

**(2012) 01 GAU CK 0001**  
**In the Gauhati High Court**  
**Case No : Writ Petition (C) No. 743 of 2010**

|                                              |            |
|----------------------------------------------|------------|
| Nongthombam Tejmani Singh and Others         | APPELLANT  |
| Vs                                           |            |
| Manipur Public Service Commission and Others | RESPONDENT |

**Date of Decision :** 23-01-2012

**Acts Referred:**

Constitution of India, 1950 — Article 14, 142, 16, 309  
Income Tax Act, 1922 — Section 14(2)(a), 14(2)(c), 16(1)(a), 16(1)(b), 24  
Indian Medical Council Act, 1956 — Section 13, 21(1), 21(1)(p), 3, 3(h)  
Partnership Act, 1932 — Section 4

**Citation :** (2013) 2 GLT 836

**Hon'ble Judges :** T. Nandakumar Singh, J

**Bench :** Single Bench

**Advocate :** A. Bimol, for the Appellant; S. Nepolean, GA, Mr. I. Lalitkumar, Sr. GA, Mr. B.P. Sahu and Mr. N. Jotendro, for the Respondent

**Final Decision :** Allowed

## Judgement

T. Nandakumar Singh, J.—By this writ petition, filed by six petitioners, is challenging the recommendation of or/declaring successful the private respondents (except the private respondent Nos. 7 and 34) who had not completed "compulsory rotating internship" on the last date/closing date for submission of forms which was the date for determining age and essential qualifications for the post of Manipur Health Services, (MHS) Grade-IV, (Medical Officers) by the Manipur Public Service Commission (MPSC) for appointment to the post of MHS Grade-IV (Medical Officers) vide notification dated 25.10.2010 (Annexure-A/7 to the writ petition) and also notification/advertisement dated 27.03.2010 for the post of Medical Officers (MHS Grade-IV). Heard Mr. A. Bimol, learned counsel for the petitioners, Shri S. Nepolean, learned GA appearing for respondent Nos. 2 to 4, Mr. I. Lalitkumar, learned senior counsel appearing for respondent Nos. 1, Mr. B.P. Sahu learned counsel for respondent Nos. 14, 19 and 23 as well as Mr. N. Jotendro, learned counsel appearing for respondent Nos. 20, 22, 27 and 30. None appeared for the other private respondents without showing

any reason inspite of proper service of notice of this writ petition to them.

## 2. FACTUAL BACKGROUND:

In exercise of power conferred by proviso to Article 309 of the Constitution of India, the Governor of Manipur was pleased to make the Rules called "Manipur Health Services Rules, 1982" vide notification No. 1/22/79 (Rules)/DP, Imphal dated 06.01.1982. Rule 4 of the MHS Rules, 1982 classified the different grades of MHS, i.e. Grade-I, Grade-II, Grade III, Grade-IV and Grade-V. Rule 7 of the MHS Rules, 1982 provides the mode of recruitment to MHS and under (1) (a) of Rule 7 direct recruitment to any grade of the service including specialist posts in the grade shall be made on the recommendation of the Commission (Manipur Public Service Commission). Qualifications for direct recruitment to various grades of the service are specified in Schedule II of the MHS Rules, 1982 under Rule 7(1)(b). Under the Manipur Health Service Rules (Amendment) Rules, 1991, Rule 4 of MHS Rules, 1982 had been amended vide Notification No. 1/51/83-MHS/DP/Imphal 12th July, 1991. Under the amended Rule 4 of the MHS Rules, 1982 different grades of the MHS have been classified as; (1) Special Grade, (2) Grade-I, (3) Grade-II, (4) Grade-III (5) and Grade-IV; and MHS Grade-V, under the un-amended/old Rule 4 of the MHS corresponds to Grade-IV of the amended Rule 4 vide order of the Governor of Manipur being No. 1/6/91-M(pt) B, Imphal the 1st July, 1993. Under Rule 16 of the MHS Rules, 1982, Governor of Manipur may, in consultation with the Commission, relax any provisions of the Rules of MHS Rules, 1982 to such extent as may be necessary to ensure satisfactory working of the Rues or to make any inequitable result, and the power of relaxation shall not be exercised so as to relax the essential qualification prescribed for appointment by any of method specified in the Rules (including promotion) or the provisions regarding pension and age of retirement. The Rule 16 of the MHS Rules, 1982 read as follows:

16. Relaxation: The Governor, may, in consultation with Commission, relax any provision of these Rules to such extent as may be necessary to ensure satisfactory working of these Rules or to remove any inequitable results.

Provided that the power shall not be exercised so as to relax essential qualifications prescribed for appointment by any of the methods specified in these rules (including promotion) or the provisions regarding pension and age of retirement.

3. Schedule II [Rule 7(1)(b)] which prescribes the essential qualification for direct recruitment to different grades of the MHS read as follows:

### SCHEDULE-II [Rule-7(1)(b)] Essential Qualifications for Direct Recruitment

4. The MPSC (Manipur Public Service Commission) issued advertisement being No. 7, Imphal dated 12th October, 2006 inviting applications from eligible candidates for appointment to 26 posts of Medical Officers in Grade-IV of the MHS. The essential qualifications for appointment of MHS Grade-IV mentioned in

the said advertisement are the essential qualifications for appointment by direct recruitment to the MHS Grade-IV mentioned in Schedule II to the MHS Rules, 1982 as prescribed under Rule 7(1)(b) of the MHS Rules, 1982; and the advertisement dated 12.10.2006 clearly mentioned that closing date for issue and receipt of application forms, determining of age and completion of Rotating Internship will be 15.11.2006. For easy reference, advertisement dated 12.10.2006 is quoted hereunder:

No. 7/10/2006-MPSC (DR)

#### MANIPUR PUBLIC SERVICE COMMISSION

Applications are invited for the following posts:

1. Department of Health, Manipur.

Name of Post - Manipur Health Services Grade-IV (Medical Officer)

Number of Posts - 26 (twenty six) (Gen-16, ST-9 and SC-1)

Scale of Pay - Rs. 8,000-13,500/- with usual allowances.

