
(2017) 05 P&H CK 0047
In the Punjab And Haryana At Chandigarh
Case No : 8649 of 2017 (O&M)

Dr. Narender Soni

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 09-05-2017

Acts Referred:

Citation : (2017) 05 P&H CK 0047

Hon'ble Judges : Rajesh Bindal, Justice Ramendra Jain

Bench : DIVISION BENCH

Advocate : Ashwani Talwar, Mukesh Rao, Ashwani Gaur, Ankur Mittal, Surender Kumar Sharma, M. S. Loniga

Final Decision : Disposed

Judgement

1. This order will dispose of three writ petitions bearing CWP Nos. 8649, 9192 and 9356 of 2017, as common questions of law and facts are involved therein.

CWP No. 8649 of 2017

2. The petitioner herein after getting MBBS Degree, was appointed as Medical Officer in ESI Health Care and is presently working as Medical Officer, ESI Dispensary at Village Mayyar, District Hisar.

3. Being a candidate for admission to Post Graduate Medical Courses for the Session 2017-18, the petitioner has challenged Clause 2 of the order dated 21.4.2017 issued by the Medical Education & Research Department, Haryana, Chandigarh, vide which maximum incentive of 20% of marks obtained in National Eligibility and Entrance Test, PG 2017 (for short, "NEET"), is to be given to inservice candidates for admission in PG Medical Courses.

4. Clause 7 of Chapter XIII of the Prospectus for admission issued by Pt. B. D. Sharma University of Health Sciences, Rohtak (for short, "the University") has also been challenged whereby additional weightage has been given to the candidates passing MBBS/ BDS from recognised Medical/ Dental colleges in the

State of Haryana.

5. As during the pendency of the present writ petition learned Single Bench of this Court in CWP No.8497 of 2017 titled as Dr. Ankit and others vs State of Haryana and others, decided on 5.5.2017, set aside the aforesaid two clauses, order dated 21.4.2017 was superseded vide order dated 5.5.2017. Simultaneously, notification dated 5.5.2017 was issued by the Department of Health, Government of Haryana, notifying the remote and/or difficult areas/ institutions in the State of Haryana, for the purpose of admission to various Post Graduate Medical/ Dental courses in the State. Challenge is sought to be made to the aforesaid notification.

CWP No. 9192 of 2017

6. The petitioner herein was appointed as Medical Officer and is presently working in Community Health Centre, Pataudi, District Gurgaon. He is candidate for admission to Post Graduate Medical Courses for the Session 2017-18. He has challenged Clause 2 of order dated 21.4.2017 issued by the Medical Education & Research Department, Haryana, Chandigarh.

7. Clause 3 of the order dated 21.4.2017 and communication dated 21.4.2017 have also been challenged on the ground that the benefit of reservation could not be granted for service rendered in rural areas as it has to be in remote/ difficult areas as per Regulation 9 of the Postgraduate Medical Education Regulations, 2000 (for short, "the 2000 Regulations").

8. Challenge has also been made to Clause 7 of Chapter XIII of the Prospectus issued by the University.

9. Further prayer has been made for directing the respondents to give weightage as per Clause 9 (IV) of the 2000 Regulations. CWP No. 9356/2017

10. The petitioners in the present writ petition passed their MBBS Degree course from Pandit B. D. Sharma University of Health Sciences, Rohtak in the year 2017 and are candidates for admission to Post Graduate Medical Courses for the Session 2017-18.

11. The writ petition has been filed challenging order dated 21.4.2017 and further directing the respondents to issue orders/notification specifying conditions strictly as per Regulation 9(IV) of the 2000 Regulations.

Facts

12. The procedure for admission to MD/MS/PG Diploma Courses for the Session 2017-18 was notified by the State on 16.3.2017. The tentative seats matrix for admission to different courses was attached with the notification. As the Annexure suggested reservation of seats for admission to MD/MS/ PG Diploma Courses for inservice candidates, the same was impugned by various candidates by filing CWP No. 7594 of 2017 Jashanpreet vs State of Haryana and others. The writ petition was disposed of on 18.4.2017 in terms of the stand taken by

learned counsel for the State that the mistake in the notification has been realized and the counselling scheduled from 18th to 20th April, 2017, has been postponed. Fresh merit list shall be drawn in terms of the 2000 Regulations and the judgment of Hon"ble the Supreme Court in State of U.P. and others vs Dr. Dinesh Singh Chauhan JT 2016(8) SC 201. Thereafter, order dated 21.4.2017 was issued, making certain specific provision for inservice candidates of HCMS/ HCDS category for admission to P.G. Degree/ P.G. Diploma/ M.D.S. Courses for the academic session 2017-18 for granting benefit of rural service in the absence of any defined/ notified remote/ difficult areas by the Health Department Haryana.

13. While issuing the prospectus for admission to the aforesaid courses the University added one clause in Chapter XIII under the title "Method of Selection and Admission where weightage of marks was given to the candidates who had passed MBBS/ BDS from recognised Medical/ Dental colleges in the State of Haryana.

14. The aforesaid order dated 21.4.2017 and the clause contained in the prospectus were challenged by the candidates by filing CWP Nos. 8497 of 2017 Dr. Ankit and others vs State of Haryana and others and other petitions. The clause providing for weightage for admission to MD/MS/PG Diploma to the extent of 83.333 and for admission to MDS to the extent of 44.444 to the open seats candidates only who have passed MBBS/ BDS from recognised Medical/ Dental Colleges in the State of Haryana, was set aside vide judgment dated 5.5.2017 in Dr. Ankit and others" case (supra) by Single Bench of this Court.

