on any other Rules concerning deputation. He also justified the amendment made to Rule 5A of the PGET Rules 2006 with effect from 18.01.2011, which is in consonance with the judgment of the Supreme Court in Gopal Thirthani and that the challenge made to the said Rules is without any merit, as the directly recruited doctors are eligible for such a

weightage as also the absorbed doctors.

39. Learned Senior Counsel appearing for the respondents in W.A. Nos.2978-2986/2012 and connected matters at the outset stated that the challenge made to the amendment of the Absorption Rules is without substance. That these respondents have the merit and are eligible to be admitted for the Post-graduate courses. On the other hand, those who are less meritorious have challenged the Amendment Rules. That in the petitions filed by certain other doctors, there was an interim order of stay granted to the Amendment Rules on 15.05.2012. As a consequence, the State Government prepared a fresh merit list excluding these respondents by issuance of Circular dated 16.05.2012. Therefore, the latter were constrained to file writ petitions seeking their inclusion in the merit list having regard to their eligibility under the PGET Rules 2006. It was also explained that the State Government had not appointed any doctor since the year 1999 by way of direct recruitment. On the other hand, doctors were appointed on contract basis and since these doctors had served for considerably long time and they had sought for regularization of their services, the Absorption Rules of 2006, 2007 and 2009 were framed. However, Absorption Rules had an additional condition inasmuch as in their initial period of service after absorption, the doctors had to work in rural areas for a period of six years and during the said period they were not eligible for deputation for higher studies. The State Government felt that such a condition would be to the disadvantage of the absorbed doctors having regard to the fact that they have served for long number of years and therefore, the said embargo was omitted pursuant to the amendments made to the said rules of absorption. That the amendment to the Absorption Rules are made pursuant to Rule 8 of the Act which enables a rule having a retrospective effect and therefore, the amendment of the Absorption Rules has not in any way affected the admission process for the current academic year since the Amendment Rules are effective from 30.12.2011, whereas the last date for filing of applications for the admission of Post-graduate was 31.12.2011.

40. It was also pointed out that Rule 5 of the Absorption Rules have an over-riding effect as they are special rules of appointment and therefore, the Rules of Deputation made under Rule 61 of the KCSR read with Appendix-IIA do not apply to the absorbed doctors. It was also contended that the appellants had participated in the admission process and they are estopped from challenging the criterion for selection. It was also contended that the challenge to the Absorption Rules could only be made before the Karnataka Administrative Tribunal and not before the High Court. It was further contended that the PGET Rules 2006 are especial rules for admission for medical and dental courses and they have an over-riding effect on Deputation Rules enacted under the Act.

41. The respondents in W.A. Nos. 3004-3018/2012 and 3020-3034/2012 through their counsel contended that the Government Order dated 29.01.2010 specifically recognizes that the period of contract service must be recognized for

the purpose of deputation. Therefore, even if it is held that PGET Rules 2006 do not over-ride the Deputation Rules made under the KCSR, having regard to the Government Order dated 29.01.2010, the contract doctors were absorbed into service are eligible to be deputed for higher studies. It was also contended that the appellants cannot challenge the grant of weightage under Rule 5A of the PGET Rules 2006 as they are also beneficiaries of the weightage of marks given to them and therefore, having participated in the admission process, they are estopped from challenging the same.

42. Learned counsel for the private respondents stated that learned Single Judge by interim order dated 15.05.2012 enabled the State Government to alter the merit list mid-way pursuant to the interim order of stay granted by this Court in May, 2012. This has led to these doctors file writ petitions.

43. Learned Senior Counsel appearing for respondent Nos.7, 8 and 16, in W.A.Nos.3004-18/2012 at the outset stated that the appellants cannot maintain a challenge to the amendment made to the Absorption Rules as the Karnataka Administrative Tribunal is the forum to challenge a service rule. That the learned Single Judge was right in holding that the contract doctors absorbed under the Absorption Rules of 2006 have the right to be deputed for Post-graduate courses. Assuming for the sake of argument that Rule 61 of the KCSR is applicable, the eligibility for deputation is to be considered after the merit list is published under the PGET Rules 2006 and that in the instant case the doctors absorbed under the Rules 2006 have the eligibility to be admitted to the Postgraduate courses. Therefore, the contention of some of the appellants that the respondent-doctors had no eligibility even to take the Entrance Test is incorrect as they had not completed five years of regular service as required under the Deputation Rules. It was also contended that the weightage under Rule 5A has to be given having regard to the period of contract service rendered by the absorbed doctors and the said Rule cannot be held to be unreasonable or arbitrary since it is made in consonance with the dictum of the Supreme Court and that only thirty marks maximum could be awarded. Concluding the said contentions, learned Senior Counsel stated that the doctors absorbed under the Absorption Rules 2006, were eligible to be admitted for Postgraduate medical courses on the basis of their merit. It was also pointed out that after absorption of the contract doctors, a common seniority list is prepared and all the doctors appointed by direct recruitment or by regularization form one class and that there can be no discrimination within the said class of doctors. That the doctors appointed under direct recruitment have no vested rights vis-à-vis the absorbed doctors and they have no reason to challenge the amendment made to the Absorption Rules.

44. Learned Senior Counsel also placed reliance on the decisions of the Apex Court in *Mridul Dhar (Minor) and Another Vs. Union of India (UOI) and Others*, and two other decisions and it was submitted that merit list prepared by the State Government cannot be altered at this point of time since 31st May was the last date for closing the admissions and therefore, the learned Single Judge was

not right in ordering re-counseling.

45. By way of reply, learned Senior Counsel for the appellants submitted that the doctors regularized under the Absorption Rules 2006 have not questioned the amendment made to the Absorption Rules. they have also accepted the insertion of Rule 5A to the PGET Rules 2006. Their only plea ultimately is that the Deputation Rules framed under the KCSR would prevail over the PGET Rules 2006 since the admission to Post-graduate courses is by way of deputation for higher studies. Therefore, the Rules made under the Act have an over-riding effect over all other laws and that the PGET Rules 2006, which are made under the Capitation Fee Act cannot over-ride the KCSR having regard to Section 12 of the Capitation Fee Act and Section 14 of the Act. Moreover, according to the appellants, these two rules operate in different fields. It was also clarified that the Deputation Rules is not a piece of subordinate legislation, but it is a part of the Karnataka Civil Services Act, whereas the PGET rules 2006 are delegated legislation, which cannot have an over-riding effect on the Act.

