
(1984) 03 SHI CK 0002

In the High Court Of Himachal Pradesh

Case No : C.W.P. No's. 309, 314, 326 and 344 of 1983

Dr. Naresh Kumar Varmani, etc.

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 12-03-1984

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : AIR 1984 HP 66 : (1984) 13 ILR HP 57

Hon'ble Judges : V.P. Gupta, J;H.S. Thakur, J

Bench : Division Bench

Advocate : Chhabil Dass, for the Appellant; P.N. Nag, General, Bhawani Singh and K.D. Sood, for the Respondent

Judgement

V.P. Gupta, J.—All these writ petitions can conveniently be disposed of by a common judgment as almost common questions of law and facts are involved in all of them. The facts of each petition are, however, being narrated separately.

C. W. P. No. 309 of 1983.

2. The petitioner in this case passed his M. B. B. S. examination in the year 1980 from the Himachal Pradesh University and did his house job in the Discipline of Orthopaedics from 1981 to 1982 in the Snowdon Hospital, Shimla. Post-graduate Degree and Diploma Courses are held in Himachal Pradesh Medical College, Shimla. For these courses there are several Disciplines, as mentioned in the Prospectus of the Medical College. One of the pre-requisites for admission is that the person should hold an M.B.B S. Degree from Himachal Pradesh University. The admission is on the basis of an open competitive examination to be conducted by the Himachal Pradesh University for different subjects. According to the prospectus and the averments in the petition there is one seat in the Speciality of Orthopaedics Degree Course. Two third seats are reserved for persons who are regularly appointed as G.D.O. I and G.D.O. II in Himachal Pradesh Health Services and the remaining 1/3rd seats are available to the graduates of Himachal Pradesh Medical College, who are not regularly appointed.

A roster system is, however, to be followed.

3. The petitioner alleges that first seat for the year 1981-82 was to be filled from amongst the G.D.Os. and the second seat for 1983-84 is to be filled by a direct candidate and that the petitioner is entitled to apply for the aforesaid second seat. It is alleged that in the advertisement issued in the Daily Tribune (copy Annex. PB) it is mentioned that the seat is to be filled by a G.D.O. The petitioner alleges that this second seat cannot Be given to a G.D.O. and the decision of the authorities to give this seat to a G.D.O. is illegal, ultra vires and void and is violative of the provisions of Articles 14 and 16 of the Constitution. With these allegations the petitioner prays that the advertisement (Annex. PB) be quashed and fresh applications from direct candidates he invited in accordance with the provisions of the Prospectus i.e. the present available seat be given to a direct candidate.

4. The petition is contested, and it is alleged that there are 15 seats for the Post Graduate Degree Courses and 10 seats for Post Graduate Diploma Courses, but there are only 14 specialities/disciplines in which the Post Graduate Degree and Diploma Courses are conducted. According to the respondents, the Post graduate Degree Courses and Diploma Courses in Orthopaedics is one speciality. It is stated that the first seat of Post Graduate Diploma Course was filled by G.D.O. and the second seat for a Degree Course was allotted to a direct candidate. The third seat was to be allotted to G.D.O. for a Diploma Course, the 4th seat to G.D.O. for a Degree Course, and the 5th seat to a direct candidate for a Diploma Course. According to the respondents, the present available seat, is to be filled by a G.D.O. because it is the 4th seat according to the roster. The respondents further allege that the advertisement was rightly issued and the petition is not maintainable. Rejoinder was filed and in the rejoinder the allegations of the petition are reiterated.

C. W. P. No. 314 of 1983.

5. The petitioner in this case after doing his M. B. B. S. joined as G.D.O. II in Himachal Pradesh Health Services on 26-7-1978 and was posted at Civil Hospital Junga, District Shimla. He worked there upto 1-8-1981 and then was transferred to Nahan and remained there upto 6-3-1982. From 7-3-1982 onwards he is posted as Registrar in Himachal Pradesh Medical College, Shimla.

6. It is alleged that Junga was a rural area and the petitioner served in this rural area for a period of three years and five days. He was allowed tire Rural Health Allowance at Junga. The petitioner alleges that respondent No. 1 has made five categories of hospitals known as "A", "B", "C", "D" and "E" vide letter dated 23-2-1983, copy of which is reproduced in letter dated 12-5-1983 (Annex. P-4). The Civil Hospital Junga has been placed in "A" category vide letter dated 23-2-1983 and it has been treated as an Urban area from that date The petitioner alleges that this categorisation of Junga in category "A" is arbitrary, illegal, capricious and without any basis and there is no justification in up-

gradation of Junga from rural area to urban area.