15. As far as order dated 21.4.2017 is concerned, this Court opined that the incentives could not be restricted to the maximum of 20% for inservice doctors as it had to be upto 30%. None pointed out at the time of hearing that the judgment has been challenged by any party. After the aforesaid judgment, the State came out with fresh order dated 5.5.2017 issued in supersession of earlier order dated 21.4.2017 withdrawing the incentives given to the candidates, who had passed MBBS/ BDS courses from recognised Medical/ Dental Colleges in the State of Haryana. The benefit of service rendered in remote and/or difficult areas was granted upto 30% of the marks obtained in NEET. Simultaneously notification dated 5.5.2017 was issued specifying the list of Community Health Centres and Primary Health Centres in the State of Haryana as remote and/or difficult areas/ institutions for the purpose of grant of incentives for admission to various Post Graduate Medical/ Dental courses. A corrigendum was issued on 6.5.2017 to the aforesaid order dated 5.5.2017 clarifying that incentive for remote and/ or difficult areas for inservice doctors shall be admissible to eligible inservice candidates of Employees State Insurance Corporation as well.

16. In terms of revised orders and notification, first round of counselling was held on 7.5.2017. Out of 112 total seats in MD/MS under the State quota seats, 30 inservice candidates were admitted after granting them benefit of service rendered in terms of notification dated 5.5.2017 notifying the remote and/or

difficult areas/ institutions in the State of Haryana.

17. As far as MDS Course is concerned, out of total 15 seats available in the Government Colleges, 10 were filled by the HCDS inservice candidate. Arguments

18. Learned counsel for the petitioners submitted that as the grievance raised in the petition with reference to grant of weightage or passing of qualifying course of MBBS/ BDS from any institute in the State has been set aside by this Court in Dr. Ankit and others" case (supra), the prayer in the present petition to that extent has been rendered infructuous.

19. Similar is the position regarding grant of incentives for inservice candidates only to the extent of 20%, as the same has also been set aside.

20. The only issue sought to be raised now is grant of benefit to inservice candidates for the service rendered by them in remote/ difficult areas. The submission is that when State had issued notification dated 16.3.2017, no area was notified as difficult/ remote by the State for grant of incentives on the basis of which the candidates could claim benefit of additional marks. Even while issuing order dated 21.4.2017, the fact is noticed that there was no defined/ notified remote/ difficult areas in the State. The State's effort to give incentives for rural service is contrary to the Regulation 9(IV) of the 2000 Regulations and judgment of Hon"ble the Supreme Court in Dr. Dinesh Singh Chauhan's case (supra). It was further submitted that after this Court had set aside notification in Dr. Ankit and others" case (supra), the State hurriedly carried out exercise for notifying the remote and/or difficult areas/ institutions in the State of Haryana, as on the same day i.e. 5.5.2017, the date on which the judgment was delivered by this Court. The notification was issued specifying 68 Community Health Centres and 268 Primary Health Centres in the State located at different places. For service rendered in these Community Health Centres and Primary Health Centres, the candidates were entitled to extra weightage.

21. While impugning the aforesaid notification, it was submitted that 12 places which have been notified for grant of benefits Community Health Centres are located at places where Municipal Committees/ Municipal Councils are existing. It was further submitted that there are number of other places where Community Health Centres or the Primary Health Centres have been notified as the remote and/or difficult areas/ institutions, which are located either on National/ State Highway or close to the City. Some of the places notified are even Sub-Divisions. By no stretch of imagination these Community Health Centres or Primary Health Centres can be said to be located in the remote and/or difficult areas. In fact, the matter was not examined in detail keeping in view the object as effort of the State was to give incentives to inservice doctors just with a view to benefit them.

22. Immediately after the judgment was delivered in Dr. Ankit and others" case (supra), notification was issued on the same day. The notification suggested that it shall come into force with effect from the date the same is published in the official gazette. The stand taken is that the same has not been published in the

official gazette till date, hence, could not be relied upon for the purpose of grant of incentives for admission to MD/MS/ PG Diploma courses. It was not even uploaded on any website and the candidates could not know the same.

23. It was further submitted that the aforesaid notification defines remote/ difficult areas only for the purpose of admission in various Medical/ Dental colleges which runs contrary to the judgment of Hon''ble the Supreme Court in Dr. Dinesh Singh Chauhan's case (supra), wherein it was provided that the area so defined should be applicable for all the beneficial schemes framed by the State for such areas and not restricted to the matter of admissions to Post Graduate Medical /Dental Courses. He further submitted that lack of application of mind while notifying the difficult/ remote areas is clear from the fact that reference was made to earlier letters dated 21.9.2005 and 23.6.2006 noticing difficult areas. Much water has flown in the last one decade. There has been lot of developments in the State. The areas which may be difficult/ remote area more than a decade back, may have been developed now. In fact, there is hardly any area in the State which can be said to be remote/ difficult.

24. On the other hand, learned counsel for the State submitted that after the earlier order dated 21.4.2017 and clause in the prospectus providing for weightage for admission to MD/MS/PG Diploma to the candidates who have passed MBBS/ BDS from recognised Medical/ Dental Colleges of Haryana was set aside vide judgment dated 5.5.2017 in Dr. Ankit and others'' case (supra) by Single Bench of this Court, exercise for notifying the difficult/ remote areas was to be carried out immediately as 7.5.2017 was cut off date for holding first counselling. However, he fairly could not dispute the fact that this Court had not directed the State to notify list of remote/ difficult areas in that case. For the purpose of identification the difficult/ remote areas, a Committee was constituted under the Chairmanship of Director General Health Services, Haryana. Certain parameters were taken into consideration for the purpose. He further submitted that the Health Department proposed to the Government that these areas be notified for the purpose of grant of benefits under all the Schemes framed by the State, however, the proposal was not accepted, hence, these areas were notified for grant of incentives to the inservice candidates for admission to Post Graduate Medical/ Dental Courses. He did not refer to any other notification/ order of the State specifying difficult / remote areas or any other scheme of the Government. Immediately after the issuance of the aforesaid notification, which was conveyed to the University, revised merit list of the candidates was prepared after getting the data from the Health Department about the candidates to whom ''no objection certificates'' had been issued. The revised merit list after adding the incentives in the marks obtained by the candidates in NEET Examination, was uploaded on the website on 6.5.2017. All the candidates were informed on their recorded mobile numbers about the first counselling to be held on 7.5.2017 through SMS. He further submitted that as the admissions have now been made, the same be not disturbed for the current session.

