

(2016) 08 SC CK 0174

In the Supreme Court Of India

Case No : Civil Appeal No. 8047 of 2016 (Arising out of SLP (Civil) No. 13832 of 2016)

State of U.P. & Ors.

APPELLANT

Vs

Dr. Dinesh Singh Chauhan

RESPONDENT

Date of Decision : 16-08-2016

Acts Referred:

Constitution of India, 1950 — Article 32

Citation : (2016) 9 ADJ 16 : (2016) AIR(SCW) 3841 : (2016) AIRSC 3841 : (2017) 1 AILJ 529 : (2017) AILSCR 843 : (2016) 5 AllWC 5376 : (2016) 118 ALR 527 : (2016) 3 ApexCourtJudgments(SC) 621 : (2016) 4 JBCJ 247 : (2016) 8 JT 201 : (2016) 4 KCCR 553 : (2016) 6 MLJ 5

Hon'ble Judges : T.S. Thakur, CJI, A.M. Khanwilkar and Dr. D.Y. Chandrachud, JJ.

Bench : Full Bench

Advocate : K.V. Viswanathan, Sr. Adv., Abhishek Kaushik, Siddhant Buxy, Dhananjay Bhaskar Ray, Ravi Raghunath, Mukunda Rao, Ajay Kumar Singh, Prakash Gautam, Sameer Kr. Tiwari, Manish K. Tiwari, Ms. Vanita Bhargava, Ajay Bhargava, Aseem Chaturvedi, Ms. Mehrunisha Anand, Irshad Ahmed, AAG, Abhish Kumar, Ms. Archana Singh, Abhishek Kumar Singh, Bipin Pradip Aspatwar, Ms. Fozia Rahman, Advocates, for the Appellant; Gopal Subramaniam, Sr. Adv., Ajay Kumar Misra, Sr. Adv., D.V. Singh, Anuradha Dubey Mishra, Ms. Tulika Mukherjee, Kumar Anurag Singh, Kumar Shivam, (M/s Anuradha & Associates), P.S. Narshima, Sr. Adv., Santosh Kumar, M.K. Maroria, A.S. Pundir, (M/s. AP & J Chambers), Abhay Kumar, Gaurav Sharma, Dhawal Mohan, Prateek Bhatia, Ms. Vara Gaur, Rahul Pratap, Ms. Preetika Dwivedi, Abhay Singh, Raghavendu S.S., Rahat B., Goutham Shrivastava, Advocates, for the Respondent

Final Decision : Disposed Of

Judgement

Khanwilkar, J.—Leave granted.

2. We have three sets of matters before us. The first is appeals arising from the common judgment of the High Court of Judicature at Allahabad dated 7th April, 2016 in Writ Petition Nos: 1380, 34118 and 35051 all of 2015. The second is an

appeal arising from the decision of the High Court of Judicature at Allahabad, Lucknow Bench dated 27th May, 2016 in Writ Petition No: 12004 of 2016. The third is a Writ Petition under Article 32 of the Constitution of India praying for a declaration that the third Proviso to Regulation 9(2) of the Post Graduate Medical Education Regulations, 2000 (hereinafter referred to as 'the said Regulation'), is unconstitutional and violative of Article 14 of the Constitution; and for a direction against the Authorities to refrain from disturbing the selection of the said writ petitioners or to interfere with their Post Graduate studies which they are presently pursuing. The latter two proceedings are the fall out of the interim order passed by this Court dated 12th May, 2016.

3. The first set of appeals (arising from SLP (C) Nos: 13832, 13872, 14427 and 15154-56 all of 2016), are directed against the common judgment of the Division Bench of the High Court dated 7th April, 2016 disposing the aforesaid three Writ Petitions preferred by the in-service Medical Officers in the State of Uttar Pradesh, challenging the Government Orders dated 28th February, 2014 and 17th April, 2014 - so far as it imposed a condition of working of three years in rural or difficult areas as ultra-vires and hit by Article 14, 15 and 16 of the Constitution of India. It was also prayed that No Objection Certificate be issued in favour of the petitioners for admission in MD/MS/Diploma in UPPGMEE-2015 and for quashing of the declaration of result dated 2nd June, 2015.

4. The said writ petitioners claimed to be members of the Provincial Medical Health Services in the State of Uttar Pradesh. According to them, they were also entitled to be considered for admission in Post Graduate Degree Courses against 30% quota for in-service candidates. That plea was opposed on the ground that 30% quota was reserved only for the in-service candidates who had worked in remote and difficult areas; and not for the in- service Medical Officers generally. In these petitions, the High Court was primarily required to consider the question as to whether the in-service Medical Officers in the State of Uttar Pradesh who had working experience (in areas other than remote and difficult areas), could also be treated as eligible for admission against the reserved 30% quota for in-service candidates in Post Graduate Degree Courses. While considering this issue, the High Court, in the context of Regulation 9, noticed that there was no provision in The Indian Medical Council Act, 1956 (hereinafter referred to as the Central Enactment or Act of 1956); and the Regulations framed thereunder known as Medical Council of India Post Graduate Medical Education Regulations, 2000 (hereinafter referred to as the said Regulations), stipulating reservation for in-service candidates against the 30% seats in "Post Graduate Degree Courses". The provision, however, was only to give weightage of marks to in-service candidates who had worked for specified period in CHC and PHC Hospitals in notified remote, difficult or backward areas of the State. On the other hand, reservation has been limited to Post Graduate "Diploma" Courses by the said Regulations. The High Court, therefore, called upon the Medical Council of India to clarify its stand in this behalf. The Medical Council of India stated before the High Court that no reservation for in-service candidates was permissible in

respect of Post Graduate "Degree" Courses; unlike for the Post Graduate "Diploma" Courses, in terms of Regulations framed in that behalf. Further, the State Government could not have framed any statutory Rules much less provided different dispensation by an executive fiat. In light of this stand, the High Court was pleased to hold that the State Government has had no authority to frame any Rules or issue any executive order to provide for reservation in the Post Graduate "Degree" Courses, contrary to the statutory Regulations framed under the Medical Council of India Act, 1956 (Central Enactment). The High Court whilst advertent to the decisions of this Court including the recent judgment in the case of *Sudhir N. and others v. State of Kerala and others*, (2015) 6 SCC 685 held that Regulation 9 is a complete Code and the admission process must strictly adhere to the norms stipulated therein. It, thus, proceeded to quash the Government Notification-cum-Government Order dated 28th February, 2014 and directed that admissions to Post Graduate "Degree" Courses be proceeded strictly on merits amongst the candidates who have obtained requisite minimum marks in the common entrance examination in question. It also noted that as per Regulation 9, at best, the in-service candidates who have worked in remote and difficult areas in the State, as notified by the State Government/Competent Authority from time to time, alone would be eligible for weightage of marks as incentive at the rate of 10% of the marks obtained for each year of service in such areas upto the maximum of 30% marks obtained in National Eligibility-cum-Entrance Test.