#### Essential Qualifications

(i) Possession of a recognized Medical qualification included in the First or Second Schedule or Part II of the Third Schedule (other than Licentiate qualification) to the Indian Medical Council Act, 1956. Holders of educational qualifications included in Part II of the Third Schedule should fulfill the condition as stipulated in Sub Section (3) of Section 13 of the Indian Medical Council Act, 1956.

(ii) Completion of Compulsory Rotating Internship.

AGE: 35 years and below. Upper age limit is relaxable by 5 years for ST/SC and 3 years for OBC.

NB:

1. See details in the information for candidates attached with the application form.
2. The number of posts may be increased or decreased according to actual requirement.
3. Closing date for issue/receipt of application form determining of age and completion of Rotating Internship will be 15th November. 2006
4. A Competitive Examination for recruitment to the post of Manipur Health Services Grade IV (Medical Officer) will be held sometime in the month of December, 2006 under the Manipur Health Services Rules, 1982. Scheme of Examination along with information for candidates will be supplied at the time of issue of application form. Examination schedules will be announced after the closing date.

5. The application shall be accompanied by cash amount of Rs. 200/- for general and Rs. 50/- for SC/ST candidates payable to the Secretary, Manipur Public Service Commission, Imphal.

6. The decision of the Commission as to the eligibility or otherwise of the candidates will be final.

7. Loss/delay due to postal service will not be the responsibility of the Commission and no claim on such matter will be entertained under any circumstances.

8. Five copies of candidate's recent passport size photograph along with the required certificates from Matriculation onwards to be authenticated by the candidates themselves alongwith a self addressed stamped envelop of Rs. 5/- (size 27 cm x 12 cm) and postage stamp of Rs. 5/- for acknowledgement card affixed thereon should be submitted with the application by the candidates.

The prescribed application form is obtainable on cash payment of Rs. 20/- at the Commission's Counter.

Sd/- (A. Indramani Singh) Deputy Secretary, Manipur Public Service Commission

5. In supersession of the earlier advertisement dated 12.10.2006 MPSC issued another advertisement dated 12.02.2010 for recruitment of 401 (four hundred and one) MHS Grade-IV (Medical Officers). The essential qualifications for appointment to the MHS Grade IV (Medical Officers) mentioned in the advertisement dated 12.10.2006 are the same essential qualifications prescribed for MHS Grade IV (Medical Officers) under Rule 7(1)(b) mentioned in Schedule II, MHS Rules, 1982. However, the closing date for issue and receipt of application forms and determination of age and essential qualification was 31.03.2010. The advertisement dated 12.02.2010 read as follows:

No. 7/1072006-MPSC (DR)

MANIPUR PUBLIC SERVICE COMMISSION

Advt. No. 1/2010 Imphal

dated 12.02.2010

In supersession of this commission's Notification No. 7/10/2006-MPSC (DR) Advertisement No. 7 dated 12.10.2006, applications are invited for the following posts:

Department of Health. Manipur.

(1)

Name of Post - The Manipur Health Services Grade-IV (Medical Officer)

Number of Posts - 401 (Four hundred and one) (UR-200, OBC-69 and SC-8, ST-124)

Scale of Pay - Rs. 8,000-13,500/- with usual allowances.

#### Essential Qualifications

(i) Possession of a recognized Medical qualification included in the First or Second Schedule or Part II of the Third Schedule (other than Licentiate qualification) to the Indian Medical Council Act, 1956. Holders of educational qualifications included in Part II of the 3rd Schedule should fulfil the condition as stipulated in Sub Section (3) of Section 13 the Indian Medical Council Act, 1956.

(ii) Completion of Compulsory Rotatory Internship.

Name of Post - The Manipur Health Services Grade-IV (Dental Surgeon)

Number of Post - 39 (thirty nine) (UR-20, OBC-1, ST-12)

Scale of Pay - Rs. 8,000-13,500/- with usual allowances.

#### ESSENTIAL QUALIFICATIONS:

(i) Possession of a recognized Dental qualification included in the First and Third Schedule to the Indian Dentist Act, 1948 as amended from time to time.

(ii) Registration with a State Dental Age: 35 years & below

The upper age limit is relaxable as follows:

i) Upto a maximum of 5 years if a candidate belongs to SC/ST.

ii) Upto a maximum of 3 years in case of a candidate belonging to BOC who are eligible to avail of reservation applicable to such candidates.

iii) Upto a maximum of 10 years in the case of physically challenged candidates belonging to General category.

iv) Upto a maximum of 15 years in the case of physically challenged candidates belonging to SC/ST.

v) Upto a maximum of 13 years in the case of physically challenged candidates belonging to OBC.

#### NB:

1. See details in the INFORMATION FOR CANDIDATES attached with the application form.

2. The number of posts may be increased or decreased according to actual requirement.

3. Rs. 200/- for General & OBC and Rs. 50/- for SC/ST candidates in cash as examination fee should be submitted along with the application form at the Counter of Manipur Public Service Commission. Physically disabled persons are exempted from payment of examination fee and the cost of application form. However, they are to submit along with their application form, an attested/

certified copy of the Disability Certificate issued by a Medical Board duly constituted by the State Government in support of his/her claim Council

NOTE: Posts identified suitable for physically disabled category and number of vacancies reserved are as under:

for being disabled. Only persons suffering from not less than 40% of relevant disability would be eligible to get reservation for the posts. Disabled candidates may collect the disabilities certificate form from the Counter of MPSC during office hours.

4. Closing date for issue and receipt of application form and determining age and essential qualification will be 31st of March, 2010.

5. Application form not accompanied by prescribed examination fee except in the case of disabled candidates shall be summarily rejected.

6. The decision of the Commission as to the eligibility or otherwise of the candidates will be final.

7. Five copies of candidate's recent passport size photograph along with the required certificates from Matriculation onwards to be authenticated by the Candidates themselves along with a self addressed stamped envelope of Rs. 5/- (size 27 cm x 12 cm) and postage stamp of Rs. 5/- for acknowledgement card affixed thereon should be submitted with the application by the candidates.

8. A written examination for recruitment to the above posts is likely to be held in the month of April, 2010. The Scheme of Examination along with the information for candidates will be supplied at the time of issue of application form. The schedule of the examination may be announced after the closing tte.

9. A physically handicapped candidate will be considered to be eligible for appointment only if he/she (after such physical examination as the Government may prescribe) is found to satisfy the requirements of physical and medical standards for the posts.