46. It was also reiterated that when once the amendment was made to the Absorption Rules by omitting the embargo under Rule 3(2) of the Rules, then the Deputation Rules made under the KCSR was at once applicable to all in-service doctors en bloc. It was also clarified that the appellants have not questioned the participation of the doctors in the admission process, but their contention is with regard to the eligibility for sending the doctors for deputation when they have not fulfilled the conditions of Rule 61 of the KCSR. It was stated that the doctors absorbed under the Absorption Rules 2006 are eligible to be deputed for Post-graduate Course and therefore, the learned Single Judge was not right in ordering re-counseling of in-service candidates by taking into consideration those doctors who were absorbed under the 2007 and 2009 Rules also.

47. It was also contended by another Senior Counsel that when once the contract doctors are absorbed into service, they are lowest in the seniority list. There are certain germs and conditions, subject to which, absorption has been made and the conditions for absorption cannot be taken away with retrospective effect. That the State Government has doubly favoured the contract doctors inasmuch as the embargo placed in the Absorption Rules have been omitted with retrospective effect and also, weightage of marks to the contract doctors is also permissible having regard to their service rendered as contract doctors.

48. Learned counsel on both sides have relied upon certain decisions in support of their respective contentions which shall be referred to, during the course of this judgment.

Point for consideration:

49. Having regard to the legal matrix and the varied submissions of the learned Senior Counsel and counsel on both sides, the point that arises for our consideration is:

Whether the learned Single Judge was right in ordering maintenance of status quo in respect of the counseling which had already taken place prior to the grant of interim orders by this court and directing the completion of the counseling process for admission to Post-graduate Medical Courses from the in-service category of doctors in terms of the merit list prepared prior to the interim order granted by this court?"

Analysis of Relevant Acts and Rules:

50. The Karnataka State Civil Service Act, 1978 is an Act to regulate the recruitment and the conditions of service of persons appointed to Civil Service in the State of Karnataka and posts in connection with the affairs of the State of Karnataka. Clause (b) of sub-section (1) of Section 3 speaks about the regulation of recruitment and conditions of service of persons appointed to public services by way of Rules. Clause (iii) of sub-section (3) of Section 3 states that all rules relating to matters referred to in sub-section (1) and in force on the date of commencement of the Act made by the Governor under the proviso to Article 309 of the Constitution of India, regulating the recruitment and conditions of service of persons appointed to civil services and posts in connection with the affairs of the State shall be deemed to be rules made under sub-section (1) and shall continue in force until they are modified or replaced by rules made under this Act. The said Act received the assent of the President on the 12.07.1985 but came into force only on 30.05.1990. Rule 6 states that the Act and any rule made or deemed to have been made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law with respect to matters for which provision is made in this Act or for which rules can be made under the Act. Sub-section (2) of Section 8 states that any rule made under this Act may be made with retrospective effect and when such a rule is made, the reasons for making the rule would have to be specified in a statement to be laid before both Houses of the State Legislature and subject to any modification made under sub section (3), every rule made under the Act has the effect as if it is enacted in the Act. Owing to the aforesaid deeming provisions Rule 61 of the Karnataka Civil Service Rule, 1958 read with Appendix-IIA which deals with deputation of or-grant of study leave to Government servants for prosecution of special course of study consisting of higher studies or specialised training within India are part and parcel of the Act. Under the said Rule and Appendix, the Government may depute a Government servant for higher studies or specialised training in a professional or technical subject having a direct and close connection with the sphere of his duty at a recognised institution within the State or outside the State but within India, if he or she has completed five years of regular service and is below 48 years of age. The number of Government servants to be deputed at any point of time for higher studies or specialised training has to be kept at a minimum, not exceeding 5% of the sanctioned permanent strength of the concerned cadre. The selection of a candidate for higher studies or specialised training has to be made strictly on the basis of seniority except for reasons to be recorded in writing.

51. The Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984 (hereinafter referred to as 'Capitation Fee Act') has been enacted to curb the evil practice of collection of capitation fee for admission to educational institutions in the State of Karnataka and to regulate certain matters relating there to. The said Act received the assent of the President on the 20.07.1984. Section 4 of the said Act deals with regulation of admission to educational institutions, on the basis of general or special orders, as may be made by the Government in this behalf and any other law for the time being in force, with regard to the minimum qualification for admission to any course of study in an educational institution, which as may be specified by the university concerned where the educational institution is maintained by or affiliated to such, university or by the Government in the case of other courses of study in any other educational institution. It also regulates the maximum number of student", that could be admitted to the course of study in an educational institution, which may be fixed by the Government from time to time. Section 5 regulates tuition fee or any other fee or deposit or other amount that may be received or collected by any educational institution or class of such institutions in respect of any or all class or classes of students. Section 12 states that the provisions of the Capitation Fee Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Section 14 enables the State Government to make rules for the purpose of carrying out the purposes of the Act.

52. POET Rules 2006 have been enacted pursuant to Section 14 of the Capitation Fee Act. Clauses (c), (g) and (h) of Rule 2 of the said Rules define Entrance Test, In-service Candidates and Merit respectively. Rule 3 deals with Entrance Test, Rule 4 speaks of Eligibility to appear for the Entrance Test, whereas Rule 10 deals with procedure for selection. of In-service candidates for admission to Post-graduate Medical and Dental Courses. Thus, there are different criteria specified in Rules 3, 4 and Rule 10. For the purpose of selection of candidates and determination of merit, the Entrance Test is conducted. Insofar as in-service candidates are concerned, under Rule 3(2) those who have completed three years of service and successfully completed the probationary period as on the last date of receipt of applications for the Entrance Test can apply through proper channel. Therefore, for the purpose of submitting an application for taking the Entrance Test two conditions are prescribed, they are (i) completion of three years of service. Initially it was three years or regular service, but the expression "regular" has been deleted, subsequently, by Corrigendum dated 10.01.2007 and; (ii) as on the last date of receipt of application for the Entrance Test, the in-service candidate had to complete the probationary period. Of course, when it comes to an in-service candidate, he must be a person belonging to Health and Family Welfare Services and other services as defined in Clause 2(g) of the PGET Rules 2006.