5. This common judgment of the High Court has been challenged in appeals arising from SLP (Civil) Nos.13832, 14427, 13872, 15154-56/2016. When these appeals came up for consideration on 12th May, 2016, this Court recorded the statement made on behalf of the State Government and proceeded to pass the following order:

"We have heard learned counsel for the parties at some length. The High Court of Judicature at Allahabad has in terms of the impugned judgment quashed Government Order dated 28th February, 2014 whereby 30% seats in post-graduate degree courses in medicine and other disciplines have been reserved for in-service candidates who had three years or more of rural service in notified and difficult areas. The High Court has relying upon the judgment of this Court in *Sudhir N. and Others v. State of Kerala and Others* - (2015) 6 SCC 685 held that the State Government could not by an executive order change the method of selection for admission of candidates for post-graduate courses in medical science so as to violate or dilute the regulations framed by the Medical Council of India in exercise of its powers under Section 33 of Medical Council of India Act. Regulation 9 of the Medical Council of India Postgraduate Medical Education Regulations, 2000 which deals with the method of selection of candidates for admission to post-graduate courses reads as under:

"9. SELECTION OF POSTGRADUATE STUDENTS.

9(1)(1) Students for Post Graduate medical courses 3 shall be selected strictly on

the basis of their Inter-se Academic Merit. b) 50% of the seats in Post Graduate Diploma Course shall be reserved for Medical Officers in the Government service, who have served for at least three years in remote and difficult area. After acquiring the PG Diploma, the Medical Officers shall serve for two more years in remote and/or difficult areas. In Clause 9(1)(b) after the words "remote and/or difficult areas" and in the proviso to the clause 9(2)(d), the following shall be inserted in terms of Notification published on 16.04.2010. "As directed by the competent State authorities from time to time." 9 (2) For determining the 'Academic Merit' the University/Institution may adopt the following methodology: (a) On the basis of merit as determined by a Competitive Test" conducted by the State Government or by the competent authority appointed by the State government or by the university/group of universities in the same state; or (b) On the basis of merit as determined by a centralised competitive test held at the national level; or (c) on the basis of the individual cumulative performance at the first, second and third MBBS examinations provided admissions are University wise. Or (d) combination of (a) and (c) Provided that wherever Entrance Test for postgraduates admission is held by a state government or a university or any other authorised examining body, the minimum percentage of marks for eligibility for admission to postgraduate medical course shall be 50 percent for general category candidates and 40 percent for the candidates belonging to Scheduled Castes, Scheduled Tribes and other Backward Classes. Provided further that in Non-Governmental institutions fifty percent of the total seats shall 4 be filled by the Competent authority notified by the State Government and the remaining fifty percent by the management(s) of the institution on the basis of Inter- se Academic Merit. The following proviso is added after clause 9(2)(d) in terms of Gazette Notification published on 17.11.2009.

"Further provided that in determining the merit and the entrance test for postgraduate admission weightage in the marks may be given as an incentive at the rate of 10% of the marks obtained for each year in-service in remote or difficult areas up to the maximum of 30% of the marks obtained." (Emphasis supplied by us)

It was contended on behalf of the petitioners-candidates by Mrs. Indu Malhotra, learned senior counsel, that while the question whether the Government could reserve seats for candidates who had rendered service in notified rural and difficult areas, could be examined in greater detail at the final hearing, the least that this court could do at the interim stage is to direct redrawing of the merit list of the candidates in terms of the Regulation 9 (supra). It was submitted that proviso (iii) to Regulation 9(2) clearly permits grant of weightage in terms of marks by way of an incentive for rural service rendered by candidates at the rate of 10% for each year of service in remote or difficult areas subject to a maximum of 30% of the marks obtained by a candidate. It was contended that even if the State was not competent to separately reserve a specific number of seats for candidates who have served in notified areas the fact that candidates

had rendered service in notified rural and difficult areas entitled them to weightage in terms of the said proviso. It was urged that the State Government could be directed to re-draw the merit list of the candidates who appeared in the competitive examination on the basis of the above Regulation giving to the eligible candidates weightage for rural service, if any rendered by them, and granting admission accordingly to those who qualify on that basis. It was urged that while the State Government had already completed one round of counselling for some of the candidates in the merit list, the remaining candidates had yet to be counselled. This may therefore call for cancellation of the earlier counselling and holding of a fresh round of counselling of candidates after a revised merit list drawn in the manner indicated above. Mr. Dinesh Dwivedi, learned senior counsel appearing for the respondents-writ petitioners and Mr. Dushyant Dave, learned senior counsel appearing for the State, submit that they will have no objection if the merit list is redrawn on the basis of Regulation 9 (supra) after giving to eligible candidates the weightage for service, if any rendered, in notified rural areas. They have also no objection to the counselling process being done de novo on the basis of the revised merit list so prepared.

In the circumstances, we direct that the State Government shall as expeditiously as possible revise and redraw the merit list of the candidates keeping in view Regulation 9 of the Medical Council of India Postgraduate Medical Education Regulations, 2000 and giving to the eligible candidates such 6 weightage as may be due to them for rendering service in notified rural and/or difficult areas and to grant admission to the candidates found suitable for the same on the basis of such redrawn merit list. This exercise shall be completed before 30th May, 2016, the last date fixed for granting of admission. The entire exercise so conducted shall however remain subject to the outcome of these proceedings.

Post after ensuing summer vacation."

(emphasis supplied)

6. In furtherance of the above order, the Competent Authority has prepared a fresh merit list of all the candidates in terms of Regulation 9, giving weightage of marks to eligible in-service Medical Officers. As a result, the previous merit list stood fully altered and realigned. The admission process will have to be taken forward on the basis of this fresh merit list. As a result of the preparation of a fresh merit list, most of the candidates who had earlier secured higher position in the common entrance test examination, have been pushed back due to allocation of incentive marks to the concerned in-service Medical Officers. Hence, those affected candidates made representations to the State of Uttar Pradesh; which in turn was advised to file Interlocutory Application in this Court being I.A.No.5/2016 in SLP (Civil) No.13832/2016, praying for permitting the State Government to restore the position as it existed prior to the issuance of the Government Order dated 28th February, 2014, so that, admission to Post Graduate Medical Seats can be made on the basis of marks obtained by the concerned candidates in the NEET; and further to extend the time for completing

the admission process in the Post Graduate Degree Courses. Besides the State Government, even the candidates affected by the fresh merit list prepared in terms of Regulation 9, have rushed to this Court by way of separate Interlocutory Applications in the respective appeals. According to them, status quo-ante should be restored to enable them to pursue their Post Graduate "Degree" Courses in the same colleges where they have already been admitted.

7. The second set of appeal (arising from SLP (Civil) No.15529/2016), is by Medical Officers of State Medical Colleges seeking admission to Post Graduate Degree Courses. According to them, they were also eligible candidates in terms of Regulation 9 and should have been considered at the time of preparing a fresh merit list. The said Writ Petition was dismissed by the Division Bench vide Order dated 27th May, 2016 on the finding that it was not feasible for the Department to consider the claim of eligible in- service candidates who had not submitted applications/documents before the notified date. In other words, only those in-service candidates who had submitted applications for grant of admission to the Post Graduate Degree Courses within the stipulated time have been considered. This proceeding is, therefore, the fall out of the interim direction issued by this Court on 12th May, 2016.