10. The date of birth accepted by the Commission is that entered in the Matriculation or Secondary School leaving Certificate or in a certificate recognized by an Indian University as equivalent to Matriculation.

11. Those who had submitted application forms for the posts mentioned above in response to the Commission's earlier Advertisement No. 7 dated 12.10.2006 need not apply again if their forms are not rejected for lacks of essential qualification. In case of any candidate whose Application forms is/was rejected earlier they have to submit again.

The prescribed application form is obtainable on cash payment of Rs. 20/- at the Commission's Counter from 17 February, 2010.

Sd/- (Y. Jugindro Singh) Secretary, Manipur Public Service Commission.

6. By the impugned advertisement dated 27.03.2010 which was issued in partial modification of the earlier advertisement dated 12.02.2010, the last date of issue and receipt of application forms and also for determining age and essential qualification was extended up to 15.04.2010. In the impugned advertisement it is also stated that "A candidate who has yet to complete the compulsory rotating internship is also educationally eligible for admission to the examination but on selection he/she will be appointed only after he/she has completed the compulsory rotating internship." For easy reference, impugned advertisement dated 27.03.2010 is quoted hereunder:

No. 7/1/2020-MPSC (DR)

MANIPUR PUBLIC SERVICE COMMISSION

Advt. No. 1-A/2010 Imphal

dated 27.03.2010

Reference: MPSC Advertisement No. 7/2006 dated 12.10.2006 and No. 1/2010 dated 12.02.2010 for the post of Medical Officer/Dental Surgeon.

In partial modification of this Commission's earlier notification No. 7/1/2010-MPSCI (DR) Advertisement No. 1/2010 dated 12.02.2010 it is hereby informed that sub-para-II of para-I regarding essential qualifications the following shall be added:

A candidate who has yet to complete the compulsory rotating internship is also educationally eligible for admission to the examination but on selection he/she will be appointed only after he/she has completed the compulsory rotating internship.

Further at para-II of N.B. the following shall be added: Those applicants who have already submitted their applications to Manipur Public Service Commission in response to MPSC Advertisement No. 7/2006 dated 12.10.2006 for 26 (twenty six) posts of Medical Officer shall also be allowed to appear in the examination (if they are within the age limit on 15th November, 2006) even if they are overaged by the time fresh advertisement is issued for 401 posts of Medical Officer.

Last date of issue and receipt of application form and determining of age and essential qualification will be extended up to 15th of April, 2010.

Sd/- (Y. Jugindro Singh) Secretary, Manipur Public Service Commission.

7. Under the impugned advertisement dated 27.03.2010 it is crystal clear that the last date of issue and receipt of application form i.e. 15.04.2010 will be the date for determining the age and essential qualification of candidates for the said 401 posts of MHS Grade-IV (Medical officers). A large number of candidates including the petitioners and private respondents appeared the selection test for the said 401 posts of MHS Grade-IV (Medical Officers) in pursuance of the advertisement i.e. Advertisement dated 12.02.2010 and the impugned

advertisement dated 27.03.2010. The MPSC issued the impugned notification being No. 7120-MPSC (DR) dated 25.10.2010 for recommending or declaring successful 329 candidates including private respondents with remarks against the names of private respondents that the compulsory Rotating Internship not completed. It is also admitted fact of both the parties that all the private respondents except private respondent Nos. 7 and 34 had not completed the compulsory rotatory internship which is the essential qualification for appointment to the post of MHS Grade-IV (Medical Officer) on the last date for submission of forms dated 15.04.2010 and also 15.04.2010 is the date for determining of age and essential qualification of the candidates for the said 401 posts of MHS Grade-IV (Medical Officers) advertised in the Advertisements dated 12.02.2010 and 27.03.2010.

8. Under the impugned notification dated 25.10.2011, 83 candidates including the present petitioners are in the list of candidates (General) wait list/waiting list of general candidates and two candidates (SC) in the waitlist. The main ground for assailing the impugned select list dated 25.10.2010 for recommending private respondents who had not completed the compulsory rotatory internship on the crucial date i.e. 15.04.2010 i.e. last date of issue and receipt of application forms and also for determination of age and essential qualification of the candidates under the advertisement dated 27.03.2010 is that the private respondents cannot be recommended for appointment to the said post of 401 MHS Grade-IV (Medical Officers) mentioned in the advertisement dated 12.02.2010 and the impugned advertisement dated 27.03.2010 as they had not admittedly completed the compulsory rotatory internship on 15.04.2010 and also that essential qualification for appointment to the MHS Grade-IV (Medical Officers) provided under Rule 7(1)(b) and Schedule II to the MHS Rules, 1982 cannot be relaxed by the MPSC in pursuance of an executive order of the Government of Manipur inasmuch as the essential qualification cannot be relaxed under proviso to Rule 16 of the MHS Rules, 1982 and also that Rule 16 is only the relaxation provision under MHS Rules, 1982.

It is further case of the petitioners that the cause of action for assailing the impugned select list dated 25.10.2010 arose on the date of publication of the impugned select list i.e. 25.10.2010 for recommending the private respondents who had not completed Compulsory Rotatory Internship on the said crucial date.

9. Respondent No. 1, MPSC filed affidavit in opposition wherein it is stated that the impugned advertisement dated 27.3.2010 was issued in pursuance of the direction of the State Government under a letter of the Deputy Secretary (Health & FW) dated 26.03.2010 directing the MPSC to allow the doctors undergoing internship, to appear in the MHS recruitment examination and also that the State Government agreed to appoint the selected candidates only after completion of internship. It is also stated in the affidavit in opposition that if the petitioners are really aggrieved by the impugned advertisement dated 27.03.2010 they should have filed writ petitions challenging the impugned advertisement before they

appear the recruitment test for the 401 posts of MHS Grade-IV (Medical Officers). The educational qualification in Schedule II of the MHS Rules 1982 regarding qualification, i.e. compulsory rotatory internship is inconsistent/vague with that of the prescribed qualification enlisted in the Indian Medical Council Act, 1956. Therefore, there was no wrong in the recommendation of the private respondents by the MPSC and the whole selection process and list of selected candidates are to be treated valid.