25. Learned counsel appearing for Medical Council of India submitted that Regulation 9(IV) of the Regulations provides for grant of incentives to the doctors serving in remote/difficult areas. He further submitted that the notification issued by the State in a hurry does not infact achieves the object for which provision was made in the 2000 Regulations. He further submitted that as per the judgment of Hon''ble Supreme Court in Dr. Dinesh Singh Chauhan's case (supra), identification of difficult/remote areas had to be for benefits, under all the schemes of the Government and not isolated for admission to Post Graduate Medical Courses. In the case in hand, it is meant only for the purposes of admissions.

26. Heard learned counsel for the parties and perused the paper book. Discussions

27. The procedure for admission to Post Graduate Medical/ Dental Courses is subject matter of judicial scrutiny every year. It is despite the fact that law on the subject is well settled. It is governed by the Rules/Regulations framed by the Medical Council of India, which have been interpreted by Hon''ble the Supreme Court of India in number of judgments. Despite this, every year new issues are raised and as a result some times even process for admissions is delayed.

28. For the session in question, for the procedure to be followed, the issue was considered by Hon''ble the Supreme Court in Dr. Dinesh Singh Chauhan's case (supra). It was a case pertaining to admission to Post Graduate Medical Courses. Regulation 9 of the 2000 Regulations which prescribes the procedure for selection of candidates for Post Graduate Medical Courses has been held to be a self-contained Code. Regulation 9 of the 2000 Regulations is reproduced below:-
"9. Procedure for selection of candidate for Postgraduate courses shall be as follows:

There shall be a single eligibility cum entrance examination namely "National Eligibility-cum-Entrance Test for admission to Postgraduate Medical Courses" in each academic year. The superintendence, direction and control of National Eligibility-cum-Entrance Test shall vest with National Board of Examinations under overall supervision of the Ministry of Health & Family Welfare, Government of India"

II. 3% seats of the annual sanctioned intake capacity shall be filled up by candidates with locomotory disability of lower limbs between 50% to 70%:

Provided that in case any seat in this 3% quota remains unfilled on account of unavailability of candidates with locomotory disability of lower limbs between 50% to 70% then any such unfilled seat in this 3% quota shall be filled up by persons with locomotory disability of lower limbs between 40% to 50% - before they are included in the annual sanctioned seats for General Category candidates. Provide further that this entire exercise shall be completed by each medical college/institution as per the statutory time schedule for admissions.

III. In order to be eligible for admission to any postgraduate course in a particular academic year, it shall be necessary for a candidate to obtain minimum of marks at 50th percentile in "National Eligibility-cum-Entrance Test for Postgraduate courses" held for the said academic year. However, in respect of candidates belonging to Scheduled Castes, Scheduled Tribes, Other Backward Classes, the minimum marks shall be at 40th percentile. In respect of candidates as provided in clause 9(II) above with locomotory disability of lower limbs, the minimum marks shall be at 45th percentile. The percentile shall be determined on the basis of highest marks secured in the All- India common merit list in "National Eligibility-cum- Entrance Test" for Postgraduate courses: Provided when sufficient number of candidates in the respective categories fail to secure minimum marks as prescribed in National Eligibility-cum- Entrance Test held for any academic year for admission to Post Graduate Courses, the Central Government in consultation with Medical Council of India may at its discretion lower the minimum marks required for admission to Post Graduate Course for candidates belonging to respective categories and marks so lowered by the Central Government shall be applicable for the said academic year only.

IV. The reservation of seats in medical colleges/ institutions for respective categories shall be as per applicable laws prevailing in States/Union Territories. An all India merit list as well as State-wise merit list of the eligible candidate shall be prepared on the basis of the marks obtained in National Eligibility-cum-Entrance Test and candidates shall be admitted to Post-graduate courses from the said merit lists only:

Provided that in determining the merit of candidates who are in- service of Government/public authority, weightage in the marks may be given by the Government/Competent Authority as an incentive at the rate of 10% of the marks obtained for each year of service in remote and/or difficult areas upto the maximum of 30% of the marks obtained in National Eligibility- cum Entrance Test, the remote and difficult areas shall be as defined by State Government/Competent authority from time to time.

V. No candidate who has failed to obtained the minimum eligibility marks as prescribed in sub-clause (II) shall be admitted to any Postgraduate courses in the said academic year.

VI. In non-Governmental medical colleges/ institutions, 50% (Fifty Per cent) of the total seats shall be filled by State Government or the Authority appointed by them, and the remaining 50% (Fifty Per Cent) of the seats shall be filled by the concerned medical colleges/institutions on the basis of the merit list prepared as per the marks obtained in National Eligibility-cum/Entrance Test.

VII. 50% of the seats in Post Graduate Diploma Courses shall be reserved for Medical Officers in the Government service, who have served for at least three years in remote and/or difficult areas. After acquiring the PG Diploma, the Medical Officers shall serve for two more years in remote and/or difficult areas as

defined by State Government/Competent authority from time to time.