7. It is alleged that prior to July, 1981, there were no Post-graduate Degree Courses in Himachal Pradesh Medical College and the authorities used to sponsor candidates for doing their Postgraduate Degree courses from other Institutions outside the State, by giving no objection certificates. From July 1981 Post-graduate Degree courses in some specialities have been started in the H. P. Medical College and no objection certificates cannot be issued to the M. B. B. S. doctors for doing their Post-graduation in the specialities which are now available in the H. P. Medical College. The petitioner applied for a no objection certificate but his application was rejected. It is alleged that many other doctors who had put in less than five years" service were granted no objection certificates and, therefore, he applied again for getting this certificate, but his prayer was again not allowed. The petitioner now alleges that he has put in five years of service as G.D.O. in Himachal Pradesh Health Department and according to the letter dated 20th Aug. 1983, issued by the Deputy Secretary Health to the Government of Himachal Pradesh to the Director of Health Services etc. no-objection certificate can be issued to doctors who have put in at least five years of service in category "A" or three years service in categories "B" and "C" or two years of service in categories "D" and "E" besides fulfilling other conditions laid down in this letter (Annex. P-11). It is alleged that according to the Prospectus issued for Post-graduate Degree Courses, a G.D.O. is eligible to do Post-graduate Degree Course if he has put in five years of service to his credit out of which three years should be in categories "B", "C" and "D" and two years in category "E" of the categorised list notified by the Government. The petitioner alleges that he has served in Civil Hospital Junga, District Shimla, for a period of three years ant) it should be treated as in categories "B" "C "D" or "E" and should not be treated in category "A". It is further alleged that in any case no retrospective effect can be given to the letter dated 23-2-1983 and the petitioner should be given full benefit of his service in the rural area, as Junga was a rural area prior to the issuance of letter dated 23-2-1983. It is alleged that his application for doing the post-graduate Degree course should be entertained and he should not be debarred for doing these studies. It is also alleged that the action of the respondents is violative of the principles of Articles 14 and 16 of the Constitution and that the petitioner's application be entertained and he be allowed to sit in the competitive examination.

8. Reply to this petition was filed on behalf of the respondents. They allege that the categorisation of the various areas in the Himachal Pradesh was effected keeping in view the various considerations and the letter regarding categorization was issued correctly. It is further alleged that the petitioner had not served in any rural area for two years or more in accordance with the present categorization and that he is not eligible to apply for the Post Graduate Course. It is further alleged that the previous categorization of rural and urban areas was only for the purpose of Rural Health Allowance and the Government has a right to change this categorization at any moment. After due consideration the

Government took a decision to make categories keeping in view the various considerations of Communication, remoteness, educational facilities, social life, residential facilities, altitude and climatic conditions etc. It is further alleged that there is no discrimination and that the action of the Government is not violative of Articles 14 and 16 of the Constitution.

CWP No. 326 of 1983.

9. The petitioners in this case passed their M. B. B. S. examination in 1975 from the Himachal Pradesh University and they allege that they are eligible for Post Graduate degree Courses as they have put in more than five years of service as G.D.Os II and have served in the rural areas for more than three years. The petitioners further allege that there is one seat in the Speciality of Anaesthesia Degree Course and that the first seat according to the roster as given in the Prospectus was to be filled by a G.D.O. and the second seat by a direct candidate. The petitioners also allege that the third seat should be filled by a G.D.O. In the advertisement dated 26th of Sept. 1983, published in the daily Tribune (Annex. P-B), this third seat is advertised to be filled from direct candidates. It is alleged that the roster cannot be changed arbitrarily and even if the second seat had been given to a G.D.O. due to the intervention of high-ups then the third seat cannot be snatched from the G.D.Os and that the same should be made available to G.D.O. only. On these grounds the petitioners have prayed that the advertisement published in the Newspaper dated 26th Sept. 1983, (Annex. P-B) be quashed and the seat be ordered to be filled from amongst the G.D.Os and applications of the petitioners for filling this seat be accepted.