10. The State respondents i.e. respondent Nos. 2 and 4 also filed affidavit in opposition stating that it is the accepted norms all over the country, as per the Medical Council of India Rules that those doctors who are undergoing internship are allowed to appear in the recruitment test/examination namely, Combined Medical Service Examination conducted by the Union Public Service Commission. A representation dated 25.03.2009 was submitted by the All Manipur Doctors' Association to the Government for allowing them to appear for the said posts of 401 MHS Grade-IV (Medical Officers) as doctors who are undergoing internship are allowed to appear in the recruitment examination namely Combined Medical Examination, conducted by the UPSC. Another application dated 22.03.2010 was also submitted by the Manipur Health Services Association addressed to the Commissioner, Health and Family Welfare Services for allowing the doctors undergoing internship to apply for the said post. The State Government accepted the request made by the said doctors and accordingly informed the MPSC that doctors undergoing internship to be allowed to appear in the recruitment examination subject to the conditions that the factors, if so selected in the process, would be appointed only after completion of the internship vide Government letter No. 4/04/09 MPSC dated 26.03.2010.

11. The private respondent Nos. 14, 19 and 23 filed a joint affidavit in opposition wherein preliminary objection has been raised to the maintainability of the writ petition; for that the petitioners who already appeared the examination/recruitment test in pursuance of the advertisement cannot challenge the criteria or process of selection. It is stated in para 17 of the counter affidavit that if the petitioners thought that the impugned advertisement and selection process are not in accordance with the relevant service rules they would have challenged the advertisement and selection process without participating in the selection process. It is well settled law of the land that if a candidate appeared in the selection test including interview then only because the result of selection process is not palatable or/favourable to him he cannot turn around and subsequently contend that selection process was unfair, unconstitutional and ultra vires. Further in para 19 of the affidavit in opposition stated that the petitioners are stopped from challenging the legality of the impugned advertisement dated 27.03.2010 as they willfully and knowingly appeared in the said recruitment test.

12. As stated above, in the present writ petition, petitioners are challenging the impugned notification dated 25.10.2011 for recommending the private

respondents not on the ground that the selection process or/recruitment test conducted by the MPSC were unfair, unconstitutional and composition of the selection committee was not properly constituted. But in the given case the ground on which the petitioners challenge the impugned recommendation dated 25.10.2011 (impugned notification) is that the recommendation of private respondents under the impugned notification/recommendation dated 25.10.2011 is illegal for the reason that the private respondents had not completed the compulsory rotatory internship on the crucial date i.e. 15.04.2010.

13. Mr. A. Bimol, learned counsel for the petitioners in support of the above ground that as the private respondents had not admittedly completed the compulsory rotatory internship on the last date i.e. 15.04.2010 mentioned in the impugned advertisement dated 27.3.2010; therefore, the recommendation of the Private respondents, except respondent Nos. 7 and 34 under the impugned recommendation dated 25.10.2011 is illegal, relied on the decisions of the Apex Court: (1) Bharat Heavy Electrical Ltd. Vs. Regional Provident Fund Commissioner, Indore, Madhya Pradesh, , (2) Harpal Kaur Chahal (Smt) v. Director, Punjab Instructions , (3) Ashok Kumar Sharma and Others Vs. Chander Shekhar and Another, , (4) State of Haryana and Others Vs. Anurag Srivastava and Another, , (5) Ashok Kumar Sonkar Vs. Union of India (UOI) and Others, . In U.P. Public service Commission's case (supra) the UP Public Service Commission issued advertisement inviting application for competitive examination called U.P. Nyayik Seva (Munsif) Examination, 1988 for selection of candidates for appointment to the said post i.e. Munsiff. In the advertisement it was clearly mentioned that the candidate must possess on the last date fixed for receipt of application, a degree of bachelor of law of a University established by law in Uttar Pradesh, or in other University of India recognized for this purpose by the Governor; last date was 20.08.1988. A candidate who did not comply with the requirement had approached the High Court by way of writ petition, which was allowed by an order dated 12.07.1991 whereby the Commission was directed to call for interview or/selection to be held on 15th and 16th of July, 1991. However, the Court stated that the Commission should withhold the result until further orders. Pursuant to the said order of the High Court, petitioner appeared the interview; but the result was kept withheld. On 17.03.1993 the High Court finally disposed of the matter by directing the Commission to declare the result and if successful, to forward her name to the Government for appointment within a month from the date of presentation of the certified copy of the order. Further direction was given that in the event there was no post available a supernumerary post should be created for her and appointment made thereon. The Commission preferred appeal against the said order of the High Court before the Apex Court and the Apex Court held that the candidates who had not fulfilled all educational qualifications or/qualifications on the last date of receipt of application by the Commission and subsequent attainment even before commencement of the written examination do not entitle to appointment. Para 6 of the SCC in U.P. Public Service Commission's case (supra) read as follows:

6. In the facts of the present case we fail to appreciate how the ratio of the said decision of this Court can be attracted. The facts of this case reveal that the respondent was not qualified to apply since the last date fixed for receipt of application was August 20, 1988. No rule or practice is shown to have existed which permitted entertainment of her application. The Public Service Commission was, therefore, right in refusing to call her for interview. The High Court in Writ Petition No. 1898 of 1991 mandated the Public Service Commission to interview her but directed to withhold the result, until further orders. In obedience to the directive of the High Court the Public Service Commission interviewed her but her result was kept in abeyance. Thereafter, the High Court while disposing of the matter finally directed the Public Service Commission to declare her result and, if successful, to forward her name for appointment. The High Court even went to the length of ordering the creation of a supernumerary post to accommodate her. This approach of the High Court cannot be supported on any rule or prevalent practice nor can it be supported on equitable considerations. In fact there was no occasion for the High Court to interfere with the refusal of the Public Service Commission to interview her in the absence of any specific rule in the behalf. We find it difficult to give recognition to such an approach of the High Court as that would open up a flood of litigation. Many candidates superior to the respondent in merit may not have applied as the result of the examination was not declared before the last date for receipt of applications. If once such an approach is recognized there would be several applications received from such candidates not eligible to apply and that would not only increase avoidable work of the selecting authorities but would also increase the pressure on such authorities to withhold interviews till the results are declared, thereby causing avoidable administrative difficulties. This would also leave vacancies unfilled for long spells of time. We, therefore, find it difficult to uphold the view of the High Court impugned in this appeal.