53. Rule 4 speaks of eligibility to appear for the Entrance Test, which is a general provision. The eligibility criteria for appearance in the Entrance Test are as

follows:

(a) a candidate must be a citizen of India:

(b) he or she must have studied and passed in the courses leading to the award of MBBS/ BDS Degree in Colleges recognised by Medical Council of India/ Dental Council of India; Government of India established by law and located in Karnataka State; or

(c) candidate must be of Karnataka origin who has studied MBBS/ BDS degrees in colleges outside Karnataka recognised by Medical Council of India/ Dental Council of India and Government of India and affiliated to any University established by law in India.

The Explanation deals with "candidate of Karnataka Origin.

54. Rule 10 deals with the procedure for selection of in Service candidates for admission to Post-graduate Medical and Dental courses. The said Rule prescribes the following conditions for admission:

(1) (a) that the in-service candidate has to have atleast three years of regular service:

(b) he has satisfactorily completed the prescribed period of probation;

(2) that an in-service candidate shall not be eligible for admission in any subject other than the speciality in which he is working;

(3) that an in-service candidate who is already holding a Post-graduate degree in any speciality shall not be eligible for admission. to any other Post-graduate degree or Diploma;

(4) that an in-service candidate who is already holding a Post-graduate Diploma in. any speciality, through Government deputation, shall be eligible for admission to Post-graduate degree courses in the same speciality and shall not be eligible for any other Post-graduate degree or Diploma courses;

(5) an in-service candidate who is studying in any Post-graduate degree or Diploma Course shall not be eligible for admission under these rules;

(6) a candidate who is above forty-eight years of age as on the last date fixed for receipt of application shall not be eligible for admission.

Answer to the point for consideration:

55. The controversy in these cases is with regard to the eligibility of certain in-service candidates for Post-graduate courses, be it degree or Diploma courses. Of course, the study of the Post-graduate course is by way of deputation insofar as the in-service candidates are concerned. However, the conundrum is, as to whether in the matter of deputation for these courses, the Rules of Deputation made under the KCSR would apply or the admission to the said courses would be

on the basis of the PGET Rules, 2006. The Rules of Deputation are made under the KCSR and have to be read as part and parcel of the Karnataka Civil Services Act, but the PGET Rules, 2006 are made under the provisions of the Capitation Fee Act and it specifically deals with admission for the Post-graduate Courses. Therefore, the moot point for our consideration is, as to whether the Deputation Rules made under the KCSR as well as the PGET Rules 2006 made under the Capitation Fee Act have to be harmoniously read for the purpose of admission of in-service candidates to Post-graduate Medical and Dental Courses or it is either of the said Rules which would have an over-riding effect on the other and therefore, compliance with only one set of Rules is required for admission to Post-graduate courses.

56. We have extracted and analysed the respective Rules having regard to the object for which they have been enacted as well as the conditions prescribed therein. If for the sake of argument it is assumed that it is Rule 61 read with Appendix-IIA of the KCSR (Deputation Rules), which are the only Rules applicable for deputation of an in-service candidate for Post-graduate studies, then the question would be as to whether the eligibility criteria prescribed under the PGET Rules 2006 would have to be given a go-by. It is noted that there are more number of criteria prescribed under the PGET Rules, 2006 at the stage of application for an Entrance Test, eligibility to appear for an Entrance Test and for admission to a Post-graduate course that is, at three stages. On the other hand, the Deputation Rule framed under Rule 61 of the KCSR is a general rule concerning deputation of all Government servants for higher studies or other training based on seniority, except for the reasons to be recorded in writing. Under the said Rules of Deputation, a Government servant is not required to apply for or appear for an Entrance Test. Under the said Rules, the selection of a candidate for higher studies or specialised training is made strictly on the basis of seniority and the number of Government servants to be deputed at any point of time for higher studies or specialised training has to be at a minimum, not exceeding 5% of the sanctioned permanent strength of the concerned cadre. Whereas under the PGET Rules, 2006 specific conditions are prescribed for application to an Entrance Test, eligibility to take the Entrance Test and for admission to a Post-graduate course. The varied conditions which have been listed supra are conspicuous by their absence in the Deputation Rules for higher studies under the KCSR. In other words, even if a Government servant fulfills the conditions prescribed under Rule 61 read with Appendix-IIA of the Deputation Rules, he or she would not be eligible for admission to a Post-graduate course unless and until he/she fulfills the eligibility criteria even for the application for the Entrance Test, eligibility to take Entrance Test as well as the admission for the Post-graduate Courses. One cannot lose sight of the fact that we are concerned with deputation for Post-graduate course in Medical/Dental Course and not any other course. Therefore, the eligibility criteria prescribed under the PGET Rules 2006 necessarily have to be fulfilled by an in-service candidate irrespective of whether such a candidate has fulfilled the conditions prescribed

under Rule 61 of the KCSR read with Appendix-HA.

57. The bone of contention in these cases, however, is with regard to the completion of the requisite number of years of service for being deputed for higher studies. Under the Deputation Rules, it is five years of regular service. However, under the PGET Rules 2006 for the purpose of application for the entrance test, it is only three years of service. Whereas, when it comes to the stage of admission to Post-graduate Courses, it is three years of regular service. In addition, an in-service candidate would have to complete the prescribed period of probation. Such a condition is also necessary at the time of making the application. But under Rule 61 of KCSR all that is stated is five years of regular service, the requirement of completion of probation is not necessary. Similarly, under Rule 10 there are other conditions which have to be fulfilled by an in-service candidate before he/she is admitted to a Post-graduate course, the same are stated supra. Two significant conditions can be mentioned at this stage. One is that, an in-service candidate who is already holding a Post-graduate Diploma in any speciality, through Government deputation, would be eligible for admission to Post-graduate degree courses in the same speciality and secondly, any in-service candidate who is already holding a Post-graduate degree in any speciality shall not be eligible for any other Post-graduate degree or Diploma courses. This can only mean that if a candidate has secured a Diploma in any speciality on the basis of the deputation made by the Government, then he shall be eligible for Post-graduate degree course in the same speciality, but would not be eligible for any other Post-graduate degree or Diploma in other speciality. In other words, an in-service candidate can obtain a Diploma or a degree in the same speciality, but not in any other speciality. That apart, a candidate who is above 48 years of age on the last date fixed for receipt of application is ineligible for admission. Therefore, the conditions prescribed under the PGET Rules, 2006 are more rigorous at every stage of selection and admission and have to be satisfied by an in-service candidate before he/she is admitted to a Post-graduate degree/diploma course despite being qualified under the Deputation Rules.