8. The third set of proceedings being Writ Petition (Civil) No. 372/2016, filed under Article 32 of the Constitution of India, is by students aspiring to take admissions to various Post Graduate "Degree" Courses in the State of Uttar Pradesh; and who claim to have been affected by the dispensation specified in the interim order passed by this Court dated 12th May, 2016. In that, they have been dislodged from the respective Post Graduate Degree Courses in which they were already admitted in the concerned medical colleges and even started pursuing their courses.

9. These matters were listed to consider the Interlocutory Applications filed by the State of U.P. and other affected candidates. The sum and substance of the argument was that the challenge before the High Court in the writ petition filed was at the instance of in-service Medical Officers who had not worked or gained experience in remote and difficult areas in the State and wanted to be equated with their counterparts who were or had worked in remote and/or difficult areas. The High Court, however, quashed the entire resolution providing for 30% reservation to in-service candidates. Further, by way of interim directions this Court directed preparation of fresh merit list; and on following that direction, several meritorious candidates have been dislodged and pushed back in order of merit because of the weightage or incentive marks given to in-service candidates.

10. The learned Attorney General representing the State Government, in all fairness, stated that he was not in a position to resile from the statement already made on behalf of the State Government as recorded in the order on 12.05.2016, but wanted this Court to consider the anomalous situation created because of the fresh merit list; and to overcome that difficulty, it would be advisable to allow the State Government to restore the position as it existed prior

to the issuance of the Government Order dated 28.02.2014 - so that admission to all Post Graduate Degree Courses can be made on the basis of merit as per the marks obtained in the Common Entrance Examination. That would result in upholding the impugned decision dated 07.04.2016. This argument has been supported by one section of applicants in the accompanying impleadment applications.

11. The leading arguments on behalf of the candidates affected by the fresh merit list were made by Shri Ashok Desai, Sr. Counsel, Shri Yatinder Singh, Sr. Counsel, and Shri Gopal Subramaniam, Sr. Counsel. The contra argument was made by Shri K.K. Venugopal, Sr. Counsel, Shri K.V. Vishwanath, Sr. Counsel, Shri Sanjay R. Hegde, Sr. Counsel and Shri Dinesh Dwivedi, Sr. Counsel.

12. According to Shri Gaurav Sharma, Advocate appearing for Medical Council of India, the dispensation provided in terms of order dated 12.05.2016 is just and legal, for granting admissions to Post Graduate "Degree" Courses in medical colleges. Hence, no fault can be found with that approach. It was further contended that the provisions regarding giving weightage to the in-service candidates by way of incentive marks has been introduced in larger public interest and the same is just, rational and proper.

13. Shri Ranjit Kumar, Solicitor General appearing for King George's Medical College supported the stand taken by the Attorney General. He submitted that reservation hitherto applied only to State colleges, but now with the dispensation adopted in terms of order dated 12.05.2016 passed by this Court of giving weightage to all the eligible in-service candidates, the benefit would apply even in respect of State seats in non-Government colleges, including statutory Universities who have to follow the merit list prepared as per the Common Entrance Examination. Ms. Pinky Anand, ASG appearing for the Union of India submitted that since advertisement was already issued, it would be appropriate to continue the college admissions without reservation for in-service candidates. It was argued on behalf of the interventionists that the decision to strictly follow Regulation 9 may be made applicable only to academic year 2016-17 and not for an earlier period, in respect of which the admission process has already been completed and more so because the students have taken admission on that basis and commenced their academic year. It was further submitted that a separate list of in-service candidates can be maintained to the extent of 30% seats. Preparation of combined merit list results in unequals being treated equally; and, more so, leads to preposterous results. In some cases the in-service candidates, because of the weightage of marks, have secured more than the maximum marks of 200, specified in the CET. The counsel appearing for the interventionists placed a comparative chart depicting the irrational effect due to the fresh merit list. That shows the unfair manner in which the meritorious candidates have been pushed down in the merit list. It was further submitted that the direct candidates were willing to give undertaking/bond to the effect that after passing out Post-Graduate Degree Courses they would serve in remote or difficult areas in the

State for a period as may be specified. This would assuage the impression being created that those candidates were un-willing to work in remote and difficult areas. It was also contended that even though some of the candidates who were keen to work in remote and/or difficult areas, in absence of any notification issued by the State Government to invite applications for quite some time for appointment as Medical Officers in remote and difficult areas, the interventionists - the aspiring eligible candidates - were denied opportunity to work as Medical Officers in the State hospitals. Further, the reservation of 30% seats was limited to Government Colleges but the fresh common merit list was applied to all the colleges and Universities including non-Government medical colleges in the State.

14. As the arguments were heard at length, it was made clear to all concerned that instead of deciding the applications taken out in the respective substantive proceedings, the entire matter will be disposed off as the issues to be answered in the main proceedings would be the same.

15. Having considered the rival submissions, the first question that needs to be answered is: whether the High Court exceeded its jurisdiction in setting aside the Government Order dated 28.02.2014 providing for reservation to in-service candidates, when the writ petition filed by the in-service candidates was limited to equate them with the in-service candidates who had the experience of working in remote or difficult areas. Indeed, the challenge before the High Court was limited. However, the High Court having held that the State Government could not have issued such order in violation of Regulation 9, quashed the same. The High Court had invited the parties to advance arguments on the validity of the said Government Order before passing the final order. The High Court relied on the decisions of the Supreme Court and opined that it was not permissible, in law, for the State Government to provide reservation for in-service candidates in Post-Graduate "Degree" courses in violation of Regulation 9. Concededly, action taken on the basis of such a void Government Order would be nothing short of a nullity in law. As a result, the High Court proceeded to issue directions to follow the admission process for Post Graduate "Degree" Courses strictly in conformity with Regulation 9. The High Court thus moulded the relief on the basis of the settled legal position. That approach is un-exceptionable, except that it may be necessary to mould the relief further as would be indicated hereinafter.

16. Be that as it may, after the interim order dated 12.05.2016 was passed by this Court on the basis of assurance given by the State, it is not open for the State Government to contend to the contrary. Notably, the State Government has not prayed for relieving itself from the statement as has been recorded in the order dated 12.05.2016. That interim order, therefore, in one sense was invited by the State Government to strictly follow Regulation 9 by giving a weightage of marks to eligible in-service candidates and redraw the merit list. The concomitant of such an informed statement made to this Court, inevitably, results in withdrawal of the Government order dated 28.02.2014 (which in fact has been justly quashed by the High Court); and also to notify that the

admissions to Post Graduate Degree Courses in the State of U.P. will be in conformity with Regulation 9, including to give only weightage or incentive marks to eligible in- service candidates who have served in notified remote/difficult areas of the State. In any case, it is not open to the State Government to provide for a dispensation different than the one specified by the Central Act and Regulations made thereunder.