14. In Harpal Kaur Chahal (Smt.)'s case (supra) the last date of receipt of application for recruitment to the post of Physical Training Instructor was on 20.04.1968. Admittedly, on the last date the appellant (Harpal Kaur Chahal) had no qualification; Division Bench of the High Court held that as on the last date the applicant was not qualified, the selection of the applicant was held to be illegal inasmuch as the last date for submission of application i.e. 26.04.1968 would be the relevant date to consider whether the applicant had the requisite qualification for consideration and appointment. In appeal before the Apex Court the appellant also contended that along with the appellant two more candidates were appointed and were upheld by the High Court, denial to her is violative of Article 14 and 16 of the Constitution of India. Such contention was not accepted by the Apex Court for that Article 14 cannot be extended to legalize illegal order though others had wrongly got the benefit of the order. Para 2 and relevant portions of para 3 of the SCC in Harpal Kaur Chahal's case (supra) read as follows:

2. It is contended for the appellant that since the appellant had been appointed

by the duly constituted Departmental Selection Committee and as on the date of interview since the appellant had the qualification, her selection and appointment cannot be said to be illegal. We find no force in the contention. It is to be seen that when the recruitment is sought to be made, the last date has been fixed for receipt of the application. Such of those candidates who possessed of all the qualifications as on that date alone are eligible to apply for and to be considered for recruitment according to rules. Since the appellant had not possessed the Physical Training Instructor qualifications as on that date, her illegal consideration by the Board and recommendation for appointment and the appointment made in furtherance thereof are illegal. Therefore, we cannot accept the contention of the learned counsel in that behalf. 3. It is next contended that along with the appellant two more candidates were selected and were appointed and their appointments were upheld by the High Court. Denial to her is violative of Article 14 of the Constitution. We find no force in the contention. The view of the High Court is obviously illegal and the judgment rendered would not form the ground for our holding that the others who got the benefit by illegal orders will be extended in favour of other candidate though illegally appointed. Article 14 cannot be extended to legalise the illegal orders though others had wrongly got the benefit of the orders.....

15. In *Ashok Kumar Sharma & Ors. case (supra)* the Apex Court held that in the case of advertisement inviting application requiring qualification to be possessed on the last date of submission of application form, qualifications should be acquired on the last date of application inasmuch as the last date is the relevant date for determination of attainment of education qualification and prescribed qualification; and candidate acquiring requisite qualification later on before holding of interview is not permissible to appear the interview. Relevant portion of Para 6 of the SCC in *Ashok Kumar Sharma & Ors.'s case (supra)* read as follows:

6....The proposition that where the applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone, is a well-established one. A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all. An advertisement or notification issued/published calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it. One reason behind this proposition is that if it were known that persons who obtained the qualifications after the prescribed date but before the date of interview would be allowed to appear for the interview, other similarly placed persons could also have applied. Just because some of the persons had applied notwithstanding that they had not acquired the prescribed qualifications by the prescribed date, they could not have been treated on a preferential basis. Their applications ought to have been rejected at the inception itself. This proposition is indisputable and in fact was not doubted or disputed in the majority judgment. This is also the proposition

affirmed in *Mrs. Rekha Chaturvedi (Smt) Vs. University of Rajasthan and Others*, . The reasoning in the majority opinion that by allowing the 33 respondents to appear for the interview, the recruiting authority was able to get the best talent available and that such course was in furtherance of public interest is with respect, an impermissible justification. It is, in our considered opinion, a clear error of law and an error apparent on the face of the record. In our opinion, *R.M. Sahai, JJ.* (and the Division Bench of the High Court) was right in holding that the 33 respondents could not have been allowed to appear for the interview.

16. The Apex Court in *Anurag Srivastava's case (supra)* also in clear and unequivocal terms held that the candidate who did not possess the requisite qualification on the last date of submission of application form is not eligible for appointment though acquires the prescribed qualification after interview and selection. Para 2, 3 and 4 of the SCC in *Anurag Srivastava's case (supra)* read as follows:

2. On the last date for receipt of applications, namely, 7.1.1981, Respondent 2 did not possess a Master's degree in Modern Indian History. She did not possess a Master's degree in History, but in Group "A", i.e. Medieval India. The marks-sheet which was annexed by her showed that the four papers which she had appeared in were in the group "Medieval India". The 2nd respondent herself has stated in her letter dated 3.7.1981, addressed to the Director, Haryana State Archives, Chandigarh, that she had passed MA Examination in History (1200 AD-1787 AD) from Kurukshetra University in 1978. One paper was for the period 1627 AD-1761 AD. Apart from this, she had already appeared in MA Examination in Modern Indian History (1707 AD-1947 AD) for obtaining additional qualifications and the result was awaited.

3. She subsequently obtained an MA in History in Group "B" "Modern Indian History" on 16.7.1981. The High Court has rightly held that on 7.1.1981, the last date for submitting the application, the 2nd respondent did not possess a Master's degree with Modern Indian History as her subject. She obtained this qualification on 16.7.1981 subsequent to her interview and selection.

4. Learned counsel for the 2nd respondent has relied upon two decisions of this Court in *Ashok Kumar Sharma and Others Vs. Chander Shekhar and Another*, and *Mrs. Rekha Chaturvedi (Smt) Vs. University of Rajasthan and Others*, . Both these judgments hold that the qualifications which have to be considered are those possessed as on the last date of filing applications. The High Court has, therefore, rightly held that the 2nd respondent did not possess the requisite qualifications at the material time and was not entitled to be selected under the advertisement on 7.12.1980. The appeal is, therefore, dismissed. There will be no order as to costs.

17. The Apex Court in *Ashok Kumar Sonkar's case (supra)* held that for determination of eligibility, there must be a cut off date and in order to avoid any

uncertainty in such matter, the last date for filing application must be considered as the cut off date. Para 16, 17, 18 and 20 of the SCC in Ashok Kumar Sonkar's case (supra) read as follows:

16. Indisputably the appellant herein did not hold the requisite qualification as on the said cut-off date. He was, therefore, not eligible therefor.