58. The specific controversy, however, is with regard to the condition prescribed in the PGET Rules 2006 that an in-service candidate who has put in three years of service as on the last date of receipt of application is eligible to apply for the Entrance Test whereas the condition under Rule 61 of the KCSR pertaining to deputation of Government servants for higher studies it is the completion of five years of regular service. This controversy assumes importance in the context of doctors appointed by direct recruitment and contract doctors absorbed under the Absorption Rules. The appointment by direct recruitment is the usual mode of appointment. Since the State Government for various reasons did not resort to direct recruitment, but appointed doctors on contract basis, the need to regularise them arose and Absorption Rules of 2006, 2007 and 2009 were made. Therefore, the terms and conditions for appointment of doctors by direct recruitment are distinct from the terms and conditions of Absorption of contract doctors, which are made under special Rules of Absorption, whereas recruitment

under the Recruitment Rules are general Rules. Of course, once the contract doctors are absorbed into service, a common seniority list of the directly recruited doctors and the absorbed doctors would be formulated. Under the Absorption Rules, 2006, 2007 and 2009, the contract doctors subsequent to Absorption had to work atleast for a period of six years from the date of Absorption in rural areas and were not to be deputed for higher studies during that period. The State Government felt that this condition placed on the contract doctors who are absorbed under the Absorption Rules with regard to being ineligible for deputation for higher studies for a period of six years was a stringent condition. Particularly, having regard to the fact that insofar as directly recruited doctors had to complete only five years of regular service for being eligible to be deputed for higher studies under the Deputation Rules. It is under these circumstances, that the State Government omitted the clause pertaining to ineligibility for deputation for higher studies for a period of six years pursuant to absorption under the Absorption Rules. As a result, of the omission of the said condition from the Absorption Rules, the contract doctors who were absorbed into regular service became eligible for deputation for higher studies even during the period of service in rural areas or in other words within a period of six years from the date of absorption.

59. It is in this background, that the in-service candidates appointed by direct recruitment as well as the doctors who were absorbed under the Absorption Rules of 2006 have a grievance with regard to the amendment made to the Absorption Rules by way of omission of the condition regarding eligibility for deputation for higher studies. Of course, the directly recruited doctors have assailed the Amendment Rules made to the Absorption Rules, whereas those doctors absorbed under the Absorption Rules of 2006 have not assailed the said Rules.

60. While considering the respective contentions of the that doctors appointed by direct recruitment as well as doctors appointed initially on contract basis and subsequently absorbed into regular service are a class apart and form two distinct categories and the classification between these two categories of doctors are on the basis of an intelligible differentia having a nexus to the object sought to be achieved. Therefore, we are of the view that the doctors appointed by direct recruitment cannot maintain a challenge to the terms and conditions of the absorption of the contract doctors as the Absorption Rules are Special Rules and in no way have any adverse impact on tile terms and conditions of appointment of the doctors appointed by direct recruitment. On the other hand, the State Government has saved the status and position of doctors appointed by direct recruitment in Rule 4 of the Absorption Rules by stating that the service rendered by a person as a contract doctor prior to the date of absorption shall not count for the purpose of seniority, granting of promotion as specialist under the Time Bound Advancement Scheme or for Grant Selection Time Scale of Pay etc. On the other hand, Rule 5 of the Absorption Rules states that all the rules regulating the conditions and service of the Government servants insofar as they are

inconsistent with the provisions of the Absorption Rules shall not apply to persons absorbed under the Absorption Rules which are as stated above special rules and which are also made u/s 8 of the Karnataka Civil Services Act, Therefore, the Absorption Rules are Special Rules and the absorbed doctors are a special category of doctors. The controversy, however, does not end.

61. In the context of admission to Post-graduate Courses by deputation of doctors is concerned, the grievance of the appellants is with regard to the omission of the condition that the contract doctors absorbed under the Absorption Rules shall not be deputed for higher studies during a period of six years from the date of absorption by virtue of the Amendment Rules. The said amendment to the Absorption Rules are made with retrospective effect from 30.12.2011 i.e., the date when the Draft Rules were published as stated in the Draft Rules itself and therefore, the contention of the appellants is that the amendment to the Absorption Rules omitting such a condition with retrospective effect is arbitrary, unreasonable and violative of Articles 14 and 16 of the Constitution of India as they have been made after the process of selection for Post-graduate courses commenced. Such a contention cannot be accepted for two reasons. Firstly, because as Elated above, the doctors appointed by way of direct recruitment from a distinct class as opposed to contract doctors regularized under the Absorption Rules and secondly, the Absorption Rules themselves are made u/s 8 of the Karnataka Civil Services Act which permits rules to be made with retrospective effect. Therefore, the appellants have also contended that if the omission of the condition made by the Amendment Rules is held to be valid, then in that case Rule 61 read with Appendix-IIA of the KCSR (Deputation Rules) would automatically occupy the field and it is only those doctors who have put in five years of regular service and are below 45 years of age would be entitled for deputation and therefore, the contract doctors absorbed under Absorption Rules 2007 and 2009 are doctors who have not completed five years of regular service would be ineligible to be deputed for Post-graduate studies as in-service candidates.