10. Reply to the petition was filed on behalf of the respondents and it is alleged that according to the roster, the first seat was filled from amongst the G.D.Os and the second seat was to be filled from direct candidates. As a direct candidate was not available for the second seat, therefore/ the second seat was filled from amongst the G.D.Os. It is alleged that the second seat was basically meant for a direct candidate and remained unfilled due to the non-availability of a direct candidate, therefore, the third seat which is now available in the Course of Anaesthesia is to be filled by a direct candidate and not by a G.D.O. It is alleged that to keep the ratio 66% and 33% between the G.D.Os. and direct candidates it is essential to fill the third seat from direct, candidates. If the third seat is filled from amongst the G.D.Os then the ratio as given in the Prospectus would be disturbed and it would come to 84% to G.D.Os and 16% to direct candidate. As such, for a harmonious interpretation of the roster as well as the ratio as given in the prospectus, the seat was advertised to be filled from direct candidates and the earmaking of the third seat to direct candidate is legal and valid. It is alleged that the petition is not maintainable and should be dismissed.

CWP No. 344 of 1983.

11. The petitioner in this case obtained her M. B. B. S. degree and joined

Himachal Pradesh State Medical Service on 7-11-1976 as G.D.O. II. She was thereafter posted in the Snowdon Hospital Shimla and worked as G.D.O. II as well as Registrar/Demonstrator in the various Departments of the Himachal Pradesh Medical College and attached Hospitals. It is alleged that the petitioner has teaching experience of more than five years, and that her husband is posted as Assistant/ Associate Professor in Orthopaedics in Himachal Pradesh Medical College since June 1977. Due to the posting of her husband at Shimla, it was not possible for the petitioner to gain any rural area experience and she remained posted in category of "A" stations as have been classified by the Director of the Health Services. It is alleged that there is a Postgraduate Degree Course in Obstetrics and Gynaecology and Prospectus has been issued for the selection of the candidates to do their post-graduate Degree Course. The petitioner alleges that only G.D.Os. who have put in at least 5 years of service to their credit out of which three years should be in category "B", "C", and "E" or two years in category "E" are eligible for this Post-graduate Degree course, as have been stated in the Prospectus.

12. It is alleged that the petitioner has already put in more than 5 years of service as a G.D.O. and she could not be posted at category "B", "C", "D" and "E" stations due to the posting of her husband at Shimla. The petitioner further alleges that in the earlier Prospectus there was no such provision and all candidates who had not served in rural areas were also eligible provided they had put in 10 years of service. It is alleged that the petitioner is desirous of doing the Post-graduate degree course in Obstetrics and Gynaecology, but the petitioner is unable to undertake this course due to the conditions laid down in the prospectus. The petitioner alleges that as the Post-graduate Degree Course in Obstetrics and Gynaecology is available in Himachal Pradesh, therefore, she is not in a position to obtain "No-objection Certificate" and cannot be sponsored for doing Post-graduation from outside the State. It is alleged that it is a case of discrimination because for post-graduate courses in a speciality which are not available in Himachal Pradesh, the candidate can get a "No-objection Certificate", but if the speciality is available in Himachal Pradesh, then such certificate cannot be issued. The petitioner alleges that she cannot take Post Graduate Course in Obstetrics and Gynaecology in Himachal Pradesh and is debarred from doing the same outside the State for no fault on her part. It is alleged that the valuable rights of the Petitioner are being jeopardized and that she is not being allowed to sit in the examination for the selection of candidates, although she has put in more than 5 years of service as G.D.O. II. and is eligible for doing her Post Graduate Course. According to the petitioner, it is a case of discrimination and the conditions for selection are arbitrary.

13. Reply to the petition was filed on behalf of the respondents and they deny the contents of the Petition. It is alleged that "No-Objection Certificate" cannot be issued to the petitioner as the facility of Post Graduation in Obstetrics and Gynaecology is available in the Medical College for Post Graduation. It is further alleged that the petitioner is not eligible for doing Post Graduation due to the fact

that she has not served in category B, C, D and E Stations and that in order to provide incentive to the Doctors serving in rural Institutions, this concession was given. It is alleged that no injustice has been done to the petitioner and that the petition is liable to be dismissed.

