
(2015) 06 SHI CK 0024

In the High Court Of Himachal Pradesh

Case No : CWP Nos. 1776, 1923 and 2101 of 2015

Vivek Kumar Garg and Others

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 18-06-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 15(4), 16, 16(4)

Citation : (2015) 06 SHI CK 0024

Hon'ble Judges : Rajiv Sharma, J;Sureshwar Thakur, J

Bench : Division Bench

Advocate : R.K. Gautam, Senior Advocate and Gaurav Gautam, for the Appellant; P.M. Negi, Dy. A.G. and Ramesh Thakur, Asstt. A.G., Advocates for the Respondent

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—Since common questions of law and facts are involved in these petitions, the same were taken up together for hearing and are being disposed of by a common judgment. However, in order to maintain clarity, the facts of CWP No. 1776 of 2015 have been taken into consideration.

CWP No. 1776 of 2015

2. The All India Post Graduate Medical Entrance Examination (AIPGMEE) for session 2015-18 was conducted from 1.12.2014 to 6.12.2014.

The result of the All India Post Graduate Medical Entrance Examination was declared on 15.1.2015. The Department of Medical Education and Research, Himachal Pradesh, in accordance with the result, issued Prospectus for Medical Post Graduate Courses (MD/MS) in IGMC, Shimla and Dr. RPGMC, Kangra at Tanda. The last date for submission of application form was 20.3.2015. The date of first round of counselling at Auditorium Complex, IGMC, Shimla was at 11:00 AM sharp on 27.3.2015. The last date of joining the allotted course/College was 6.4.2015. The date of 2nd round of counselling at Auditorium Complex, IGMC,

Shimla was at 11:00 AM sharp on 27.4.2015. The last date of joining for candidates admitted in 2nd round of counselling was 8.5.2015. The 3rd round of counselling at Auditorium Complex, IGMCH, Shimla was at 2:30 PM on 22.6.2015. The last date of joining for candidates admitted in 3rd round of counselling was 22.6.2015. The commencement of academic session was w.e.f. 30.6.2015. The last date up to which students can be admitted against vacancies arising due to any reason from the waiting list was notified as 10.7.2015.

3. The eligibility and distribution of seats have been provided under para 3 of the Prospectus. Para 3.1 (A), deals with HPHS (In-service GDO) Group, which reads as under:

"ELIGIBILITY and DISTRIBUTION OF SEATS

3.1 (A) HPHS(In-service GDO) Group.

(i) 66.6% of the State Quota Seats will be filled up by in-service Medical Officers. The in-service group will consist of two sub-groups i.e. one sub-group consisting of regularly appointed Medical officer and second sub-group consisting of Contractual and Rogi Kalyan Samiti appointees. The distribution of seats between regular and those appointed on contract basis including Rogi Kalyan Samiti appointees will be made in the ratio proportionate to their total number as on 31.10.2014. For the academic session 2015-18, the distribution of seats between above two sub-groups will be in the ratio of 2:1."

4. Para 3.5 (iii) of the Prospectus reads as under:

"(iii) the allotment of seats/specialities between the Regular GDO"s and the contractual GDO"s (including appointees of RKS) on the basis of the respective in position strength ratio of both the categories as on 31.10.2014 i.e. (2:1) will be made in the following manner:

1. GDO (Regular)
2. GDO (Regular)
3. GDO (Contract)

After 3rd point, it will be repeated again."

5. Para 3.5 (iii) has been substituted by notice dated 16.3.2015, which reads as under:

"(iii) 4 point roster will be applied for allotment of seats/specialities between the GDO(Regular) and the GDO(Contract/RKS) on the basis of the respective in-position strength ratio of both the categories as on 31.10.2014 (i.e. 3:1). The 4 point roster will be applied in the following manner as per previous practice:--

1. GDO(Regular)
2. GDO(Regular)

3. GDO(Contract)

4. GDO(Regular)

After 4th point, it will be repeated again."

6. The 4 point roster was also published in the daily edition of The Tribune, dated 17.3.2015 vide Annexure P-8. The petitioners have challenged the allocation of seats on the basis of roster points based on sub-groups in the in-service HPHS (In-service GDO). In CWP No. 1923 of 2015, the petitioners have also sought quashing of communication dated 16.3.2015. According to them, the counselling be held as per the contents of para 3.5(iii), as originally contained in the prospectus.

CWP No. 2101 of 2015.