17. A priori, it must be held that the relief claimed in the application filed by the State Government is an ingenious way to overcome the unconditional and unequivocal statement made before this Court on 12.05.2016. We are of the considered opinion that the State Government is obliged to adopt a procedure as is stipulated by the Central Act and Regulations framed thereunder and noted in the interim order dated 12.05.2016. Regulation 9 has been extracted in the said order dated 12.05.2016, as reproduced above. Regulation 9(2) specifically deals with the process of "determining the academic merit" of the eligible candidates. Indeed, the primary consideration for determining the academic merit of the candidates is the marks obtained by the respective candidates in the common competitive test or centralized competitive test held by the concerned Authority. What is relevant for our purpose is the third proviso in Regulation 9(2). It envisages that in determining the merit, weightage may be given at the rate of 10% of the marks obtained for each year in-service in remote or difficult areas upto the maximum of 30% marks obtained in the common examination by the candidates. This Regulation does not envisage reservation of seats for the Post Graduate "Degree" Courses, unlike the express provision which is made in the same Regulation to provide reservation of seats for in-service candidates in "Diploma" courses.

18. Reverting to Regulation 9 of the Post Graduate Medical Education Regulations, 2000, which have been framed by the Medical Council of India in exercise of power conferred by Section 33 read with Section 20 of the Indian Medical Council of India Act, 1956, it is noticed that the same has undergone amendment from time to time. The decisions pressed into service have considered the stipulations as applicable at the relevant time. The recent decision in the case of Sudhir N. (supra) also dealt with Regulation applicable to admission process commenced in the year 2009-2010. We are, however, concerned with the admission process for the subsequent academic years and covered by the Regulations as in force. Regulation 9, as amended and lastly notified and made applicable from the Academic Year 2013-14 vide Notification No.MCI-18(1)/2010-Mad/62052 dated 15th February 2012, reads thus:

"9. Procedure for selection of candidate for Postgraduate courses shall be as follows:

I. There shall be a single eligibility cum entrance examination namely `National Eligibility-cum-Entrance Test for admission to Postgraduate Medical Courses" in each academic year. The superintendence, direction and control of National Eligibility-cum-Entrance Test shall vest with National Board of Examinations

under overall supervision of the Ministry of Health & Family Welfare, Government of India"]

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

Provided that in case any seat in this 3% quota remains unfilled on account of unavailability of candidates with locomotory disability of lower limbs between 50% to 70% then any such unfilled seat in this 3% quota shall be filled up by persons with locomotory disability of lower limbs between 40% to 50% - before they are included in the annual sanctioned seats for General Category candidates.

Provide further that this entire exercise shall be completed by each medical college/institution as per the statutory time schedule for admissions.

III. In order to be eligible for admission to any postgraduate course in a particular academic year, it shall be necessary for a candidate to obtain minimum of marks at 50th percentile in 'National Eligibility-cum-Entrance Test for Postgraduate courses' held for the said academic year. However, in respect of candidates belonging to Scheduled Castes, Scheduled Tribes, Other Backward Classes, the minimum marks shall be at 40th percentile. In respect of candidates as provided in clause 9(II) above with locomotory disability of lower limbs, the minimum marks shall be at 45th percentile. The percentile shall be determined on the basis of highest marks secured in the All-India common merit list in 'National Eligibility-cum-Entrance Test' for Postgraduate courses:

[Provided when sufficient number of candidates in the respective categories fail to secure minimum marks as prescribed in National Eligibility-cum- Entrance Test held for any academic year for admission to Post Graduate Courses, the Central Government in consultation with Medical Council of India may at its discretion lower the minimum marks required for admission to Post Graduate Course for candidates belonging to respective categories and marks so lowered by the Central Government shall be applicable for the said academic year only.

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

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

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

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

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

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

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

X. The Medical Council of India may direct, that any student identified as having obtained admission after the last date for closure of admission be discharged from the course of study, or any medical qualification granted to such a student shall not be a recognized qualification for the purpose of the Indian Medical Council Act, 1956. The institution which grants admission to any student after the last date specified for the same shall also be liable to face such action as may be prescribed by MCI including surrender of seats equivalent to the extent of such admission made from its sanctioned intake capacity for the succeeding academic year.]"

(emphasis supplied)

19. The structure of the provision, as in force, may be somewhat different. Nevertheless, the legal principle stated in the earlier decisions of this Court on the question of justness of reservation and/or to provide separate channel for the in-service Medical Officers and/or grant weightage of incentive marks to candidates having served in remote and difficult areas may be of some relevance.

20. By now, it is well established that Regulation 9 is a self-contained Code regarding the procedure to be followed for admissions to medical courses. It is also well established that the State has no authority to enact any law much less by executive instructions that may undermine the procedure for admission to Post Graduate Medical Courses enunciated by the Central Legislation and

Regulations framed thereunder, being a subject falling within the Entry 66 of List I to the Seventh Schedule of the Constitution (See: Preeti Srivastava (Dr.) v. State of M.P., (1999) 7 SCC 120). The procedure for selection of candidates for the Post Graduate Degree Courses is one such area on which the Central Legislation and Regulations must prevail.

21. Thus, we must first ascertain whether Regulation 9, as applicable to the case on hand, envisages reservation of seats for in-service Medical Officers generally for admission to Post Graduate "Degree" Courses. Regulation 9 is a composite provision prescribing procedure for selection of candidates - both for Post Graduate "Degree" as well as Post Graduate "Diploma" Courses. Clause (I) of Regulation 9 mandates that there shall be a single National Eligibility-cum-Entrance Test (hereinafter referred to as NEET) to be conducted by the designated Authority. Clause (II) provides for three per cent seats of the annual sanctioned intake capacity to be earmarked for candidates with locomotory disability of lower limbs. We are not concerned with this provision. Clause (III) provides for eligibility for admission to any Post Graduate Course in a particular academic year. Clause (IV) is the relevant provision. It provides for reservation of seats in medical colleges/institutions for reserved categories as per applicable laws prevailing in States/Union Territories. The reservation referred to in the opening part of this clause is, obviously, with reference to reservation as per the constitutional scheme (for Scheduled Caste, Scheduled Tribe or Other Backward Class Candidates); and not for the in-service candidates or Medical Officers in service. It further stipulates that All India merit list as well as State wise merit list of the eligible candidates shall be prepared on the basis of the marks obtained in the NEET and the admission to Post Graduate Courses in the concerned State shall be as per the merit list only. Thus, it is a provision mandating admission of candidates strictly as per the merit list of eligible candidates for the respective medical courses in the State. This provision, however, contains a proviso. It predicates that in determining the merit of candidates who are in-service of Government or a public Authority, weightage in the marks may be given by the Government/Competent Authority as an incentive at the rate of 10% of the marks obtained for each year of service in specified remote or difficult areas of the State upto the maximum of 30% of the marks obtained in NEET. This provision even if read liberally does not provide for reservation for in-service candidates, but only of giving a weightage in the form of incentive marks as specified to the class of in- service candidates (who have served in notified remote and difficult areas in the State).