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

15. Shri Chhabil Dass, the learned counsel for the petitioner in writ petition No. 309 of 1983, contended that there were two courses (Post Graduate Degree Courses and Post Graduate Diploma Courses) and 15 seats were available for degree courses and 10 seats in diploma courses. He further contended that the degree courses and diploma courses were to be treated as two specialities and both these courses could not be clubbed together as one speciality, for filling the seats. All the seats were to be filled from amongst regularly appointed G.D.Os and direct candidates in the ratio of 66.6 and 33.3 per cent. The learned counsel contended that if the rotation system, as given in the prospectus, was to be followed for one year only, then there would not be any seat available for the direct candidate.

16. Miss Kamlesh Sharma, the learned counsel for the petitioner in Civil Writ Petition No. 314 of 1983, contended that under para 3.2 of the prospectus only G.D.Os having at least five years service to their credit out of which three years should be in category B, C and D or two years in category E were eligible. She contended that this categorization was done for the purpose of giving Rural Health Allowance to various Doctors. Previously Junga Hospital was in a rural area. She pointed out that the petitioner had already put in five years service and served in Junga area, (a rural area) for more than three years. According to her, the categorization vide annexure P-4 dated 12-5-1983 could only be prospective and could not debar the petitioner from applying for admission to the Post Graduate Courses. She contended that depriving the petitioner from continuing with Post Graduate studies would be unjustified.

17. Shri Patyal the learned counsel for the petitioner in writ petition No. 326 of 1983, contended that the petitioners were eligible for the Post Graduate Courses and that the present available third seat for degree in Anaesthesia should have been advertised for being filled from amongst the G.D.Os and not from direct candidates as was mentioned in the advertisement dated 26th Sept. 1983, (Annex. P-B). It was contended that according to the roster the first seat was to go to G.D.O., the second seat to a direct candidate and the third seat was to be filled from G.D.Os. The learned counsel contended that the second seat was filled from amongst the G.D.Os at the intervention of some high-ups and that this deviation from the roster could not in any way affect the roster.

18. Shri Devinder Gupta, the learned counsel for the petitioner in civil writ petition No. 344 of 1983 contended that the petitioner had no opportunity to serve in a rural area due to the fact that her husband was posted at Shimla. Being a couple case she remained posted at Shimla. It was contended that the

choice of posting was with the Government and that the petitioner could not be made to suffer for the fact that she remained posted at Shimla due to some Government Policy. It was contended that the petitioner had put in more than five years of service and no objection certificate for doing Post Graduation Courses had been issued to many doctors who were similarly placed as the petitioner but the petitioner was denied this opportunity. He contended that the petitioner was entitled to do her post graduation from the Himachal Pradesh University and in any case she was entitled to do her post graduation from any other University after obtaining a no objection certificate from this institution. It was contended that the exclusion of category "A" candidates for doing Post Graduate Degree Courses was a clear case of discrimination.

19. The learned counsel appearing on behalf of [he respondents in civil writ petition No. 309 of 1983 contended that the speciality in the Post Graduate Degree and Post Graduate Diploma in Orthopaedics should be considered as one speciality. It was contended that for the year 1981-82 only two seats were available in this speciality. The first seat was to be filled out of G.D.Os for Diploma in Orthopaedics and the second seat was to be filled from amongst direct candidates for Degree in Orthopaedics. Similarly for the year 1983-84 only three seats were available (two for Diploma in Orthopaedics and one for Degree in Orthopaedics). According to the roster fourth seat for Diploma in Orthopaedics was to be filled from amongst the G.D.Os and it was rightly advertised to be filled from amongst the G.D.Os. It was contended that according to para 3.3 of the prospectus the seats were to be filled in each speciality. As Degree Courses and Diploma Courses constituted one speciality, therefore, the roster had to be maintained accordingly. The learned counsel contended that the Government had acted according to the various directions given in the prospectus and the roster.

20. In C. W. P. 314 of 1983 the learned counsel for the respondents contended that the categorisation was done keeping in view the various considerations of communication, remoteness, education facilities, social life, residential facilities, altitude and climatic conditions. The Government framed a policy making different categories so that the Doctors should be willing to serve in the rural area. The categorisation was done in public interest and is reasonable. It was contended that according to the categorisation the petitioner was not entitled to get, admission as Junga was excluded from rural area.