VIII. The Universities and other authorities concerned shall organize admission process in such a way that teaching in postgraduate courses starts by 2nd May and by 1st August for super specialty courses each year. For this purpose, they shall follow the time schedule indicated in Appendix-III.

IX. There shall be no admission of students in respect of any academic session beyond 31st May for postgraduate courses and 30th September for super speciality courses under any circumstances. The Universities shall not register any student admitted beyond the said date.

X. The Medical Council of India may direct, that any student identified as having obtained admission after the last date for closure of admission be discharged from the course of study, or any medical qualification granted to such a student shall not be a recognized qualification for the purpose of the Indian Medical Council Act, 1956."

29. Hon"ble the Supreme Court was emphatic in Dr. Dinesh Singh Chauhan's case (supra) while holding that the State has no authority to enact any law much less any executive instructions that may underline the procedure for admission to Post Graduate Medical Courses enunciated by the Central Legislation and Regulations, namely, the Medical Council of India Act and the Regulations framed thereunder. The procedure for selection of candidates for the Post Graduate Degree Courses is one such area on which the Central Legislation and Regulations must prevail. From the current session 2017-18, for admission to all Post Graduate Medical Courses, NEET was made mandatory. Certain incentives were provided for inservice doctors, who had been serving in remote/ difficult areas. Incentive was ranging from 10% to maximum 30% depending on the period of service rendered. Additional marks were to be added in the marks obtained in NEET. The remote and difficult areas are to be notified by the State Government/ competent authority from time to time. The aforesaid incentive was upheld by Hon"ble the Supreme Court by observing that it is to encourage the doctors to opt for service in remote or/ and difficult areas so as to enable them to get incentive for admission to Post Graduate Medical Courses. As a result the health care in the remote/ difficult areas is supplemented which otherwise remains neglected. Award of weightage, to the extent it is provided for in the Regulations, was upheld while opining that the provision has been brought into force in larger public interest. State has been given discretion to notify the remote/ difficult areas. The declaration has to be made on the basis of decision taken at the highest level and the area so defined should be applicable for all the beneficial schemes framed by the State for such areas and not restricted to the matter of admissions to Post Graduate Medical /Dental Courses. The reservation for inservice candidates being not part of the Regulations, it was done away with.

30. Despite the aforesaid judgment by Hon"ble the Supreme Court in Dr. Dinesh Singh Chauhan's case (supra) delivered on 16.8.2016, the State came out with a

notification dated 16.3.2017 notifying the procedure for admission to the Post Graduate Medical / Dental Courses for the session 2017-18, providing for reservation for inservice candidates, which was totally contrary to the 2000 Regulations and judgment of Hon'ble the Supreme Court. The aforesaid notification was subject matter of challenge in Jashanpreet's case (supra). After notice, it was conceded by the respondents therein that there was error in the notification issued, which has now been realized. Fresh merit list shall be drawn in terms of Regulations and judgment of Hon'ble the Supreme Court in Dr. Dinesh Singh Chauhan's case (supra). The counselling scheduled for 18th to 20th April, 2017 was postponed. The order was passed by this Court on 18.4.2017. On 21.4.2017, another order was issued by the State granting incentives to inservice candidates of HCMS/ HCDS category for admission to P.G. Degree/ Diploma for the academic session 2017-18. The aforesaid order clearly notices the fact that the same was issued "in the absence of any defined/ notified remote/ difficult areas by the Health Department Haryana". The order sought to provide benefit to the candidates for rendering service in rural areas. Again on the face of it, the order was contrary to the Regulations and Judgment of Hon'ble the Supreme Court in Dr. Dinesh Singh Chauhan's case (supra), which clearly provided incentives to inservice doctors for service in difficult/ remote areas and that too notified by the State for grant of other benefits as well in those areas and not restricted to the admissions. This order sought to grant benefit for rural service.

31. It was further provided in the aforesaid order that the maximum incentive available for rural service for the session 2017-18 shall be 20% of the marks obtained in NEET. Besides this, there was enabling provision contrary to clause 9 of the 2000 Regulations for grant of incentives for passing qualifying examination from any recognised Medical/ Dental College in the State of Haryana and a provision having been made in the prospectus issued by the University. The same were subject matter of challenge in Dr. Ankit and others" case (supra).

32. In the aforesaid judgment, this Court set aside the additional weightage given to the candidates who had passed their MBBS/ BDS Courses from recognised Medical/Dental Colleges in the State of Haryana. It further set aside clause 2 of the order dated 21.4.2017, which restricted maximum benefit to 20% marks for the service rendered in rural areas, as the Regulations provided for maximum 30%. The aforesaid judgment was delivered on 5.5.2017. There was no direction given by this Court to notify any difficult / remote areas. Prior to that no such area had been notified. None of the counsels pointed out at the time of hearing that any appeal has been filed against the aforesaid judgment. We are not sitting in appeal against that judgment.

33. CWP No. 8649 of 2017 Dr. Narender Soni vs State of Haryana and others (the present one) and CWP No. 8652 of 2017 Himanshu Moudgil vs State of Haryana and others were filed by some of the candidates impugning the order dated 21.4.2017, which were listed before this Court as vires of the said order

was under challenge. Dr. Ankit and others" cases (supra) were listed before a Single Bench.

34. Before even the judgment was delivered in either of the cases where incentive granted for rural area service was under challenge, the State having realized error in the aforesaid order, the Health Department initiated the process for correction. While referring to the relevant para from judgment of Hon"ble the Supreme Court in Dr. Dinesh Singh Chauhan's case (supra), proposal was made for notifying difficult/ remote areas in the State of Haryana. Finally a committee headed by the Director General Health Services was constituted on 4.5.2017. Conduct of the State needs to be deprecated as the procedure for admission was notified, which was contrary to the law laid down by Hon"ble the Supreme Court.