62. It is in this context that Rule 61 of the KCSR pertaining to deputation for higher studies and the PGET Rules of 2006 have to be considered together. As already analysed above, the PGET Rules, 2006 have several conditions to be fulfilled by in-service candidates before they can be admitted for Post-graduate Courses which conditions are not found in Rule 61 of the KCSR. The object and purpose of the PGET Rules, 2006 is to select the most meritorious candidates for Post-graduate Courses even within the in-service quota, on the basis of the conditions prescribed under the Rules at the stage of application for the Entrance Test, at the stage of appearance for the Entrance Test and finally at the stage of admission to the Post-graduate courses. It is also noted that even if an in-service candidate fulfills the condition of Rule 61 of the KCSR, he would not be entitled to admission for a Post-graduate course until and unless he fulfills the conditions prescribed under the PGET Rules 2006. The Deputation Rules on the other hand, do not deal with the necessity of taking an Entrance Test for being selected and

admitted to a Post-graduate Medical or Dental Course. The PGET Rules 2006 are thus "Special Rules" framed by the State Government in the matter of admission to Post-graduate Medical and Dental Courses both degree and Diploma of pursuant to the decision of Supreme Court in Copal D. Thirthani and Regulation 9 of the PGME Regulations Regulation 9 of the said Regulation reads as follows:

6. Regulation 9 of the Regulations framed by the Medical Council of India reads as follows:

9. Selection of postgraduate students-(1) Students for postgraduate medical courses shall be selected strictly on the basis, of their academic merit.

For determining the academic merit, the university/ institution may adopt any one of the following procedures both for degree and diploma courses:

on the basis of merit as determined by a competitive test conducted by the State Government or by the competitive authority appointed by the State Government or by the university/ group of universities in the same State;

on the basis of merit as determined by centralized test held at the national level; or

on the basis of the individual cumulative performance at the first, second and third MBBS examinations, if such examination have been passed from the same university: or

combination of (i) and (iii):

Provided that whatever entrance test for postgraduate admissions 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 fifty per cent for all the candidates:

Provided further that in non-governmental institutions fifty per cent of the total seats shall be filled by the competent authority and the remaining fifty per cent by the management of the institution on. the basis of merit.

63. Having regard to the aforesaid Regulations, the State Government has framed the PGET Rules 2006 prescribing not only the mode of selection for admission to Post-graduate courses both medical and dental, but also the eligibility of the candidates for prosecuting such courses. The object of PGET Rules 2006 is to select and admit those candidates who are meritorious having secured 50% atleast in the Entrance Test, provided they have the eligibility to apply and take the exam as well as being admitted to the course. The Apex court in several decisions has emphasised on the need to maintain merit in the matter of selection and admission of candidates for professional courses, particularly at the level of Post-graduate and Super Speciality Courses. Therefore, in the instant case, we cannot lost sight of the fact that admissions are being made to Post-graduate Medical Courses, where merit is the overwhelming condition for admission of all the candidates, in-service or non-service, who have to take a

common Entrance Test and but for a separate stream of admission being kept apart, the in-service candidates would have otherwise competed with the non-service candidates. The prescription of the eligibility criteria under the PGET Rules 2006 would therefore, prevail over any other Rules of Deputation made as a condition of service for higher studies. In the instant case what we have discerned is the eligibility for admission to Post-graduate course and not a mere deputation for higher studies. The selection and admission for a Post-graduate course is circumscribed by certain terms and conditions prescribed under the PGET Rules 2006 which are common both with regard to in-service candidates as well as those candidates who are not in service. But as fair as in-services candidates are concerned, certain additional prescriptions are made under the PGET Rules 2006 and it has already been observed that these additional prescriptions are absent in the KCSR. Therefore, the PGET Rules 2006 being Special Rules for admission to a Post-graduate Course would obviously prevail over the Rule 61 of the KCSR, which is a general rule for deputation. Also, an in-service candidate, merely on the basis of his seniority cannot be sent for deputation and admitted to a Post-graduate course, unless he qualifies under PGET 2006 Rules. Moreover, under the Deputation Rules, it is only upto 5% of the sanctioned permanent strength of the concerned cadre that can be deputed for higher studies. Whereas, under the PGET Rules 2006 within the seat matrix, certain percentage of seats are categorised as Government seats as opposed to Management seats and within the quota of Government seats, certain seats are ear-marked for in-service candidates in which there is reservation of seats for scheduled caste and scheduled tribe as per Rule 12 of the PGET Rules 2006. Therefore, there are numerous conditions which have to be complied with by an in-service candidate before becoming eligible for admission for a Post-graduate course though by way of deputation. It is for all the aforesaid reasons, we hold that the PGET Rules, 2006 would prevail over the Deputation Rules in the matter of admission to Post-graduate courses in Medical. In other words the PGET Rules 2006 have an over-riding effect over the Deputation Rules made under KCSR.

64. Section 6 of the Act states that the Act and any Rule made or deemed to have been made thereunder would have effect notwithstanding anything inconsistent therewith contained in any other law with respect to matters for which provision is made in the Act or for which Rules can be made under the Act. At the same time, Section 12 of the Capitation Fee Act also states that the provisions of the said Act would have effect notwithstanding anything inconsistent therewith contain in any other law for the time being in force.

65. Learned Senior Counsel for some of the appellants has brought to our notice these two provisions to contend that ultimately, the Rules made under the Act would prevail over the Rules made under the Capitation Fee Act. On a comparative reading of the two provisions, we note that they are made in two different enactments whose objects are totally alien to each other. However, the overlapping aspect is with regard to deputation of in-service doctors for Post-graduate studies. Insofar as this aspect is concerned, under the Act provision is

made only for the deputation of in-service doctors for higher studies based on seniority, the number of years of regular service and tint age factor. No provision is made with regard to the eligibility for selection and admission on the basis of merit. In fact, Rule 61 of the KCSR read with Appendix-II are silent on this aspect. On the other hand, the POET rules 2006 made under the provision of Capitation Act deals with not only the number of years of requisite service, the maximum age limit and also eligibility being based on merit. In fact Section 12 of the Capitation Fee Act provides for an over-riding effect of the provisions of the Act notwithstanding anything inconsistent contained in any other law for the time being in force. The Deputation Rules made under KCSR were in force prior to the enactment of the Capitation Fee Act. However, it is the provisions of the Capitation Fee Act which would prevail over any other law for the time being in force in view of the non-obstante clause in Section 12.