21. In C. W. P. 326 of 1983 it was contended that as second seat had been given to a G.D.O., therefore, for keeping up the roster it was necessary to fill the third seat from amongst the direct candidates and not G.D.Os. It was contended that for giving harmonious interpretation to the various Paras of prospectus and for filling up these seats according to the ratio (66% of G.D.Os and 33% of direct candidates) it was essential that the third seat should be filled from amongst the direct candidates. If this was not followed then the ratio could not be maintained and the whole purpose of the roster would have been defeated. In these circumstances the seat was advertised to be filled from amongst the direct

candidates.

22. In C. W. P. No. 344 of 1983 it was contended that there was no discrimination and that no doctors placed in similar situation had been given any benefits to which the petitioner was denied. It was contended that the policy of the Government was in the public interest and was not liable to challenge. The action of the Government was not discriminatory or violative of Article 14 of the Constitution. We have considered the various contentions.

23. The admitted facts are that the Himachal Pradesh Medical College Simla holds courses in Post-graduate degree and diploma for various subjects (disciplines) from the year 1981. A Prospectus (Annexure PA) for the year 1983 was issued regulating the admissions to these courses. Persons eligible for these postgraduate courses should hold an M. B. B. S. degree of the Himachal Pradesh University or any other University recognised by the Medical Council of India as is mentioned in para 5 of the Prospectus. Various post-graduate courses are mentioned in para 1 of the prospectus and the seats available in each of these courses are mentioned in para 2 of the Prospectus. The number of seats can be increased/decreased from year to year as per exigencies or circumstances.

24. Para 3 of the Prospectus deals with the reservations and restrictions for the filling of seats. We are mainly concerned with this para and it is desirable to reproduce the same : --

"3. Reservations and Restrictions.

3.1. 66% seats will be reserved for in service regularly appointed G.D.O. I and G.D.O. II in H. P. H. S. and 33.3% seats will be available for open competition from amongst the graduates of H. P. Medical College, who are not regularly appointed G.D.Os. If sufficient number of candidates in one category is not available, the seats reserved for them will be allotted to the candidates of other category.

3.2. Only such of the G.D.Os will be eligible who have at least five years service to their credit out of which three years should be in category B,C and D or two years in category E of the categorised list duly notified by the Government. For this purpose ad hoc service shall be counted.

3.3 Distribution of seats in each speciality to G.D.Os. and direct candidates will be according to the following roster : --

3.3.1 First seat to G.D.O.

3.3.2 Second seat to Direct candidate.

3.3.3 Third seat to G.D.O.

3.3.4 Fourth seat to G.D.O.

3.3.5 Fifth seat to direct candidate.

3.3.6 Sixth seat to G.D.O.

This roster will be repeated after it is exhausted.

3.4. 5% seats shall be reserved for Scheduled Tribes and 15% for Scheduled Castes. The allotment of seats shall be prefixed before advertisement. However, if the sufficient number of candidates in any one category are not available the seats will be given to open category candidates.

25. The distribution of seats is in each speciality and the specialities are given in paras 1 and 2 of the Prospectus which are reproduced below : --

"1. POST-GRADUATE DEGREE COURSES :

1.1 Doctor of Medicine (M. D.) :

1.1.1 Anaesthesiology

1.1.2 Community Medicine

1.1.3 Medicine

1.1.4 Obst. and Gynaecology

1.1.5 Pharmacology

1.1.6 Physiology

1.1.7 Radio Diagnosis

1.2. Master of Surgery (M. S.) :

1.2.1 Surgery

1.2.2 Anatomy

1.2.3 Orthopaedics

1.3. Post-graduate Diploma Courses :

1.3.1 Diploma in Child Health (D. C.H)

1.3.2 Diploma in Laryngology and Otology (D. L. O)

1.3.3 Diploma in Ophthalmology (D. O.)

1.3.4 Diploma in Clinical Pathology (D. C. P.)

1.3.5 Diploma in Orthopaedics (D. Ortho).

Note-1. The Post-graduate Courses may be initiated, altered or deleted as per exigencies of the circumstances or as per recommendations of medical court of India.

Note-2. Besides the above courses, Himachal Pradesh Medical College is also conducting Diploma in Anaesthesiology (D. A.) and Diploma in Radio Diagnosis

(D. M. R. D.) courses.

2. SEATS:

No. of Seats

2.1.

Post-graduate Degree Courses :

2.1.1.