22. From the plain language of this proviso, it is amply clear that it does not envisage reservation for in-service candidates in respect of Post Graduate "Degree" Courses with which we are presently concerned. This proviso postulates giving weightage of marks to "specified in-service candidates" who have worked in notified remote and/or difficult areas in the State - both for Post Graduate "Degree" Courses as also for Post Graduate "Diploma" Courses. Further, the weightage of marks so allotted is required to be reckoned while preparing the

merit list of candidates.

23. Thus understood, the Central Enactment and the Regulations framed thereunder do not provide for reservation for in-service candidates in Post Graduate "Degree" Courses. As there is no express provision prohibiting reservation to in-service candidates in respect of admission to Post Graduate "Degree" Courses, it was contended that providing for such reservation by the State Government is not impermissible in law. Further, there are precedents of this Court to suggest that such arrangement is permissible as a separate channel of admission for in-service candidates. This argument does not commend to us. In the first place, the decisions pressed into service have considered the provisions regarding admission process governed by the Regulations in force at the relevant time. The admission process in the present case is governed by the Regulations which have come into force from Academic Year 2013-14. This Regulation is a self-contained Code. There is nothing in this Regulation to even remotely indicate that a separate channel for admission to in-service candidates must be provided, at least in respect of Post Graduate "Degree" Courses. In contradistinction, however, 50% seats are earmarked for the Post Graduate "Diploma" Courses for in-service candidates, as is discernible from Clause (VII). If the Regulation intended a similar separate channel for in-service candidates even in respect of Post Graduate "Degree" Courses, that position would have been made clear in Regulation 9 itself. In absence thereof, it must be presumed that a separate channel for in-service candidates is not permissible for admission to Post Graduate "Degree" Courses. Thus, the State Government, in law, had no authority to issue a Government Order such as dated 28th February 2014, to provide to the contrary. Hence, the High Court was fully justified in setting aside the said Government Order being contrary to the mandate of Regulation 9 of the Regulations of 2000, as applicable from Academic Year 2013-14.

24. In the case of *AIIMS Students Union v. AIIMS & Ors.*, 2002 (1) SCC 428, this Court was called upon to examine the question whether seats earmarked for institutional candidates do or do not result in reservation in the sense in which it is understood in the Constitution. After examining earlier decisions on the point, this Court in paragraph 59, noticed the distinction between undergraduate level education which is a primary or basic level of education in medical sciences. The Court held that institutional reservation is not supported by the Constitution or constitutional principles. However, a certain degree of preference for students of the same institution is permissible without making an excessive or substantial departure from the rule of merit and equality. Further, it has to be kept within the limits, minimum standards and merit cannot be diluted as to become practically non-existent. In the present case, we have held that providing 30% reservation to in-service candidates in Post Graduate "Degree" Courses is not permissible. It does not however, follow that giving weightage or incentive marks to in-service candidates for Post Graduate "Degree" Courses entails an excessive or substantial departure from the rule of merit and equality. For, Regulation 9 recognizes the principle of giving weightage to in-service candidates while

determining their merit. In that sense, incentive marks given to in-service candidates is in recognition of their service reckoned in remote and difficult areas of the State, which marks are to be added to the marks obtained by them in the NEET. Weightage or incentive marks specified in Regulation 9 are thus linked to the marks obtained by the in-service candidate in the NEET and reckon the commensurate experience and services rendered by them in notified remote/difficult areas of the State. That is a legitimate and rational basis to encourage the Medical Graduates/Doctors to offer their services and expertise in remote or difficult areas of the State for some time. Indisputably, there is a wide gap between the demand for basic health care and commensurate medical facilities, because of the inertia amongst the young doctors to go to such areas. Thus, giving specified incentive marks (to eligible in-service candidates) is permissible differentiation whilst determining their merit. It is an objective method of determining their merit.

25. Coming to the next decision pressed into service in the case of *State of M.P. & Ors. v. Gopal D. Tirthani & Ors.*, 2003 (7) SCC 83, it was a case of conducting separate entrance test for in-service candidates. That was frowned upon by this Court. The Court, however, suggested modality of preparing two separate merit list for the two categories and merit inter se of the successful candidates to be assessed separately in the two respective categories. The Court had examined the question as to whether weightage can be given to doctors for having rendered specified number of years of service in rural/tribal areas to determine the inter se merit. The Court analyzed four earlier decisions of this Court; to wit, *Dinesh Kumar (Dr.) (II) v. Motilal Nehru Medical College*, (1986) 3 SCC 727, *Snehelata Patnaik (Dr.) v. State of Orissa*, (1992) 2 SCC 267, *Narayan Sharma (Dr.) v. Pankaj Sharma Kr. Lenkar*, (2000) 1 SCC 44 and *State of U.P. v. Pradip Tandon*, (1975) 1 SCR 267. The Court in paragraph 33 observed thus:

".....The case at hand presents an entirely different scenario. Firstly, it is a case of post-graduation within the State and not an all- India quota. Secondly, it is not a case of reservation, but one of only assigning weightage for service rendered in rural/tribal areas. Thirdly, on the view of the law we have taken hereinabove, the assigning of weightage for service rendered in rural/tribal areas does not at all affect in any manner the candidates in open category. The weightage would have the effect of altering the order of merit only as amongst the candidates entering through the exclusive channel of admissions meant for in-service candidates within the overall service quota. The statistics set out in the earlier part of the judgment provide ample justification for such weightage being assigned. We find merit and much substance in the submission of the learned Advocate-General for the State of Madhya Pradesh that Assistant Surgeons (i.e. medical graduates entering the State services) are not temperamentally inclined to go to and live in villages so as to make available their services to the rural population: they have a temptation for staying in cities on account of better conditions, better facilities and better quality of life available not only to them but also to their family members as also better educational facilities in elite

schools which are to be found only in cities. In-service doctors being told in advance and knowing that by rendering service in rural/tribal areas they can capture better prospects of earning higher professional qualifications, and consequently eligibility for promotion, acts as a motivating factor and provides incentive to young in-service doctors to opt for service in rural/tribal areas. In the set-up of health services in the State of Madhya Pradesh and the geographical distribution of population, no fault can be found with the principle of assigning weightage to be service rendered in rural/tribal areas while finalizing the merit list of successful in-service candidates for admission to PG courses of studies. Had it been a reservation considerations would have differed. There is no specific challenge to the quantum of weightage and in the absence of any material being available on record we cannot find fault with the rule of weightage as framed. We hasten to add that while recasting and reframing the rules, the State Government shall take care to see that the weightage assigned is reasonable and is worked out on a rational basis." (emphasis supplied)

26. However, in the present case, the Medical Council of India itself has framed a Regulation predicated one merit list by adding the weightage of marks assigned to in-service candidates for determining their merit in the NEET.