66. In this context, Section 4 of the Capitation Fee Act provides for the minimum qualification for admission, the maximum students who could be admitted to the course of study and the reservation of seats. Further, pursuant to the directions in Copal Thirthani, Regulation 9 of the PGME Regulations have been made which also speaks about merit determined by a competitive test. These Regulations are framed by the Medical Council of India, which is the Authority responsible for maintaining standards in medical education through out India. Therefore, for these reasons also, we hold that the PGET Rules 2006 have an over-riding effect over the Deputation Rules made under the KCSR.

67. Section 8 of the Act empowers the State Government to make Rules to carry out the purposes of the Act with retrospective effect and when such a Rule is made, the reasons for making the Rule has to be specified ire statement to be laid in both Houses of the State Legislature and subject to any modification, every Rule made under the Act has the effect as if it is enacted in the Act. The Absorption Rules have been made by virtue of Rule 8 of the Act.

68. It is a settled position in law that if on a particular subject several rules have been made, the Special Rules would always prevail over the general rules vide Maya Mathew Vs. State of Kerala and Others, In the instant case, we have held that the PGET Rules 2006 are Special Rules of admission for Post-graduate Courses which also take into consideration the deputation of in-service candidates for such courses. They are special rules with regard to deputation for higher studies, which would prevail over the general rules of deputation under the KCSR.

69. Since we have held that it is only the PGET Rules 2000, which have to be considered for the purpose of deputation for Post-graduate studies from the category of in-service candidates, we also hold that the decision of this Court in Dr. Ranganath's case under which three separate merit lists were prepared based on the length of service of the in-service candidates completed were upheld and also the interim order of the learned Single Judge in W.P. No. 15539/2011 dated 01.05.2011 and the subsequent order of the Division Bench

dated 07.06.2011 are not relevant for the present controversy. Even if for a moment it is considered that the PGET Rules, 2006 do not have an over-riding effect over the Deputation Rules, even then, having regard to the amendment made to the Absorption Rules, 2006, 2007 and 2009, which we uphold it would not be now necessary to prepare three separate merit lists of in-service doctors as all doctors absorbed under the said Absorption Rules are eligible to take the Entrance Test provided they fulfil the eligibility criteria prescribed under PGET Rules. We hold that amendments made to the Absorption Rules are valid. Firstly because, they are made under Rule 8 of the Act which itself permits making Rules with retrospective effect and secondly, because the amendment made to the Absorption Rules would have no impact on the right of the directly recruited doctors to participate in the admission process to Post-graduate Courses, as the directly recruited doctors and the contract doctors who have been subsequently absorbed fall into different classes. That apart, the effect of the amendments made to the Absorption Rules have enlarged the scope of eligibility of in-service candidates and has not taken away the vested right of in-service candidate from participating in the selection and admission process. Therefore, the amendment made with retrospective effect i.e., from 30.12.2011, prior to the last date of filing of applications for the Entrance Test are legal and valid.

70. N.T. Bevin Katti, etc., Vs. Karnataka public Service Commission and others, the Apex Court has held thus:

If the recruitment Rules are amended retrospectively during the pendency of selection, in that event selection must be held in accordance with the amended Rules. Whether the Rules have retrospective effect or not, primarily depends upon the language of the Rules and its construction to ascertain the legislative intent. The legislative intent is ascertained either by express provision or by necessary implication; if the amended Rules are not retrospective in nature the selection must be regulated in accordance with the rules and orders which were in force on the date of advertisement. Determination of this question, largely depends on the facts of each case having regard to the terms and conditions set out in the advertisement and the relevant rules and orders. Lest there be any confusion" we would like to make it clear that a candidate on making application for a post pursuant to an advertisement does not acquire any vested right of selection, but if he is eligible and is otherwise qualified in accordance with the relevant rules and the terms contained in the advertisement, he does acquire a vested right of being considered for selection in accordance with the rules as they existed on the date of advertisement. He cannot be deprived of that limited right on the amendment of rules during the pendency of selection unless the amended rules are retrospective in nature.

71. In the case of P.D. Aggarwal and Others Vs. State of U.P. and Others, also the Apex Court has held that the Government has got the power under proviso to Article 309 of the Constitution to make such rules as to amend them giving retrospective effect. Nevertheless, such retrospective amendments cannot take

away the vested rights and the amendments must be reasonable, not arbitrary or discriminatory and violating Articles 14 and 16 of the Constitution. To the same effect are the observations in the case of Union of India (UOI) and Others Vs. Tushar Ranjan Mohanty and Others,

72. There can be no contrary view to the aforesaid observations of the Apex Court. However, in the instant case Section 8 of the Act specifically empowers the State Government to make rules with retrospective effect. It is on the strength of the said provision that the amendments have been made to the Absorption Rules of the Act. That apart, by the amendments made to the Absorption Rules, no vested right of the appellants for being considered for selection and admission for Post-graduate Medical Courses in terms of their merit have been taken away. In the instant case, the amendments are made to the Absorption Rules with effect from 30.12.2011 i.e., prior to the last date for submission of applications to appear in the Entrance Test by the said Amendment Rules. The right of the appellants who were absorbed under Absorption Rules 2006 to be considered for selection and admission has not been deprived. Their rights have remained intact. On the other hand, the effect of the amendment made to the Absorption Rules is to enlarge the scope of eligibility to the doctors who have been absorbed under the Absorption Rules of 2006, 2007 and 2009.

73. As far as the appellants who are the direct recruits are concerned, they are a class apart and cannot fall into the same category as the contract doctors who have been absorbed into service. Therefore, their right to be selected and admitted is totally unaffected by the amendment made to the Absorption Rules. Whereas, as far as contract doctors absorbed under the Absorption Rules, 2006 is concerned, the amendment in fact enures to their benefit. It is for this reason that they have not assailed the amendment made to Absorption Rules, 2006. Even this class of doctors cannot have any grievance to the amendment made to the Absorption Rules of 2007 and 2009 having regard to the fact that the doctors absorbed under the Absorption Rules, 2006 are themselves the beneficiaries of the amendment and their right to selection and admission to Post-graduate Courses is unaffected. Therefore, the amendments in no way take away the vested rights of the contract doctors absorbed under the Absorption Rules, 2006. Therefore, the amendments made to the Absorption Rules 2006, 2007 and 2009 are valid.