35. Report prepared by the Committee so constituted was submitted and placed before the State on 5.5.2017. On the same day, the file was approved upto the level of Chief Minister. Notification dated 5.5.2017 was issued notifying 68 Community Health Centres and 268 Primary Health Centres located in different districts as difficult/ remote areas/ institutions. Notification reads as under:-
"HARYANA GOVERNMENT

HEALTH DEPARTMENT

NOTIFICATION

The 5th May, 2017

No. 13/08/2017-3HB-I. The Governor of Haryana is pleased to notify the following 336 Health Institutions (268 Primary Health Centres & 68 Community Health Centres) as remote and/or difficult areas/ institutions in the State for the purpose of service which will qualify the in Service Doctors for granting weightage in marks obtained in National Eligibility-cum-Entrance test for admission to various Post Graduate Medical/ Dental courses in compliance with the Clause 9 of MCI regulations as amended vide notification dated 15.02.2012.

Name of the District No. Name of the Community Health Centres No. Name of the Primary Health Centres

Ambala 1 Chaur Mastpur 9 Bihta, Noorpur, Patrehri, Samlehri, Nauhani Naggal, Saha, Kesari Dhanana

Bhiwani 9 Jhoju Kalan, Jamalpur, Kairu, Gopi, Manheru, Bondkalan, Loharu, Ohanana, Miran 27

Nakipur, Mai-kalan, Sanwar, Hirodi, Chang, Manakawas, Ranila, Behal, Biran, Alakhpura, Achina, Santokhpura, Chhapar, Kadma, Balkara, Badhra, Bamla, Jui, Lilas, Jhumpakalan, Kharak Kalan, Dhani mahu, Talu, Dhigawa Jattan, Sandwa, Nandgaon, Imlota.

Faridabad 0 -- 7 Dhouj, Punhera Khurd, Mohna, Kurali, Fatehpur Biloch, Fatehpur Tega, Sikri

Fatehabad 3 Bhattu Kalan 10 Birdhana, Mohamadpurrohi, Bothankalan, Kulan, Pirthala, Meaondkalan, Nehla, Mamupur, Pilimandori, Nagpur.

Gurgaon 2 Ghangola, Bhora Kalan 4 Bhangrola, Mandpura, Kasan, Bhondsi

Hisar 4 Siswal, Mirchpur, Sorkhi, Adampur 19 Pabra, Bass, Puttisamain, Chaudhrywas, Nalwa, Agroha, Kajlan, Dobi, Gawar, Gurana, Talwandi-Ruka, Datta, Balsamand, Hassangarh, Chulibagrian, Landri, Thurana, Banbhor, Bichpari

Jhajjar 4 Badli, Dighal, Dhakla, Jamalpur 19 Jahajgarh. Chhudani, Dujana, Birohar, Matanhail, Badsha, Mandothi, Machrauli, Chhara, Bambheva, Bahu Jholri, Tumbaheeri, Jassaurkheri, Dubaldhan, Chhuchhakwas, Salhawas, Kanonda, Patauda, Behrana.

Jind 5 Ujhana Safidon, Juliana, Kalwa Kharakramji 20 Shamlokalan, Gogrian, Rajaundkalan, Amargarh, Deola, Dhatrath, Muana, Dhanauri, Dhamtan Sahib, Chhatar, Ramrai, Nidhana, Dariyawala, Durjanpur, Dhanodakalan, Hatt, Sinsar. Swanamal, Alewa, Nagura

Kaithal 3 Kalayat, Kaul Siwan 14 Padla, Bhagal, Dhand, Pai, Habri, Mundri, Kangthali, Karora, Kithana, Rasina, Jakhauli, Kharkan, Balu, Teek

Karnal 0 -- 14 Kachwa. Nigdu, Khukhni, Jundla, Gheer, Sambhli, Gagseena, Uplana, Ballah, Popra, Sagga, Jalmana, Gonder, Gudha.

Kurukshetra 1 Jhansa 11 Khanpurkohlian, Babain, Thaska Miranji, Dhurala, Ismailabad, Tatka, Gudha. Barna, Thal Ramgarh road, Mathana.

Mewat 3 3 Nuh Ferozepur Zhirka Punhana 18 Ujina, Tauru, Mohammadpur Ahir, Ghasera, Singar, Pinangwan, Tigaon, Biwan, Marora, Nagina, Padhani. Jorasi, Sikrawa, Sudaka, Jamalgarh, Bicchor, Bai, Kaliyaka.

Narnaul 3 Satnali, Sehlang, Dochana 11

Madhogarh, Antri, Bhojawas, Bayal, Sihma, Budhwal, Balaha Kalan, Mundiya Khera, Chhilronizampur, Barnanwas, Blgopur

Palwal 2 Hathin, Sondhad 7 Tappa, Mandkola, Uttawar, Naggaljatt, Bulwana, Chhanisa, Kot.

Panchkula 1 Raipur Rani 3 Morni, Hangola, Nanakpur

Panipat 4 Ahar, Dadlana, Bapoli, Mathloda 7 Mandi, Naultha, Seenkh, Kabri, Rairkalan, Khotpura, Israna

Rewari 3 Gurawara, Nahar, Khol 10 Jatusana, Meerpur, Dahinajainabad, Bassauda, Fatehpuri, Bharawas, Bawwa, Gudyani, Siha, Gangayacha Ahir

Rohtak 4 Kahnaur, Sampla, Kiloi, Madina 12 Pilana, Girawar, Hassangarh, Ballandh, Pakasma, Baniani, Lakhanmajra, Sanghi, Chiri, Samargopalpur, Ghilor Kalan, Farmana Badshpur.