27. The imperative of giving some incentive marks to doctors working in the State and more particularly serving in notified remote or difficult areas over a period of time need not be underscored. For, the concentration of doctors is in urban areas and the rural areas are neglected. Large number of posts in Public Health Care Units in the State are lying vacant and unfilled in spite of sincere effort of the State Government. This problem is faced by all States across India. This Court in *Dr.Snehelata's case* (supra) had left it to the Authorities to evolve norms regarding giving incentive marks to the in-service candidates. The Medical Council of India is an expert body. Its assessment about the method of determining merit of the competing candidates must be accepted as final (*State of Kerala v. T.P.Roshana*, (1979) 1 SCC 572 (para 16); also see *MCI v. State Of Karnataka*, (1998) 6 SCC 131). After due deliberations and keeping in mind the past experience, Medical Council of India has framed Regulations inter alia providing for giving incentive marks to in-service candidates who have worked in notified remote and difficult areas in the State to determine their merit. The Regulation, as has been brought into force, after successive amendments, is an attempt to undo the mischief.

28. As aforesaid, the real effect of Regulation 9 is to assign specified marks commensurate with the length of service rendered by the candidate in notified remote and difficult areas in the State linked to the marks obtained in NEET. That is a procedure prescribed in the Regulation for determining merit of the candidates for admission to the Post Graduate "Degree" Courses for a single State. This serves a dual purpose. Firstly, the fresh qualified Doctors will be attracted to opt for rural service, as later they would stand a good chance to get admission to Post Graduate "Degree" Courses of their choice. Secondly, the Rural

Health Care Units run by the Public Authority would be benefitted by Doctors willing to work in notified rural or difficult areas in the State. In our view, a Regulation such as this subserves larger public interest. Our view is reinforced from the dictum in Dr. Snehelata Patnaik's case (supra). The three Judges' Bench by a speaking order opined that giving incentive marks to in-service candidates is inexorable. It is apposite to refer to the dictum in the said decision which reads thus:

"We have already dismissed the writ petition and special leave petitions by our order dated December 5, 1991. We would however, like to make a suggestion to the authorities for their consideration that some preference might be given to in-service candidates who have done five years of rural service. In the first place, it is possible that the facilities for keeping up with the latest medical literature might not be available to such in- service candidates and the nature of their work makes it difficult for them to acquire knowledge about very recent medical research which the candidates who have come after freshly passing their graduation examination might have. Moreover, it might act as an incentive to doctors who had done their graduation to do rural service for some time. Keeping in mind the fact that the rural areas had suffered grievously for non-availability of qualified doctors giving such incentive would be quite in order. Learned counsel for the respondents has, however, drawn our attention to the decision of a Division Bench of two learned Judges of this Court in Dr. Dinesh Kumar v. Motilal Nehru Medical College, Allahabad. It has been observed there that merely by offering a weightage of 15 per cent to a doctor for three years' rural service would not bring about a migration of doctors from the urban to rural areas. They observed that if you want to produce doctors who are MD or MS, particularly surgeons, who are going to operate upon human beings, it is of utmost importance that the selection should be based on merit. Learned Judges have gone on to observe that no weightage should be given to a candidate for rural service rendered by him so far as admissions to post-graduate courses are concerned (see para 12 at page 741).

In our opinion, this observation certainly does not constitute the ratio of the decision. The decision is in no way dependent upon these observations. Moreover, those observations are in connection with all India Selection and do not have equal force when applied to selection from a single State. These observations, however, suggest that the weightage to be given must be the bare minimum required to meet the situation. In these circumstances, we are of the view that the authorities might well consider giving weightage up to a maximum of 5 per cent of marks in favour of in-service candidates who have done rural service for five years or more. The actual percentage would certainly have to be left to the authorities. We also clarify that these suggestions do not in any way confer any legal right on in-service students who have done rural service nor do the suggestions have any application to the selection of the students up to the end of this year."

(emphasis supplied)

29. The crucial question to be examined in this case is: whether the norm specified in Regulation 9 regarding incentive marks can be termed as excessive and unreasonable? Regulation 9, as applicable, does not permit preparation of two merit lists, as predicated in the case of Tirthani (supra). Regulation 9 is a complete Code. It prescribes the basis for determining the eligibilities of the candidates including the method to be adopted for determining the inter se merit, on the basis of one merit list of candidates appearing in the same NEET including by giving commensurate weightage of marks to the in-service candidates.

30. As aforesaid, Regulations have been framed by an Expert Body based on past experience and including the necessity to reckon the services and experience gained by the in-service candidates in notified remote and difficult areas in the State. The proviso prescribes the measure for giving incentive marks to in-service candidates who have worked in notified remote and difficult areas in the State. That can be termed as a qualitative factor for determining their merit. Even the quantitative factor to reckon merit of the eligible in-service candidates is spelt out in the proviso. It envisages giving of incentive marks at the rate of 10% of the marks obtained for each year of service in remote and/or difficult areas up to 30% of the marks obtained in NEET. It is an objective method of linking the incentive marks to the marks obtained in NEET by the candidate. To illustrate, if an in-service candidate who has worked in a notified remote and/or difficult area in the State for at least one year and has obtained 150 marks out of 200 marks in NEET, he or she would get 15 additional marks; and if the candidate has worked for two years, the candidate would get another 15 marks. Similarly if the candidate has worked for three years and more, the candidate would get a further 15 marks in addition to the marks secured in NEET. 15 marks out of 200 marks in that sense would work out to a weightage of 7.5% only, for having served in notified remote and/or difficult areas in the State for one year. Had it been a case of giving 10% marks enbloc of the total marks irrespective of the marks obtained by the eligible in-service candidates in NEET, it would have been a different matter. Accordingly, some weightage marks given to eligible in-service candidate linked to performance in NEET and also the length of service in remote and/or difficult areas in the State by no standard can be said to be excessive, unreasonable or irrational. This provision has been brought into force in larger public interest and not merely to provide institutional preference or for that matter to create separate channel for the in-service candidate, muchless reservation. It is unfathomable as to how such a provision can be said to be unreasonable or irrational.