74. Learned Senior Counsel appearing for some of the respondents has relied upon the following decisions with regard to the permissibility of the retrospective operation of Rules. In the case of State Bank's Staff Union (Madras Circle) Vs. Union of India (UOI) and Others, it has been held that:

31. Learned counsel for the appellant submitted that vested rights cannot be taken away by the legislature by way of retrospective legislation. The plea is without substance. Whenever any amendment is brought in force retrospectively or any provision of the Act is deleted retrospectively, in this process rights of some are bound to be affected one way or the other. In every case the exercise

by the legislature by introducing a new provision or deleting an existing provision with retrospective effect per se does not amount to violation of Article 14 of the Constitution. The legislature can change as observed by this Court in Cauvery Water Disputes Tribunal, Re the basis on which a decision is given, by the Court and thus change the law in general, which will affect a class of persons and events at large. It cannot, however, set aside an individual decision inter partes and affect their rights and liabilities alone. Such an act on the part of the legislature amounts to exercising the judicial power by the State and to function as an appellate court or tribunal, which is against the concept of separation of powers.

75. To the same effect are *Bhubaneshwar Singh and Bimla Devi Poddar and Others Vs. Union of India (UOI) and Others*, *K.V. Subba Rao and Others Vs. Government of Andhra Pradesh and Others*, and *Dr. Indrani Pyarelal Gupta & others V/s. W.R. Naidu & others* (AIR 1963 SCC 274). Since Section 8 of the Act itself permits the Rule making authority to make Rule with retrospective effect as State Government Rules are valid and as they have effect prior to the last date for receipt of application for the Entrance Test, there can be no grievance on the score.

76. In *Mahabir Vegetable Oils Pvt. Ltd. and Another Vs. State of Haryana and Others*, and *N.T. Bevin Katti, etc., Vs. Karnataka public Service Commission and others*, also Recruitment Rules were amended retrospectively during the pendency of selection, in that event selection must be held in terms of the Amended Rule, is the dicta of the Apex Court. The said analogy would also apply for selection and admission to professional courses.

77. The next issue to be considered is with regard to the maintainability of a challenge to a service rule before the High Court as opposed to the Administrative Tribunal. In *L. Chandra Kumar Vs. Union of India and others*, the Apex Court has held that though Administrative Tribunals are competent to hear matters where the vires of statutory provisions are questioned, but in discharging this duty, they cannot act as substitutes for the High Courts and the Supreme court which have, under our constitutional set-up, been specifically entrusted with such an obligation. Their function in this respect is only supplementary and all such decisions of the Tribunals will be subject to scrutiny before a Division Bench of the respective High Courts. Though the Tribunals act as the courts of first instance in respect of the areas of law for which they have been constituted and the litigants would have to approach the Tribunals prior to approaching the High Court, but having regard to the fact that the quintessence of the controversy in these cases is with regard to the selection and admission of in-service doctors to Post-graduate Medical Courses and the challenge made to the amendment to the Absorption Rules is also one of the questions to be determined, we are of the view that the learned Single Judge was not right in holding that the appellants had to first approach the Administrative Tribunal, assailing the amendment made to the Absorption Rules and then approach this

Court with regard to the admission for Post-graduate medical courses.

78. Learned Single Judge was also not right in placing reliance on another decision of the Apex Court in the case of *Rajeev Kumar and Another Vs. Hemraj Singh Chauhan and Others*, In the said case, the appellants therein had tried to implead themselves at the stage when the matter was before the High Court, whereas they were not parties before the Central Administrative Tribunal. It is under those circumstances, the Apex Court held that the appellants could not approach the High Court directly by treating it as the Court of first instance.

79. Even otherwise, the amendment to the Absorption Rules is closely linked with the eligibility criteria prescribed under the PGET Rules 2006, which we have held have an over-riding effect on the Deputation Rules. It is in order to create a level playing field for all in-service category candidates, whether appointed by regular recruitment or by way of absorption that the embargo on deputation for higher studies for a period of six years immediately after absorption has been omitted. The main issue in these cases is with regard to eligibility of the in-service doctors to be admitted to post-graduate medical course. The challenge to the amendment to Absorption Rules is only incidental. Therefore, this High Court has the jurisdiction to consider a challenge made to Service Rules in the context of admission of in-service doctors to Post-graduate medical courses. Therefore, that portion of the order of the learned Single Judge that no challenge to a Service Rule is permissible before this Court is set aside.

80. This leaves us with the consideration of one other contention pertaining to the validity of Rule 5A of the PGET Rules, 2006 granting weightage to those in-service candidates who have rendered service in rural areas. The said Rule was inserted by the Amendment Rules of 2011 by virtue of notification dated 18.01.2011. However, it was withdrawn with immediate effect on 07.03.2011, but was revived with effect from 07.04.2011. Sub-rule (1) of Rule 5A pertains to the giving of weightage of four marks for each completed year of service beyond five years of service to the marks secured in the Entrance Test subject to maximum of thirty marks, provided the candidate has secured the minimum qualifying marks. The proviso states that for each completed year of rural service beyond five years of service, a weightage of eight marks would be added to the marks secured in the Entrance Test instead of four marks, subject to maximum of thirty marks. "Rural Service" has been explained to include the service rendered in rural areas under the contract period as well as rural service rendered under the Rural Weightage Selection. The challenge is made to the proviso as it prescribes eight marks in lieu of four marks to the doctors who have served, in rural areas and secondly, that the weightage of eight marks is unreasonable. The Supreme Court in *Copal Thirthani* has held that weightage given for rural service is valid provided it is reasonable.