Sirsa 4 Odhan, Bara Gudda, Nathusari Chopta, Ellenabad 22 Madhosinghana, Juttianwali, Malekan, Goriwala, Desujodha, Ding, Panihari, Rori, Darbi, Kharia, Darba-Kalan, Jagmalera, Panni-walamaota, Keharwala, Randhawa, Kaluana, Dadupur, Ganga, Bani, Dhottar, Jamal Bhavdeen

Sonipat 7 Badkhalsa, Juan, Mundlana, Firozepur Bangar Purkhas Bhainswal Kalan, Gohana 17 Halalpur, Farmana, Jakhauli, Dubeta, Bidhlana, Moi-majri, Butana-zafrabad, Banwasa, Butana, Bhatgaon, Mahra, Jagsi, Sargathal Shamri, Mohana, Barodamor, Kundli.

Yamuna Nagar

5 Mustafabad, Sadhaura, Chhaccrauli, Bilaspur, Khizrabad 7 Kalanaur, Kotmustraka, Muglanwali, Haibatpur, Rasualpur, Antawa, Khadri.

Total 68

268

Grand Total 336

This order will come into force w.e.f. the date of notification in the Official Gazette."

(emphasis supplied)

36. To challenge the benefit given to the inservice candidates on the basis of the aforesaid notification one of the ground raised by the petitioners was that once the notification itself provided that the same will come into force only from the date of its publication in the official Gazette, the same could not have been taken into consideration before that date for granting incentives to the inservice candidates.

37. A perusal of the aforesaid notification shows that it has specifically been mentioned therein that the order shall come into force with effect from the date of publication in the official gazettee. It was not disputed that the aforesaid notification dated 5.5.2017 has till date not been published in the official Gazette. Hence, its applicability is still in doubt.

38. Simultaneously the writ petitions pending before a Single Bench of this Court challenging the order dated 21.4.2017 and clause contained in the prospectus providing for weightage of marks for admission to MD/MS/PG Diploma, were also allowed on 5.5.2017. In supersession to the earlier order dated 21.4.2017 issued by the State, another notification was issued on 5.5.2017 while referring to the judgment of this Court in Dr.Ankit and others" cases (supra), for granting incentives for Post Graduate Medical Courses to the inservice doctors at the rate of 10% of the marks obtained for each year in service in remote and/or difficult areas/ institutions in the State of Haryana upto the maximum of 30% of marks obtained in NEET. It further provided that this will be admissible only to such inservice candidates who have been issued NOC by the Health Department in this

regard.

39. It was not disputed at the time of hearing that the aforesaid notification dated 5.5.2017 was not even uploaded on the website of the Health Department.

40. The prospectus issued by the University, for admission to Post Graduate Courses clearly provides in Chapter II that the candidates are advised to regularly check websites i.e. www.uhsr.ac.in, www.pgimsrohtak.nic.in and www.uhspgadmissions.in for any amendment/ corrigendum or rescheduling/ counseling. The stand taken by learned counsel for the State is that the aforesaid notification was sent to the University on 06.05.2017.

41. Learned counsel for the University was not able to state that the aforesaid notification dated 5.5.2017 was uploaded on any of the websites as mentioned in the prospectus.

42. Despite this fact, the Medical Education Department sought information from the Health Department regarding the cases in which it had issued "No Objection Certificates" to the inservice candidates. On the basis of information received with reference to 73 candidates vide memo dated 6.5.2017, revised merit list was prepared granting incentive of the service rendered in the remote/difficult areas as notified on 5.5.2017. It was clarified that the aforesaid revised merit list was uploaded on the website www.uhspgadmissions.in, which is maintained by the State. It was further claimed that 7.5.2017 being the date for the first counseling and the revised merit list having been prepared on 6.5.2017, all the candidate were informed on their mobile phones as available with the agency hired for the purpose. In the counseling held on 7.5.2017, out of total 15 seats in Government Colleges in MDS, 10 were filled by inservice candidates whereas out of 112 seats for MD/MS Courses in Government Colleges, 30 were filled up by inservice candidates after they were granted the incentives for service rendered in rural/remote areas.

43. Now, coming to the challenge to notification dated 05.05.2017, issued by the State notifying remote and/or difficult areas/institutions, the proviso to Regulation 9 (IV) provides that such a benefit is admissible to the doctors serving in remote and/or difficult areas. The Regulation was the subject matter of consideration before Hon"ble the Supreme Court in Dr. Dinesh Singh Chauhan's case (supra) and it was opined that the State has discretion to notify areas to be remote or difficult. The decision has to be taken at the highest level and is applicable to all the beneficial schemes of the State for such areas and not limited to the matter of admissions in Post Graduate Medical Courses. The relevant part of the judgment is extracted below:- "35. Presumably, realizing this position writ petition has been filed to challenge the validity of proviso to Clause IV of Regulation 9. According to the writ petitioners, the prospectus provided for 30% reservation in favour of inservice candidates for admission to post-graduate medical courses. The application of Regulation 9 results in an absurd situation because of giving weightage to specified in-service Medical Officers in the State.