17. In Bhupinderpal Singh and Others Vs. State of Punjab and Others, this Court moreover disapproved the prevailing practice in the State of Punjab to determine the eligibility with reference to the date of interview, inter alia, stating: (SCC pp. 267-68, para 13)

13. Placing reliance on the decisions of this Court in Ashok Kumar Sharma and Others Vs. Chander Shekhar and Another, , A.P. Public Service Commission, Hyderabad and Another Vs. B. Sarat Chandra and Others, , District Collector and Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and Another Vs. M. Tripura Sundari Devi, , Mrs. Rekha Chaturvedi (Smt) Vs. University of Rajasthan and Others, / Dr. M.V. Nair Vs. Union of India (UOI) and Others, and U.P. Public Service Commission U.P., Allahabad and Another Vs. Alpana, the High Court has held (i) that the cutoff date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules and if there be no cut-off date appointed by the rules then such date as may be appointed for the purpose in the advertisement calling for applications: (ii) that if there be no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications have to be received by the competent authority. The view taken by the High Court is supported by several decisions of this Court and is therefore well settled and hence cannot be found fault with. However, there are certain special features of this case which need to be taken care of and justice be done by invoking the jurisdiction under Article 142 of the Constitution vested in this Court so as to advance the cause of justice.

(See Jasbir Rani and Others Vs. State of Punjab and Another,

18. Yet again in Shankar K. Mandal and Others Vs. State of Bihar and Others, this Court held that the following principles could be culled out from the aforementioned decisions: (SCC p.523, para 5)

(1) The cut-off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules.

(2) If there is no cut-off date appointed by the rules then such date shall be as appointed for the purpose in the advertisement calling for applications.

(3) If there is no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications were to be received by the competent authority.

20. Possession of requisite educational qualification is mandatory. The same should not be uncertain. If an uncertainty is allowed to prevail, the employer would be flooded with applications of ineligible candidates. A cut-off date for the purpose of determining the eligibility of the candidates concerned must, therefore, be fixed. In absence of any rule or any specific date having been fixed in the advertisement, the law, therefore, as held by this Court would be the last date for filing the application.

18. On careful consideration of the ratios laid down in the cases discussed above, it is crystal clear that (i) in the case of an advertisement mentioning the last date for submission of forms is the date for determining age and qualification mentioned in the advertisements, cut off date for acquiring qualification would be the last date; (ii) even the candidates who acquired the qualification before the interview should not be permitted for the interview or selection; and (iii) also that selection of candidates who acquired the qualification after the cut-off date will be illegal; and (iv) also if there is no cut-off date appointed by the rules, then such date shall be appointed for the purpose in the advertisement calling applications; and (v) if there is no such date appointed then eligibility criteria shall be applied by reference to the last date appointed by which the applications were to be received by the competent authority. In the present case, it is crystal clear that the last date for acquiring the qualification i.e. completion of compulsory rotatory internship, is the last date, i.e. 15.04.2010 and, therefore, selection of private respondents, (except respondent Nos. 7 and 34) who did not complete compulsory rotatory internship on the last date i.e. 15.04.2010 is illegal.

19. Proposition of the learned counsel for the respondents that in earlier case, this Court passed order allowing the candidates who acquired qualification after the cut-off date, to appear in the interview and also ordered to appoint them, the private respondents should get the similar benefit, is also not acceptable as held by the Apex Court in Harpal Kaur Chahal's case (supra) inasmuch as Article 14 cannot be extended to legalise the illegal order though the others had wrongly got the benefit of the order.

20. Regarding the maintainability of the present writ petition, Mr. Bimol, who asserted that the present writ petition is maintainable inasmuch as the writ petitioners are not questioning the composition of the Selection Committee and also not alleging that the process of selection was unfair and unconstitutional; what is stated in the writ petition is that the selection of the unqualified candidates, for the reasons discussed above, i.e. private respondents except respondent Nos. 7 and 34 are illegal, has placed heavy reliance on the decisions of the Apex Court:

(1) Raj Kumar and Others Vs. Shakti Raj and Others, , (2) Rajesh Kumar Gupta and Others Vs. State of U.P. and Others, , (3) Union of India (UOI) and Others Vs. S. Vinodh Kumar and Others, , (4) Tarun Ch. Deka Vs. State of Assam and Others, .

21. To the contra Mr. B.P. Sahu, learned counsel and Mr. Nepolean, learned GA appearing for the respondents, relied on the decisions of the Apex Court: (1) Jatinder Kumar and Others Vs. State of Punjab and Others, , (2) Madan Lal and Others Vs. State of Jammu and Kashmir and Others, , (3) University of Cochin, Rep., by its Registrar, University of Cochin Vs. N.S. Kanoonjamma and others, , (4) Union of India (UOI) and Others Vs. S. Vinodh Kumar and Others, , (5) Marripati Nagaraja and Others Vs. The Government of Andhra Pradesh and Others, , (6) Dhananjay Malik and Others Vs. State of Uttaranchal and Others, , (7) Amlan Jyoti Borooah Vs. State of Assam and Others, (8) Manish Kumar Shahi Vs. State of Bihar and Others, .

22. The fact in Rajkumar & Ors.'s case (supra) is that the post of Canal Patwaris in Irrigation Department of State of Haryana had been excluded in exercise of the statutory power under para 6 of the notification dated 28.1.1970 from the purview of SSSB after examination had been held under the Rules. Thereafter selection committee was constituted for completing the selection. The Apex Court held that the procedure of selection and exercise of power to exclude the post from the purview of the SSSB suffer from illegalities; and the candidates appearing in the selection and remaining unsuccessful were not barred from questioning the selection-Acquiescence/Estoppel is not applicable in such a case. It is the clear decision of the Apex Court in Rajkumar & Ors.'s case (supra) that when there is glaring illegality in the procedure of selection, unsuccessful candidate is not barred from questioning the selection. The principles of acquiescence and estoppel is not applicable in such case. Para 16 of the SCC in Rajkumar & Ors.'s case (supra) read as follows:

16. Yet another circumstance is that the Government had not taken out the posts from the purview of the Board, but after the examinations were conducted under the 1955 Rules and after the results were announced, it exercised the power under the proviso to para 6 of 1970 Notification and the posts were taken out from the purview thereof. Thereafter the Selection Committee was constituted for selection of the candidates. The entire procedure is also obviously illegal. It is true, as contended by Shri Madhava Reddy, that this Court in Madan Lal and Others Vs. State of Jammu and Kashmir and Others, and other decisions referred therein had held that a candidate having taken a chance to appear in an interview and having remained unsuccessful, cannot turn round and challenge either the constitution of the Selection Board or the method of selection as being illegal; he is estopped to question the correctness of the selection. But in his case, the Government have committed glaring illegalities in the procedure to get the candidates for examination under the 1955 Rules, so also in the method of selection and exercise of the power in taking out from the purview of the Board and also conduct of the selection in accordance with the Rules. Therefore, the principle of estoppel by conduct or acquiescence has no application to the facts in this case. Thus, we consider that the procedure offered under the 1955 Rules adopted by the Government or the Committee as well as the action taken by the Government are not correct in law.