31. Here, it may be necessary to deal with the decision of a two Judges' Bench of this Court in Satyabrata Sahoo and others (supra). The Court was called upon to consider the validity of Clause 11.2 of the "Prospectus" for selection of candidates for Post Graduate (Medical) Courses in the Government Medical

Colleges of Odisha for the Academic Year 2012. The challenge to the said clause in the prospectus was by direct candidates, inter-alia, on the ground that it makes in road into the prospects of direct candidates category. It was contended that giving weightage of marks to in-service candidates would be diluting merit to the extent of additional marks. A total of 173 seats available for the category MD/MS course was split into 87 seats for in-service category and 86 seats to direct category. The argument was that if all the candidates - be it direct or in-service candidates - were required to appear in a common entrance test examination and the admission criteria is only comparative merit, the arrangement specified in the prospectus was impermissible. The Court considered Clause 11.2 of the prospectus issued by the PG(Medical) Selection Committee, 2012 and took the view that giving incentive marks to in-service candidates results in encroachment or an in road or appropriation of seats earmarked for open market candidates (direct admission category) who compete strictly on the basis of merit. The Court held that the arrangement provided in Clause 11.2 of the Prospectus was violative of the merit criteria specified in Clause 9 (1)(a) of the MCI Regulation. It held that seats for direct category or open category is a homogeneous class which consists of all categories of candidates who are fresh from college, who have rendered service after MBBS in Government or private hospitals in remote or difficult areas like hilly, tribal and rural areas and so on. All of them have to compete on merit in the direct candidate category, subject to rules of reservation and eligibility. The Court further noticed that except the State of Odisha and to some extent the State of Tamil Nadu none of the other States in India have incorporated such a clause in their prospectus for the Post Graduate Medical Courses. The Court also quashed the proviso to Clause 9(2)(d) of the MCI Regulations as applicable in that case, to the extent indicated above. From the issues formulated in paragraph 15 of this reported decision, it is evident that the challenge of direct candidates was about allowing in-service candidates to compete for seats earmarked for direct category by giving weightage of marks. In the present case, however, there is no separate channel for two categories in respect of Post Graduate "Degree" Courses, as was the dispensation in that case. On the other hand, only one merit list is prepared and all available seats in terms of Regulation 9 are thrown open to both categories of candidates. The proviso to Clause IV of Regulation 9 in force (corresponding to third proviso to Regulation 9(2) as extracted in the interim order dated 12.05.2016), as interpreted by us, is in the nature of giving additional marks as incentive to in-service candidates, commensurate with length of service in notified remote/difficult areas in the State and also dependent on marks obtained by them in NEET. In our opinion, neither the decision in Tirthani nor the case of Satyabrata Sahoo will have any application to the admissions to Post Graduate Degree Courses in the present case, to be taken forward on the basis of Regulation 9, as in force.

32. Reverting to the recent decision of this Court in Sudhir N. and Ors. (supra), the two Judges' Bench was dealing with the question of selection of in-service

medical officers for post-graduate medical education under Section 5(4) of the Kerala Medical Officers Admission to Post-graduate Courses under the Service Quota Act, 2008. The said provision has been extracted in paragraph 5 of the reported decision. It deals with the finalization of select list by the Post-graduate Course Select Committee strictly on the basis of seniority in-service of the Medical Officers and following such other criteria as may be prescribed. Dealing with that challenge the court noticed that Regulation 9 is a complete Code by itself and then proceeded to answer the question whether the State was competent to enact law on the matter of admission on the basis of inter-se seniority of candidates. In that context the Court noted that the basis of selection must be strictly as per norms specified in the MCI Regulations. Any law with regard to that will be beyond legislative competence of the State legislature. The Court noted that weightage for in-service candidates is made permissible by Regulation 9. That is the limited departure from the merit list criteria permitted by the Regulation itself. Neither in the case of Sudhir N. (supra) nor in the case of Tirthani (supra) the Court had the occasion to deal with the question regarding challenge to the proviso to Clause IV of Regulation 9.

33. The matter does not end here. In the present proceedings, however, large number of candidates who earlier found place in the merit list have been affected by the fresh merit list prepared in terms of Order of this Court dated 12.05.2016. As a result of giving effect to Regulation 9, the fresh list has thrown up a different argument for consideration. The in- service candidates who had secured relatively less marks in NEET have been placed high up in the order of merit consequent to addition of incentive marks @ 10% of the marks for each year of service in the remote and/or difficult areas upto the maximum of 30% of marks obtained in NEET (CET). We find merit in the submission of Mr. Dwivedi, learned senior counsel, that the rights of such candidates to be considered for admission, is not affected. What is affected is the opportunity to get admission in a college or subject of their choice. There can, however, be no right to get the subject or college of one's choice. The provision in the shape of Regulation 9 is to determine the merit of the competing candidates. Provision for giving incentive marks to in-service candidates is permissible in law; and thus the proviso to Clause IV in Regulation 9 must be upheld in larger public interest. That provision has been introduced, inter-alia, also to address the deficiency and lack of response of graduate doctors to serve in remote or difficult areas in the State. The scarcity of doctors in villages has been felt for quite some time for which the provision in the form of proviso to Clause IV of Regulation 9 was necessitated. This concern was even echoed in the Rajya Sabha. Following questions were raised which were duly answered by the Minister for Health and Family Welfare on 23.12.2014. The same read thus :-

"Questions

"

The measures being taken by Government to make up for the extreme shortage

of qualified and skilled doctors for healthcare in rural areas;

(b) Whether government is planning to introduce measures to measures to introduce and enforce compulsory rural postings for doctors, before or after they have obtained an MBBS degree;

(c) If so, the details thereof; and

(d) If not the reasons therefor?

Answers

.....

(a) At present, in order to encourage the doctors working in remote and difficult areas, the Medical Council of India with the previous approval of Central Government, has amended the Post Graduate Medical Education Regulations, 2000 to provide :-

I. 50% reservation in Post Graduate diploma Courses for Medical Officers in the Government service, who have served for at least three years in remote and difficult areas; and

II. Incentive at the rate of 10% the marks obtained for each year in-service in remote or difficult area upto the maximum of 30% of the marks obtained in the entrance test for admission in Post Graduate Medical Courses.

(emphasis supplied)

(b)-(d): The proposal of Medical Council of India (MCI) to amend the Post Graduate Medical Education Regulations, which makes one year rural posting at the Public Health Centre (PHC) mandatory for a MBBS student to apply for admission in a PG course is not yet notified."

(emphasis supplied)

34. It was then contended that hitherto reservation for in-service candidates was applicable only in respect of Government colleges but on account of interim directions given by this Court, dispensation of giving weightage or incentive marks as per Regulation 9 to the in-service candidates has been made applicable across the board even to non-Government medical colleges where the seats allocated to the State Government are to be filled up. In our opinion, Regulation 9 per se makes no distinction between Government and non-Government colleges for allocation of weightage of marks to in-service candidates. Instead, it mandates preparation of one merit list for the State on the basis of results in NEET. Further, regarding in-service candidates, all it provides is that the candidate must have been in-service of a Government/public Authority and served in remote and difficult areas notified by the State Government and the Competent Authority from time to time. The Authorities are, therefore, obliged to continue with the admission process strictly in conformity with Regulation 9. The fact that most of the direct candidates who have secured higher marks in the

NEET than the in-service candidates, may not be in a position to get a subject or college of their choice, and are likely to secure a subject or college not acceptable to them, cannot be the basis to question the validity of proviso to Clause IV of Regulation 9. The purpose behind proviso is to encourage graduates to join as medical officers and serve in notified remote and difficult areas of the State. The fact that for quite some time no such appointments have been made by the State Government also cannot be a basis to disregard the mandate of proviso to Clause IV - of giving weightage of marks to the in-service candidates who have served for a specified period in notified remote and difficult areas of the State.