Anaesthesiology

1

2.1.2

Community Medicine

1

2.1.3

Medicine

3

2.1.4

Obst. and Gynaecology

2

2.1.5

Pharmacology

1

2.1.6

Physiology

1

2.1.7

Radio-Diagnosis

2

2.1.8

Surgery

2

2.1.9

Anatomy

1

2.1.10.

Orthopaedics

1

15

2.2.

Post-Graduate Diploma Courses:

2.2.1

Diploma in Child Health (D. C. H.)

2

2.2.2.

Diploma in Laryngology and Otology (D. L. O.)

2

2.2.3

Diploma in Ophthalmology (D. O.)

2

2.2.4

Diploma in Clinical Pathology (D. C. P.)

2

2.2.5

Diploma in Orthopaedics (D. Ortho.)

2

10

The number of seats may be increased/ decreased from year to year as per exigencies of circumstances."

26. In C. W. P. No. 309 of 1983, according to the respondents the speciality of Orthopaedics for the degree and diploma courses should be considered as one speciality and the roster given in para 3 of the prospectus should be followed treating the degree and diploma courses in orthopaedics as one speciality while according to the petitioner these should be considered as two specialities, that is, degree course as one speciality, and diploma course as a separate speciality.

27. The purpose of filling the seats by roster system is that 66.6% of the seats should be filled from amongst the G.D.Os. who are serving in Himachal Pradesh and 33.3% of the seats should be filled from direct candidates, that is, the graduates of Himachal Pradesh Medical College.

28. Now, "Speciality" is defined in Webster's Dictionary as :

"a particular, peculiar or individual circumstance, detail or characteristic; a distinctive or sometimes a restrictive mark or quality, 2a : an object or class of objects distinguished by some special characteristic, individual quality, or peculiarity; the state of being special; possession of distinctive or peculiar or particular characteristics; 3 : something in which one specialises or of which one has special knowledge : as a : a branch of knowledge, science, art or business to which one devotes one self whether as an avocation or a profession and usu. to the partial or total exclusion of related matters.

29. It is clear that speciality is a particular attainment of an individual in Science, Art or Trade. In the Prospectus, there is a 4 post-graduate degree course in Orthopaedics and also a post-graduate diploma in Orthopaedics and, therefore, it means that the comparative attainment of an individual in the two courses is of two different standards. Subject (Discipline) may be Orthopaedics, but in this subject there are two specialities. The postgraduate degree course in Orthopaedics is of a higher speciality than a post-graduate diploma course in Orthopaedics. Both the courses being separate, are to be treated as two specialities for the purpose of filling of the seats. In the prospectus, the number of seats allotted to the post-graduate degree course is also separate from the number of seats allotted to post-graduate diploma course. Thus, we are of the considered view that the post-graduate degree courses and the post-graduate diploma courses are two separate specialities and the seats for these courses are to be filled in accordance with the roster given in para 3.3 of the Prospectus.

30. Some seats were admittedly filled in the year 1981 for post-graduate degree and diploma courses in Orthopaedics. The copy of the notification is Annex. Pr/A. One seat was available for post-graduate degree course in Orthopaedics and one for post-graduate diploma course in Orthopaedics. According to the roster, in the year 1981 it was considered as first seat for both the courses or specialities. Thus these seats were to be filled from amongst the G.D.Os. The notification Annex. Pr/A reflects that the post-graduate diploma course seat was filled from amongst the G.D.Os. but the postgraduate degree seat was filled from amongst the direct candidates. This was not permissible.

31. For the year 1982 the notification is Annex. Pr/B. During this year there was only one seat available in post-graduate diploma course in Orthopaedics and it was advertised for an open category candidate. As first seat in diploma course was filled from amongst the G.D.Os. in the year 1981, therefore, this being the second seat was to be filled from the direct candidates. Similarly another notification Annex. Pr/C was issued for filling one seat to the post-graduate

diploma course in Orthopaedics from G.D.Os. category. This, was the 3rd seat, therefore, it could be filled from amongst the G.D.Os. In this manner up to 1982, the 3rd seat for the post graduate diploma course was rightly filled from amongst the G.D.Os.