23. In *Rajesh Kumar Gupta & Ors.*'s case (supra), Apex Court discussed the question as to whether the writ petitioners having applied for BTC course and failed to get their names in the merit list are stopped from challenging the selection. The High Court, taking the view that as the criterion for merit list was changed after the applications had been made by the candidates, no candidate had any occasion to protest; and in such circumstances candidate who had applied and were not selected could not be said to be stopped from challenging the process of selection, nor could there be any plea of promissory estoppel invoked by the petitioners as nothing was established to show that they have altered their position to their detriment by applying pursuant to the advertisement. The said decision of the High Court was upheld by the Apex Court. Para 13 of the SCC in *Rajkumar & Ors.*'s case (supra) read as follows:

13. The Division Bench also found that at the time of making the application the scheme notified by the State Government was that the preparation of the merit list would be at the State level and not at the district level. The criterion for merit list was subsequently challenged (sic change) only on 31.10.2001 i.e. after the applications had been made by the candidates. Consequently, no candidate had any occasion to protest, since the criterion was abruptly changed by the State Government. Thus, the Division Bench overruled the objection to the maintainability of the writ petitions by taking the view that there was no question of estoppel and the candidates, challenging the process of selection. Nor could there be any plea of promissory estoppel invoked by the writ petitioners, as nothing was established to show that they had altered their position to their detriment by applying pursuant to the advertisement. In our view, the finding of the Division Bench on this point is justified.

24 The Apex Court in *Vinodh Kumar & Ors.*'s case (supra) held that there are exceptions to the Rules that when a candidate appeared at the examination without protest and subsequently found to be not successful in the examination, the question of entertaining the petition challenging the examination would not arise. Para 19 and 20 of the SCC in *Vinodh Kumar & Ors.*'s case supra read as follows:

19. In *Chandra Prakash Tiwari and Others Vs. Shakuntala Shukla and Others*, , it was held: (SCC p.148, para 32)

32. In conclusion, this Court recorded that the issue of estoppel by conduct can only be said to be available in the event of there being a precise and unambiguous representation and it is on that score a further question arises as to whether there was any unequivocal assurance prompting the assured to alter his position or status-the situation, however, presently does not warrant such conclusion and we are thus not in a position to lend concurrence to the contention of Dr. Dhavan pertaining to the doctrine of estoppel by conduct. It is to be noticed at this juncture that while the doctrine of estoppel by conduct may not have any application but that does not bar a contention as regards the right to challenge an appointment upon due participation at the interview/selection. It

is a remedy which stands barred and it is in this perspective in *Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others*, a three-Judge Bench of this Court laid down in no uncertain terms that when a candidate appears at the examination without protest and subsequently found to be not successful in the examination question of entertaining a petition challenging the said examination would not arise.

It was further observed: (SCC P.149, para 34)

34. There is thus no doubt that while question of any estoppel by conduct would not arise in the contextual facts but the law seem to be well settled that in the event a candidate appears at the interview and participates therein, only because the result of the interview is not "palatable" to him, he cannot turn round and subsequently contend that the process of interview was unfair or there was some lacuna in the process."

20. We are, however, not oblivious that there are certain exceptions to the aforementioned Rules but we are not concerned therewith in the present case.

25 This Court in *Tarun Chandra Deka's* case (supra) was of the view that the writ petition challenging the selection on the ground of violation of Rule 6(c) of Assam State Archives (Gazetted) Service Rules, 2000, filed by the petitioner who participated in the said selection is maintainable and the writ petitioner will not be barred from challenging the selection which is illegal, therefore, it is the decision of this Court that in case, selection of the candidate is illegal or was in violation of the Rules or law, the writ petitioners who participated in the said selection will not be barred from filing the writ petition challenging the illegal selection. Para 17 and 18 of the GLT in *Vinodh Kumar & Ors.'s* case (supra) read as follows:

17. The Apex Court in *Madan Lal & Ors.* (supra) as well as *Dhananjay Malik* (supra), while had declined the locus standi of an unsuccessful participating candidate in a selection process to question the validity of the same subsequently in *Raj Kumar and Others Vs. Shakti Raj and Others*, it had permitted such assailment if the exercise undertaken suffers from glaring illegalities. Their Lordships in *Raj Kumar* (supra), decided against the bar of acquiescence/estoppel of such a candidate. This view of the Apex Court comprised of three Hon"ble Judges was taken notice of by a Division Bench of this Court in *Assam Animal Husbandry and Veterinary Service Association and Others Vs. State of Assam and Others*, .

18. Thus two views of the Apex Court on the issue emerge suggesting that the one propounded in *Madan Lal* (supra), and *Dhananjay Malik* (supra) does not in absolute terms debar an unsuccessful candidate to impugn the validity of the selection process even on the culmination thereof. The impeachment by the present petitioner noticeably is not unduly delayed and, therefore, in the considered opinion of this Court in view of the precedential enunciation as hereinabove, the plea of non-suiting him on the ground of having participated in

the selection process does not commend for acceptance in the facts of the instant case.

26 In Madan Lal & Ors.'s case (supra) the Apex Court held that the writ petitions filed by unselected candidates on the ground of unfairness of interview process, defect of any constitution of selection committee, is not maintainable. Para 9 of the SCC in Madan Lal & Ors.'s case (supra) read as follows:

9. Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being respondents concerned herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Up to this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at the written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not, properly constituted. In the case of Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others, , it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petition.