There is neither any committee set up nor guidelines made as to which area can be notified as remote and difficult area. The power vested in the State is an uncanalized power and disregards the settled position that for consideration after the graduate level, merit should be the sole criteria. Further, there is no nexus with the object sought to be achieved for providing weightage to the extent of 10% of the marks obtained by the candidate in the common competitive test and to the extent of maximum of 30% marks so obtained. Dealing with this contention, we find that the setting in which the proviso to Clause IV has been inserted is of some relevance. The State Governments across the country are not in a position to provide health care facilities in remote and difficult areas in the State for want of Doctors. In fact there is a proposal to make one year service for MBBS students to apply for admission to Post Graduate Courses, in remote and difficult areas as compulsory. That is kept on hold, as was stated before the Rajya Sabha. The provision in the form of granting weightage of marks, therefore, was to give incentive to the in-service candidates and to attract more graduates to join as Medical Officers in the State Health Care Sector. The provision was first inserted in 2012. To determine the academic merit of candidates, merely securing high marks in the NEET is not enough. The academic merit of the candidate must also reckon the services rendered for the common or public good. Having served in rural and difficult areas of the State for one year or above, the incumbent having sacrificed his career by rendering services for providing health care facilities in rural areas, deserve incentive marks to be reckoned for determining merit. Notably, the State Government is posited with the discretion to notify areas in the given State to be remote, tribal or difficult areas. That declaration is made on the basis of decision taken at the highest level; and is applicable for all the beneficial schemes of the State for such areas and not limited to the matter of admissions to Post Graduate Medical Courses. Not even one instance has been brought to our notice to show that some areas which are not remote or difficult areas has been so notified. Suffice it to observe that the mere hypothesis that the State Government may take an improper decision whilst notifying the area as remote and difficult, cannot be the basis to hold that Regulation 9 and in particular proviso to Clause IV is unreasonable. Considering the above, the inescapable conclusion is that the procedure evolved in Regulation 9 in general and the proviso to Clause (IV) in particular is just, proper and reasonable and also fulfill the test of Article 14 of the Constitution, being in larger public interest." (emphasis supplied)

44. In the case in hand, initially while issuing notification dated 16.3.2017, despite the judgment of Hon'ble the Supreme Court in Dr. Dinesh Singh Chauhan's case (supra) instead of providing for incentives in terms of Regulation 9 (IV) of the Regulations and notifying difficult/remote areas certain percentage of seats were reserved for in-service candidates. The aforesaid notification was challenged before this Court in Jashanpreet's case (supra), which was disposed of on 18.4.2017. The State conceded its mistake and learned counsel appearing for the respondent therein stated that fresh merit list shall be drawn in terms of

the Regulations and judgment of the Hon''ble Supreme Court in Dr. Dinesh Singh Chauhan's case (supra). Still as is evident from the notification dated 16.3.2017 and order dated 21.4.2017 issued by the Department of Medical Education and Research, Haryana, none had cared to go through the judgment of Hon''ble Supreme Court in Dr. Dinesh Singh Chauhan's case (supra) and the Regulations. The conduct is indeed depreciable. A total non-serious attitude. The officers were dealing with admission to Post Graduate Medical Courses. The order dated 21.4.2017, suggested that certain provision was made for granting benefit of rural service to inservice candidates for admission to Post Graduate Medical Courses in the absence of any defined/notified remote/difficult areas by the Health Department. The same was contrary to the Regulations as well as the judgment in Dr. Dinesh Singh Chauhan's case (supra). The aforesaid order was subject matter of challenged in Dr. Ankit and others'' cases (supra). Prior to the decision in Dr. Ankit and others'' cases (supra) on 5.5.2017, a Committee was constituted to examine "remote and difficult areas" for the purpose of giving incentives to the in-service candidates on 4.5.2017. It submitted its report on 5.5.2017. The report was accepted on the same day and the impugned notification dated 5.5.2017 was issued. As per the stand taken in the affidavit dated 9.5.2017 filed by Dr. Satish Aggarwal, Director General Health Services, Haryana, the following criteria was followed for the purpose of identifying remote/difficult areas:- "5. That the Criteria followed by the Committee for identifying Institutions of Health Department for remote and/or difficult areas category was as follows:-

- a) Health Institutions not preferred by doctors for posting.
- b) CHCs and PHCs falling in the areas beyond 10 kilometer from the Municipal limits.
- c) Challenging and difficult institution/areas identified by the department in 2005 and 2006. (Copies of the letters dated 21.09.2005 and 23.06.2006 are annexed as Annexure R-1/1 (Colly).
- d) PHCs/CHCs falling in less developed areas of Mewat and Shivalik area"

45. The perusal of the aforesaid criteria followed for the purpose of notifying difficult/remote areas does not suggest that the purpose which is underlying in the Regulations and the observations made by Hon''ble the Supreme Court in Dr. Dinesh Singh Chauhan's case (supra), will be achieved.

46. There is no relevance of the fact that any doctor wants or does not want to be posted at given place to notify that as a difficult/remote area. Any Government servant is bound to follow the order by the appointing/ competent authority, transfer being incidence of service. Merely because any Community Health Center or Primary Health Center is beyond 10 kilometres from Municipal Limits cannot ipso facto be a reason to notify that as difficult/remote area. The list as prepared in the year 2005-06 identifying challenging and difficult institutions/areas may have lost significance after more than a decade as lot of

development has been carried out in the State of Haryana during the interregnum. Fourth factor may have some relevance which mentions about the Primary Health Centres or Community Health Centres falling in less developed areas in the State.

47. State of Haryana was carved out from the joint Punjab on November 01, 1966. It is spread over an area of 44,212 Square Kilometres. As per 2011 census, the total population was 2,53,53,081. Approximately 65% of population lives in rural areas, whereas 35% in urban areas. The State is divided into 22 districts, 62 Sub-Divisions, 83 Tehsils, 47 Sub Tehsils and 126 Blocks. It has total 154 cities and towns and 6,841 villages. There are six Municipal Corporations and 52 Municipal Committees/ Councils.

48. As submitted by learned counsel for the State there are total 115 Community Health Centres and 498 Primary Health Centres, in the State. Out of the aforesaid total number, 68 Community Health Centres have been notified as remote and/ or difficult areas/ institutions in the State of Haryana. If the percentage thereof is calculated, 60% of the total have been notified as remote and/ or difficult areas. In the case of Primary Health Centres, 54% have been notified as remote and/ or difficult areas. In a State like Haryana, which is one of the developed States, such a high percentage of Community Health Centres and Primary Health Centres cannot possibly be located in difficult/ remote areas.