32. In 1983 an advertisement (Annex. PB) was issued for filling the two seats for post-graduate diploma courses. Out of these two seats, one was reserved for Scheduled Castes candidate and the second was from the general category. Now the 3rd seat according to the roster had been filled from amongst the G.D.Os. and therefore, these were the 4th and 5th seats. The 4th seat was to be filled from the G.D.Os and the 5th from the direct candidates. In the advertisement (Annex. PB) it is mentioned that these seats are to be filled from amongst the direct candidates and G.D.Os. It is, therefore, in accordance with the roster as given in the Prospectus. In these circumstances, the advertisement (Annex. PB) for filling the post-graduate diploma course seats is in accordance with the Prospectus.

33. In 1981, one seat for the postgraduate degree course in Orthopaedics was advertised to be filled from direct candidates (vide Annex. RA). This seat was the first seat and according to the Prospectus it was to be filled from amongst the G.D.Os. In the reply, it is mentioned that this seat was filled from the direct candidates. After this, the present advertisement (Annex. PB) was issued. There is only one seat available in the postgraduate degree course of Orthopaedics. The first seat had already been filled from direct candidate (while it should have gone to a G. D. O). The present available seat is therefore the second seat. According to the roster it should go to a direct candidate. Now, if the first seat was wrongly filled by a direct candidate, then it does not mean that the second seat should now be filled by a G.D.O. after ignoring the roster. In our view, this being the second seat in the speciality of the postgraduate degree course of Orthopaedics, can only be filled from a direct candidate. The contention of the learned counsel for the respondents that if the first seat was not filled according to the roster then it was to be carried forward for maintaining the ratio mentioned in para 3.1 of the Prospectus, cannot be accepted in view of the fact that in para 3.1 of the Prospectus it is clearly mentioned that "if sufficient number of candidates in one category is not available, the seats reserved for them will be allotted to the candidates of the other category". In other words, the ratio mentioned in para 3.1 of the Prospectus can be disturbed/varied in certain contingencies. It is nowhere mentioned that if a seat is not filled by a candidate of one category in accordance with the roster then such unfilled seat is to be carried forward for the next year or for the next session.

34. In Writ Petition No. 314 of 1983, Para 3.2 of the Prospectus is relevant. According to Para 3.2 a G.D.O. is eligible for the post-graduation course, if he has at least 5 years' service to his credit out of which three years' should be in categories "B", "C" and "D" or two years' in category "E" of the categorised list duly notified by the Government.

35. The Government vide letter dated 12th May 1983 (Annex. P-4)" categorised various institutions under the Health and Family Welfare Department for the purpose of the Rural Health Allowance. Various hospitals were divided into five categories, namely, "A", "B", "C", "D" and "E". This was done in supersession to the letter dated 14-4-1978 allowing Rural Health Allowance. Vide Annex. P-4, with effect from 1-7-1982, the doctors working in the institutions mentioned in category "A" were not held entitled to Rural Health Allowance while the remaining doctors working in institutions mentioned in categories "B" "C" "D" and "E" were held entitled to Rural Health Allowance at different rates as are mentioned against each category. Vide letter dated 25-11-1980 (Annex. P-1) for the purpose of Rural Health Allowance, Junga Civil Hospital was considered to be a rural area hospital. Similarly vide letter dated 21-2-1981 (Annex. P-2) Junga hospital was considered in a rural area.

36. The petitioner worked in Junga Civil Hospital with effect from 26-7-1978 to 1-8-1981 as is apparent from the certificate (Annex. P-3) and has admittedly served in this hospital for a period of more than three years.

37. Vide letter dated 12-5-1983 (Annex. P-4) Junga Civil Hospital was put in category "A" and was excluded from the rural area.

38. The intention of para 3.2 of the Prospectus is that the persons who have served in the rural area hospitals should be given a chance to get admission in the post-graduation courses. In case the categorisation done vide Annex. P-4 is followed retrospectively, then the doctors who had served in rural areas for a period of more than three years or two years would be deprived of getting a chance for doing their post-graduation courses in spite of the fact that they had served in rural areas prior to this categorisation. The categorisation done vide Annex. P-4 is for the purpose of Rural Health Allowance and the previous classification of the rural and urban areas was also for the purpose of Rural Health allowance.