27. The Apex Court in Ashok Kumar Sharma's case (supra) is of the view that the unsuccessful candidate who had participated in the selection and taken a chance to get themselves selected is barred from filing writ petitions challenging the correctness of the procedure.

28. The Apex Court in Marripati Nagaraja & Ors.'s case (supra) held that it is well settled principles of law that the rule which will be applicable for selecting candidates would be the one which are prevailing at the time of notification for inviting application for recruitment. It is also equally well settled that the State may, subject to constitutional limitations, made the Rules with retrospective effect provided the vested right of the candidates or concerned individual accrue on the earlier rules i.e. old rule had not been taken away by the retrospective amendment.

29. The Apex Court in Dhananjay Malik & Ors. Case (supra) held that unsuccessful candidate participated in the process of selection without any demerit they are stopped from challenging the selection criterion and if they had valid objection they should have challenged the advertisement and selection

process without participating the selection. Para 8 and 9 of the SCC in Dhananjay Malik's case (supra) read as follows:

8. In *Madan Lal and Others Vs. State of Jammu and Kashmir and Others*, this Court pointed out that when the petitioners appeared at the oral interview conducted by the members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned, the petitioners took a chance to get themselves selected at the said oral interview. Therefore, only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed writ petitions. This Court further pointed out that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted.

9. In the present case, as already pointed out, the respondent-writ petitioners herein participated in the selection process without any demur; they are estopped from complaining that the selection process was not in accordance with the Rules. If they think that the advertisement and selection process were not in accordance with the Rules they could have challenged the advertisement and selection process without participating in the selection process. This has not been done.

30. The Apex Court in *Amlan Jyoti Borooah's* case (supra) and *Manish Kumar Shahi's* case (supra), the writ petition filed by the petitioner, after he found that his name does not figure in the list prepared by the Commission is stopped and precluded from contending that the procedure adopted by the selection committee was illegal.

31. On careful application of mind of this Court to the ratios laid down by the Apex Court in the cases discussed above, it is clear that the unsuccessful candidate who appeared in the selection without even demur and had taken calculated chance to get themselves selected cannot turn round and subsequently contend that the process of selection was not fair and bias or interview or selection committee was not properly constituted; but there are certain exception to the above rules such as that the unsuccessful candidates can certainly challenge the selection of the candidates, if selection of candidates is illegal or/is in violation of certain law.

In the present case, as discussed above, writ petitioners in the present writ petition, are challenging the select list or list of the selected candidates on the ground that selection of private respondents except respondent Nos. 7 and 34 are illegal inasmuch as they did not attain essential eligibility/educational qualification or/qualification for the post of MHS Grade-IV (Medical Officer) on the crucial date discussed above and not on the ground that the composition of the selection committee is not correct and process of selection are unfair and

bias.

32. As discussed above, as held by the Supreme Court in the cases discussed above, there is absolutely no bar in the given case in filing present writ petition by the petitioners. It is worth to mention that respondent Nos. 7 and 34 had attained the essential eligibility/educational qualification or/criterion for appointment to MHS Grade-IV (Medical Officer) on or before the cut-off date i.e. 15.04.2010 and therefore, this Court had vacated the interim order restraining the State respondents from appointing them to the post of MHS Grade-IV (Medical Officer).

33. It is fairly well settled that when the plaintiff has claimed higher right but has been able to prove only a lesser right or entitlement to lesser relief, such plaintiff would not be disentitled from succeeding the suit so long as his lesser right substantiated by him is sufficient in law to entitle him to the reliefs against the defendants. It is also well settled that the Court, in a given case, can mould the relief sought for by the plaintiff/petitioner.

The Apex Court in *R. Kapilnath (Dead) through Lr. Vs. Krishna*, held (in para 5 of the SCC as follows:

5. It was next submitted though a petition for eviction u/s 21(1)(p) of the Act can be filed by a landlord and it is not necessary that he must also be the owner of the premises, yet it is necessary that the petitioner must claim himself to be only a landlord and not an owner. The learned counsel further submitted that the respondent has claimed himself to be the owner of the premises which claim is inconsistent with his being a mere rent collector on behalf of the temple and so the claim for eviction at this instance should have been refused. This submission too is wholly devoid of any merit. A petition for recovery of possession of any premises can be filed by the landlord against the tenant within the meaning of Section 21(1). Clause (h) of Section 3 includes in the meaning of "landlord" any person who is for the time being receiving or entitled to receive rent in respect of any premises whether on his own account or on account or on behalf, or for the benefit of any other person etc. It cannot be doubted nor has it been disputed that the respondent is "landlord" within the meaning of Section 3(h) aforesaid. Though the respondent claimed, himself to be an owner also so long as he has been found to be a landlord he is entitled to maintain the action for eviction u/s 21(1)(p). The plaintiff or the petitioner may claim a higher right and may succeed in proving only a smaller right or entitlement to relief but that would not result in disentitling the plaintiff or the petitioner from succeeding so long as the smaller right successfully substantiated by him is enough in law to entitle him to a relief against the defendant.

34. For the foregoing discussions, this Court is of considered view that the petitioners are entitled to lesser relief that the impugned list of the selected candidates or/successful candidates dated 25.10.2010 so far as private respondents, except respondent Nos. 7 and 34 are concerned is illegal,

accordingly, that portion of the impugned list is hereby quashed. However, in the given case, this Court is compelled to observe that the State respondents should not confuse with the MHS Rules, 1982 made by the Governor in exercise of the power conferred by proviso to Article 309 of the Constitution of India and the Rules, relied upon by the State Government Advocates; framed under the Indian Medical Council Act, 1956 for recognition of medical qualification or/certification granted by the University or Medical Institution in India and Medical Institutions outside India, inasmuch as the said Rules framed by the Medical Council of India Act, 1956 are concerned with the recognition of Certificate or Medical qualification granted by the Universities/Medical Institutions of India and Medical Institutions outside India, whereas the MHS Rules, 1982 are the Rules governing the appointment and service conditions of the medical officers i.e. different grades of medical officers or/members of the MHS.

Parties are to bear their own costs. The writ petition is allowed to the extent indicated above.