35. Presumably, realizing this position writ petition has been filed to challenge the validity of proviso to Clause IV of Regulation 9. According to the writ petitioners, the prospectus provided for 30% reservation in favour of in-service candidates for admission to post- graduate medical courses. The application of Regulation 9 results in an absurd situation because of giving weightage to specified in-service Medical Officers in the State. There is neither any committee set up nor guidelines made as to which area can be notified as remote and difficult area. The power vested in the State is an un-canalized power and disregards the settled position that for consideration after the graduate level, merit should be the sole criteria. Further, there is no nexus with the object sought to be achieved for providing weightage to the extent of 10% of the marks obtained by the candidate in the common competitive test and to the extent of maximum of 30% marks so obtained. Dealing with this contention, we find that the setting in which the proviso to Clause IV has been inserted is of some relevance. The State Governments across the country are not in a position to provide health care facilities in remote and difficult areas in the State for want of Doctors.[11*] In fact there is a proposal to make one year service for MBBS students to apply for admission to Post Graduate Courses, in remote and difficult areas as compulsory. That is kept on hold, as was stated before the Rajya Sabha. The provision in the form of granting weightage of marks, therefore, was to give incentive to the in-service candidates and to attract more graduates to join as Medical Officers in the State Health Care Sector. The provision was first inserted in 2012. To determine the academic merit of candidates, merely securing high marks in the NEET is not enough. The academic merit of the candidate must also reckon the services rendered for the common or public good. Having served in rural and difficult areas of the State for one year or above, the incumbent having sacrificed his career by rendering services for providing health care facilities in rural areas, deserve incentive marks to be reckoned for determining merit. Notably, the State Government is posited with the discretion to notify areas in the given State to be remote, tribal or difficult areas. That declaration is made on the basis of decision taken at the highest level; and is applicable for all the beneficial schemes of the State for such areas and not limited to the matter of admissions to Post Graduate Medical Courses. Not even one instance has been brought to our notice to show that some areas which are not remote or difficult

areas has been so notified. Suffice it to observe that the mere hypothesis that the State Government may take an improper decision whilst notifying the area as remote and difficult, cannot be the basis to hold that Regulation 9 and in particular proviso to Clause IV is unreasonable. Considering the above, the inescapable conclusion is that the procedure evolved in Regulation 9 in general and the proviso to Clause (IV) in particular is just, proper and reasonable and also fulfill the test of Article 14 of the Constitution, being in larger public interest.

[11.* Rural Health Statistics for 2014-15 published by the Government of India, Ministry of Health & Family Welfare depicting the shortage of doctors in rural areas particularly State of Uttar Pradesh, which reads thus:

Qualification

MBBS Doctors at Primary Health Centres("PHC?s")

Required

3497

Sanctioned

4509

In position

2209

Vacant

2300

Shortfall

1288

Specialists At Community Health Centres ("CHC?s")

3092

2099

484

1615

2608]

36. The last question that needs to be answered is whether the arrangement directed in terms of order dated 12.05.2016 by this Court should have prospective effect or also apply to admissions for academic year 2015-16. Ordinarily, as the subject matter of challenge before the High Court was pertaining to Academic Year 2015-16, the dispensation directed in terms of Order dated 12th May 2016 should apply thereto. However, considering the fact that

the said admission process has been completed and all concerned have acted upon on that basis and that the candidates admitted to the respective Post Graduate Degree Courses in the concerned colleges have also commenced their studies, it may not be appropriate to unsettle that position given the fact that neither the direct candidates nor the eligible in-service candidates who had worked in remote and/or difficult areas in the State approached the Court for such relief. It is only the in-service candidates who had not worked in remote and/or difficult areas in the State approached the Court for equating them with their counterparts who had worked in remote and/or difficult areas in the matter of reservation of seats for in-service candidates. If at this distance of time, the settled admissions were to be disturbed by quashing the entire admission process for Academic Year 2015-16, it would inevitably result in all the seats in the State almost over 500 in number remaining unfilled for one academic year; and that the candidates to be admitted on the basis of fresh list for Academic Year 2015-16 will have to take fresh admission coinciding with the admissions for Academic Year 2016-17. That would necessitate doubling the strength of seats in the respective colleges for the current Academic Year to accommodate all those students, which may not be feasible and is avoidable. In the peculiar facts on hand, we may instead mould the relief in the appeals before us by directing all concerned to follow the admission process for Academic Year 2016-17 and onwards strictly in conformity with the Regulations in force, governing the procedure for selection of candidates for Post Graduate Medical Degree Courses and including determination of relative merit of the candidates who had appeared in NEET by giving weightage of incentive marks to eligible in- service candidates.

37. We must hold that the High Court was justified in quashing the stated Government Order providing for reservation to in- service candidates, being violative of Regulation 9 as in force. However, we modify the operative direction given by the High Court and instead direct that admission process for Academic Year 2016-17 onwards to the Post Graduate Degree Course in the State should proceed as per Regulation 9 including by giving incentive marks to eligible in-service candidates in terms of proviso to Clause IV of Regulation 9 (equivalent to third proviso to Regulation 9(2) of the Old Regulations reproduced in the interim order dated 12th May 2016). We, accordingly, mould the operative order of the High Court to bring it in conformity with the direction contained in the interim order dated 12th May, 2016 but to be made applicable to Academic Year 2016-17 onwards on the basis of Regulation 9 as in force. We are conscious of the fact that this arrangement is likely to affect some of the direct candidates, if not a large number of candidates whose applications were already processed by the competent Authority for concerned Post Graduate Degree Course for Academic Year 2016-17. However, their admissions cannot be validated in breach of or disregarding the mandate of Regulation 9, as in force. The appeals against the judgment of the High Court of Judicature at Allahabad dated 7th April, 2016 are disposed of accordingly.

38. Reverting to the second set of appeals arising from the judgment of the High

Court of Judicature at Allahabad, Lucknow Bench dated 27th May 2016 in Writ Petition No.12004/2016 we have no hesitation in upholding the view taken by the High Court that the direction to prepare fresh merit list vide interim order dated 12th May 2016 was in respect of only such eligible in-service candidates as had submitted applications for admission to Post Graduate Degree Courses for the relevant academic year within stipulated time. The direction in the interim order dated 12th May 2016 was not to consider all similarly placed persons (eligible in-service candidates) irrespective of whether they had made applications for admission to Post Graduate Degree Courses or otherwise. Hence, this appeal must fail.

39. In so far as Writ Petition No.372/2016 even that should fail as we have held Regulation 9 to be a complete Code and a provision for determining inter-se merit of the candidates including by giving weightage of marks as incentive to eligible in-service candidates who have worked in notified remote or difficult areas in the State, which is just, reasonable and necessary in larger public interest.

40. We make it clear that we have not examined the correctness of the fresh merit list prepared by the concerned Authority in terms of interim order dated 12.05.2016. If any candidate is aggrieved on account of wrong placement in the fresh merit list or being in violation of this decision, will be free to question the same by way of appropriate proceedings. That challenge can be considered on its own merit.

41. Accordingly, the appeals as well as Writ Petition are disposed of in the above terms and for the same reasons the accompanying applications are also disposed of. No order as to costs.