39. After considering the main purpose and intention of para 3.2 of the Prospectus and the categorisation done vide Annex. P-4 we are of the view that the persons who have served in the rural area hospitals should be allowed the benefit of this service provided they have put in five years of service as required under para 3.2 of the Prospectus. The categorisation vide Annex. P-4 can only have prospective effect but the doctors who have already served in rural areas for a period of more than three years or two years cannot be deprived of their right to avail of the opportunity to do post-graduation courses. If annex. P-4 is given a retrospective effect, then it will amount to discrimination between the doctors who had served in rural areas earlier and the doctors who serve in the rural areas at a later stage. In view of this situation we are of the view that the petitioner in this writ petition be allowed to sit in the examination and Annexes P-4 and P-11 should not stand in his way.

40. In Civil Writ Petition No. 326, the petitioners have already put in five years of

service as G.D.Os. They have served in the rural areas for more than three years and are eligible for sitting in the competition. Their only challenge is that the third seat advertised in the daily Tribune dated 26th September, 1983 (Annex. PB) for post-graduate degree in Anaesthesia should be filled by a G.D.O. and not by a direct candidate.

41. The respondents have advertised this seat for being filled from direct candidates because the second seat was filled from amongst the G.D.Os.

42. The respondents in their reply have stated that a direct candidate for filling the second seat was not available in 1981 and, therefore, the seat was given to a G.D.O. The respondents further state that to plug up deficiency rather backlog caused by admitting the G.D.Os in the second seat provisionally, basically meant for a direct candidate, this year's advertisement was issued so as to give a practical shape to the earlier unfilled assurance. It is further stated that if the seat is not filled from the direct candidates, then the ratio for the G.D.Os. will increase and the ratio for the direct candidates will decrease.

43. Whatever may be the position, we have already held in C. W. P. No. 309 of 1983 that, the ratio criteria between the G.D.Os. and direct candidates can be varied but the roster system as mentioned in para 3.3 is to be followed and if a candidate in one category is not available for filling up a particular seat then that seat is to be filled from the candidates of the other category as stated in para 3.1 of the Prospectus. In view of this fact the present seat being a third seat has to be filled from amongst the G.D.Os. only. In view of this, the advertisement Annex. PB is to be quashed and the seat for post-graduation degree in Anaesthesia which is a third seat is to be filled from amongst the G.D.Os in accordance with para 3.3 of the Prospectus.

44. In Civil Writ Petition No. 344 of 1983, the contention of the petitioner is that she was never posted in any rural area due to the fact that her husband was posted at Simla. Now, the Government has laid down a policy for giving certain benefits to persons who have or had served in rural areas. The policy of the Government is not challenged. The Government has laid down a reasonable criteria for admission. The recommendations of the Director of Health Services were never accepted by the Government and the directions given in para 3.3 of the Prospectus cannot be changed by any recommendatory letters. The vires of para 3.3 of the Prospectus have also not been challenged. We find that the criteria laid down by the Government are reasonable whereby some benefit has been given to doctors who have served in rural areas. The petitioner cannot take both benefits, that is, by not serving in any rural area and at the same time claiming benefit over the doctors who have served in the rural areas. The two classes of doctors "serving in the rural areas" and "not serving in the rural areas" cannot be placed equally. Thus we find that there is no merit in this writ petition.

45. As a result of the above discussion, the advertisement in the daily Tribune dated 26-9-1983 (copy Annex. PB) with respect to the filling up the post-

graduate degree course seat in the discipline of Orthopaedics from amongst the G.D.Os. is quashed and the respondents are directed to fill up this seat for postgraduate degree course in the discipline of Orthopaedics from amongst the direct candidates, after due publicity. The petitioner shall be entitled to appear in the test for admission to the post-graduate degree course in Orthopaedics. The Writ Petition No. 309 of 1983 is allowed to the extent mentioned above.

46. In C. W. P. No. 314 of 1983, the respondents are directed to entertain the application of the petitioner to appear in the competitive examination for admission to post-graduate degree course in Medicines. The writ petition is accordingly allowed.

47. In C. W. P. No. 326 of 1983, the advertisement in the daily Tribune dated 26-9-1983 (copy Annex. PB) for filling of one seat in post-graduate degree course of M. D. Anaesthesiology, is quashed and the respondents are directed to fill this seat from amongst the G.D.Os. after due publicity. The petitioners shall be entitled to appear in the test for admission to the post-graduate degree course in Anaesthesiology. This Writ Petition No. 326 of 1983 is allowed to this extent.

48. C. W. P. No. 344 of 1983 is dismissed.

49. Keeping in view the facts and circumstances, we make no order as to costs.