49. As per the notification dated 05.05.2017, 68 Community Health Centres have been notified as situated in remote and/or difficult areas, out of that 12 are at the places where Municipal Committees/Councils exist, namely, in district Bhiwani-Loharu; in district Jind-Safidon and Jullana; in district Kaithal-Kalayati; in district Mewat-Nuh, Ferozepur Zhirka and Punhana; in district Palwal-Hathin; in district Rohtak-Kalanour and Sampla; in district Sirsa-Ellenabad and in district Sonapat-Gohana. Ten places are such which are sub-divisions in the districts concerned.

50. Besides this, there are number of Community Health Centres and Primary Health Centres as mentioned in the notification which are located either on the National Highways or State Highways or other main roads. Some of the Community Health Centres and Primary Health Centres are located in the cities which have large population with all facilities which in turn cannot be said to be remote or difficult areas. The State has large network of roads. It has length of more than 45,000 kilometers of metallic roads connecting different cities and villages (source -MSME Development Institute Government of India, Ministry of Micro, Small and Medium Enterprises 2015-16). Per capita income in Haryana is about Rs. 1.33 lakhs as against National average of about Rs. 74,000/- (2013-14).

51. From the criteria which was followed by the Committee and facts which have been noticed above regarding the places where Community Health Centres and Primary Health Centres are located, which have been notified as difficult/remote

areas, it can be safely be opined that the entire exercise was done in a great hurry without proper examination of complete facts and record. It is based on material which has no nexus with the object sought to be achieved. The term "difficult and /or remote area" has not been defined in the Act or Regulations.

52. Despite the fact that the judgment in Dr. Dinesh Singh Chauhan's case (supra) had clearly provided that the identification of difficult/remote areas have to be uniform for the purpose of all incentive schemes framed by the Government, but in the case in hand, admittedly, the notification dated 05.05.2017, identifying the difficult and remote areas is only for the purpose of admission to Post Graduate Courses, hence, clearly in violation of the law laid down by Hon"ble the Supreme Court. No other notification was referred before us. Issuance of such a notification would only mean either judgment of Hon"ble the Supreme Court was not read or was deliberately ignored/ violated.

53. Still further, at the stage when the difficult/remote areas have been notified by the State, the power could very well be mis-utilized. This exercise is necessarily to be done in all eventualities prior to the declaration of result of NEET. After the marks secured by the candidates in the NEET are known, there are chances of manipulation of any area to be declared as remote/ difficult area. In future, the State, if so, advised to carry out exercise to declare any area to be difficult/remote, shall complete the process after proper appreciation of the material and relevant factors keeping in view the object sought to be achieved. The needful shall be done before the result of NEET is declared for the relevant session. The exercise has to be periodic as changes in the interregnum have to be taken care of.

54. It is further directed that the State shall be bound to issue procedure for admission to Post Graduate Courses well in advance, in any case close to the period when the NEET examination is notified, so as to enable the candidates to go through all the conditions and examine if any of the conditions laid down in the prospectus is offending Rules and Regulations applicable or is contrary to the law laid down by Hon"ble the Supreme Court or this Court. In the case in hand as has already been noticed above, the repeated exercise was carried out by the State beginning from notifying the procedure for admissions on March 16, 2017, without going through the judgment of Hon"ble the Supreme Court or the Regulations framed by the Medical Council of India. Even the revised or superseded orders/notifications also did not take care of the law on the subject. The action needs to be deprecated.

55. Medical Education is not everybody's cup of tea. It requires lot of hard work. It is unfortunate that the State is dealing with the candidates who are seeking admission in Post Graduate Courses in this manner. They are still in dilemma whether they will get admission or not or in which subject or admission already given will be taken away only because of illegal and irresponsible actions of the Government. Inservice candidates or the candidates who have recently passed out their MBBS examination were compelled by the State to come to the Court

repeatedly and indulge in avoidable litigation instead of discharging their duty as a Medical Officer in any of the hospital/dispensary in which they are posted. They must be attending the office of their counsels or the Court proceedings. The State certainly deserves to be burdened with heavy costs for this irresponsible attitude. All the petitioners shall be entitled to cost of Rs. 1 Lakh each to be paid by the State within two weeks by way of demand drafts. The candidates who may loose admission or may get less preferred branch on account of the notification dated 5.5.2017 having been set aside, shall also be entitled cost of Rs. 1 Lakh each to be paid by the State within two weeks.

56. A Committee shall be set up by the Chief Secretary to examine the reasons for serious lapses committed in notifying the procedure for admission and take remedial measures for future. In case such a blunder is committed in coming years and Rules, Regulations or binding precedents are violated while notifying procedure for admission, the officers concerned may be burdened with heavy personal costs, when the matter comes for judicial scrutiny. Action taken report be submitted in Court by 3.10.2017.

57. We do not find any merit in the submissions made by learned counsel for the State that though undisputedly blatant illegalities have been committed by the State in notifying and re-notifying procedure for admissions to Post Graduate Medical Courses in clear violation of the judgment of the Hon''ble Supreme Court in Dr. Dinesh Singh Chauhan's case (supra) and the Regulations but still the admissions already made be saved. This would be nothing else but giving premium to the illegalities committed by the State. The candidates who are entitled to admission will loose the same because of illegal action of the State. The officers are accountable. They should be answerable to the candidates for having created complete mess in the process of admission.

58. As the notification on the basis of which admissions have been made has been set aside, the State/the Nodal Agency/ University shall carry out fresh counselling on 17.5.2017, after due intimation to all concerned.

59. The writ petitions stand disposed of accordingly.