81. In the instant case, insofar as non-rural service is concerned, four marks for each completed year of service beyond five years of service are added. But insofar as rural service is concerned, it is eight marks. In other words, it is the

double the marks awarded in sub-rule (1) of Rule 5A. In that view of the matter, it cannot be held to be unreasonable. In fact, the weightage of marks could have been "1" mark for non-rural service and "2" marks for rural service or "2" marks for non-rural service and "4" marks for rural service. Instead it is fixed at "4" marks for non-rural service and "8" marks for rural service. This is a matter, which is within the wisdom of the rule making authority and this court cannot sit in judgment over the quantum of marks awarded for rural service. That apart, the challenge made to the award of eight marks for rural service is made by those appellants who are themselves beneficiaries of the award of four marks for each complete year of service beyond five years under sub-rule(1) or Rule 5A. The maximum marks that can be awarded is thirty only. This Rule has been in force from 18.01.2011 or at any rate from 07.04.2011. The appellants were well aware of this Rule and they have participated in the selection and admission process for Post-graduate course. They are therefore, estopped from challenging the Rule.

82. In *State of Jharkhand V/s. Ashok Kumar Dangi* (2011) 13 SCC 383) it has been held that where candidates appeared for the exam without challenging the retrospective amendment of the eligibility conditions and participated in the selection process without any demur, they would not be permitted to challenge the retrospective amendments after the declaration of result. To the same effect 12, *Dhananjay Malik and Others Vs. State of Uttaranchal and Others*, In this case, as observed, the Rule granting weightage is in force since 07.04.2011 long prior to the notification dated 21.11.2011 calling upon eligible candidates to apply for the Entrance Test

83. The State Government by Circular dated 11.04.2012 published the Draft Rank List prepared by allotting service weightage marks to depute the in-service doctors for Post-graduate studies for the year 2012-2013. The Draft Rank List is in three parts. Those in-service candidates who have completed above five years of service; those candidates who have completed above four years of service; and thirdly, those candidates who have completed above three years of service. The same was objected to by certain doctors by placing reliance on the Rule 61 of the KCSR and the interim order of the learned Single Judge dated 01.05.2011 passed in *W.P.Nos.15539-42/2011* as well as the confirmatory order of the Division Bench. Subsequently, they challenged the amendments made to the Absorption Rules, 2007 and 2009 giving retrospective effect from 30.12.2011, By interim order dated 15.05.2012, the amendments to the Absorption Rules were stayed by this Court. As a result, the State Government prepared another merit list excluding those in-service candidates who were absorbed into service pursuant to the 2007 and 2009 Absorption Rules. Consequently, the in-service candidates who were excluded from the merit list, filed writ petitions seeking quashing of Circular dated 15.05.2012 and to allow the petitioners to appear for counseling to be held on 17_05.2012 as per the notification dated 04.05.2012. It is under these circumstances, that the learned Single Judge by interim order dated 24.05.2012 directed maintenance of status quo in respect of the

counseling which had already taken place and had stayed further counseling.

84. The only other controversy is, with regard to the State Interim Order of stay granted by this court on 15.05.2012, staying the operation of the amendments made to the Absorption Rules to 2006, 2007 and 2009. On account of the order of stay granted by this court, the State Government applied Rule 61 of the KCSR and selected only those candidates who had completed five years of regular service and who are below 48 years of age while revising merit list as the initial merit list comprised of in-service doctors who had completed three years of regular service. In this context, the case of the doctors regularised under the Absorption Rules of 2006 is slightly different from the case of doctors regularised pursuant to regular Absorption Rules of 2007 and 2009. As far as the contract doctors appointed under the Absorption Rules of 2006 is concerned, what is contended is, since under Rule 61 of the KCSR, they have completed five years of regular service, in the year 2011, they were eligible to take the Entrance Test, but the doctors absorbed under the Absorption Rules 2007 and 2009, were not eligible to take the Entrance Test since they had not completed five years of regular service under the Deputation Rules. It has been held that Rule 61 of the KCSR (Deputation Rules) are not at all applicable as in the matter of admission to Post-graduate courses under the PGET Rules, 2006 in-service doctors who have completed three years of regular service and who are eligible under various eligibility criteria prescribed under the PGET Rules 2006 and who have taken the Entrance Test and have secured a minimum of 50% are eligible to be considered for admission. In that view of the matter, the State Government could not have excluded the doctors absorbed under the 2007 and 2009 Rules from the merit list pursuant to the interim order dated 15.05.2012 granted by this court. For that matter, even directly recruited doctors who have completed three years of regular service and have taken the Entrance Test have to be considered while drawing up of the merit list. In the circumstances, the merit list prepared by the State Government excluding all doctors who have not completed five years of regular service is illegal and requires to be quashed. The State Government has to prepare the merit list of all in-service candidates who have completed three years of regular service by also taking into consideration Government Order dated 29.01.2010 which has been upheld by this Court on 26.04.2010 and have completed the period of probation for the purpose of admission to the Post-graduate courses subject to fulfilling of other conditions prescribed under the PGET Rules 2006.

85. In view of our findings, we direct the extension of time for the completion of counseling process for admission to Post-graduate Medical Courses for the in-service category of doctors by ten days from today as per the common merit list prepared prior to the interim order dated 15.05.2012 and keeping in mind all eligibility criteria prescribed under PGET Rules 2006. While we issue the aforesaid direction, we are also conscious of the directions and observations of the Supreme Court in the case of Mridul Dhar (Minor) and Another Vs. Union of India (UOI) and Others, Medical Council of India Vs. Manas Ranjan Behera and Others,

and also the more recent decision in the case of Priya Gupta V/s. State of Chhatisgarh (Civil Appeal No. 4318/2012 disposed of on 08.05.2012). However, with all due respect and deference to the Apex Court, this Court has been constrained to intervene in these matters having regard to the nature of controversy touching upon the process of selection and rule of merit, as in the instant case, there was no certainty with regard to the merit list itself having regard to the claims and counter claims raised by various groups within the in-service category and the impact of the interim order dated 15.05.2012 on the merit list which was altered owing to the stay of the amendment made to the Absorption Rules. Therefore, we think it was the duty of this Court to resolve the controversy in such a manner, that ultimately, merit would prevail in the matter of selection and admission to the Post-graduate Courses for the year 2012-2013. It is, in these circumstances, that this Court has been under a duty to intervene in these matters. In the result, the appeals are dismissed. Parties to bear their own costs.