7. The All India Post Graduate Dental Entrance Examination (AIPGDEE) was conducted on 24.1.2015. The result was declared on 5.2.2015. The State issued Prospectus. The last date of receipt of application(s) was 20.3.2015. The first date of counselling was 30.3.2015. The last date for joining the allotted course/ College was 7.4.2015. The date of 2nd round of counselling at HP Govt. Dental College and Hospital, Shimla at 11:00 AM was 29.4.2015. The last date for joining the allotted course/College was 10.5.2015. The 3rd round of counselling at H.P. Govt. Dental College and Hospital, Shimla at 11:00 AM was on 20.6.2015 and the last date for joining the allotted course/College was 20.6.2015. Para 3 of the Prospectus lays down the eligibility and distribution of seats. Para 3.1(i) reads as under:

"ELIGIBILITY and DISTRIBUTION OF SEATS

3.1 (A) In-service GDO (M.O Dental) Group Seats.

(i) 66.6% of the State Quota Seats will be filled up by in-service (M.O. Dental) Group Candidates. The in-service (M.O. Dental) Group will consist of two sub-groups i.e. one sub-group consisting of regular In-service (M.O. Dental) and second subgroup consisting of Contractual and Rogi Kalyan Samiti appointees. The distribution of seats between regular M.O. Dental and those appointed on contractual basis including Rogi Kalyan Samiti appointees will be made in the ratio proportionate to their total number as on 31.10.2014. For the academic session 2015-18, the distribution of seats between above two sub-groups will be in the ratio of 2:1."

8. The allotment of seats between the regular in-service GDO(MO Dental) and the contractual in-service GDO(MO Dental) on the basis of the respective in-position strength ratio has been laid down in para 3.6(b)(iii), which reads as under:

"3.6(b)(iii). The allotment of seats between the regular in-service GDO(MO Dental) and the contractual in-service GDO(MO Dental) on the basis of the respective in-position strength ratio of both the categories as on 31.10.2014 in

the following manner:--

1. GDO (Regular)
2. GDO (Regular)
3. GDO (Contract)

After 3rd point, it will be repeated again."

9. The respondents have filed the replies. They have justified the constitution of different sub-groups and framing of the roster points.

10. Mr. R.K. Gautam, Sr. Advocate, with Mr. Gaurav Gautam, Advocate and Mr. Ajay Mohan Goel, Advocate, for the respective petitioners, have strenuously argued that the allocation/distribution of seats as per the sub-groups created under the Prospectus for HPHS (In-service GDO) and In-service GDO(MO Dental), is impermissible and unconstitutional. They further contended that the rules of the game cannot be changed mid-way by prescribing the new roster after the issuance of Prospectus. They lastly contended that the merit should be the sole criterion for MD/MS and MDS Courses. On the other hand, Mr. P.M. Negi, learned Dy. Advocate General has vehemently argued that constituting of sub-groups was in accordance with law and he has also justified the preparation of roster.

11. We have heard learned Advocates and gone through the pleadings carefully.

12. The petitioners have participated in the selection process seeking admission to postgraduate degree (MD/MS/MDS) courses for the academic session 2015-18, as per the prospectus issued by the State Government. According to para 3.1 of the Prospectus issued for degree/MD/MS/MDS, courses, 66.6% of the State quota seats are to be filled up by in-service candidates. The in-service group comprises of two further sub-groups; one sub-group consisting of regularly appointed Medical Officers and the second comprising of Medical Officers appointed on contractual basis, including Rogi Kalyal Samiti appointees. The distribution of seats between the regular and those appointed on contractual basis, including Rogi Kalyal Samiti appointees, is to be made in the ratio proportionate to the total number as on 31.10.2014 for the academic session 2015-18. Initially, as per para 3.5 (iii), the ratio between the regular GDO's and the contractual GDOs, including appointees of RKS was as under:

- "1. GDO (Regular)
2. GDO (Regular)
 3. GDO (Contract)"

13. After the 3rd point, the process was to be repeated again. The respondent-State issued communication on 16.3.2015, whereby 4 point roster was to be applied for allotment of seats between GDO regular and GDO contract (including the RKS), on the basis of the respective in-position strength ratio of both the

categories as on 31.10.2014. Initially as per para 3.5 (iii), the first two seats were to be allotted to GDO (Regular) and thereafter 3rd to GDO (Contract), but after the notification of 16.3.2015, the first two seats would go to GDO(Regular) and 3rd to GDO (Contract) and thereafter 4th to GDO (Regular).

14. It is settled law that for filling up the MD/MS/MDS seats, the criteria should be merit alone. The respondent-State has created two groups within the HPHS (In-service GDO) group, comprising of regularly appointed Medical Officers and contractual/Rogi Kalyan Samiti appointees. The respondent-State has also created sub-groups in the In-service GDO (MO Dental) Group seats, comprising of two sub-groups; one sub-group comprising of regularly appointed Medical Officers and other comprising of contractual/Rogi Kalyan Samiti appointees. All the Medical officers appointed either on regular basis, contractual or by RKS, discharge the same duties. Once they have been permitted to sit in the examination, they would lose birthmark of their initial recruitment either as Medical Officers appointed on regular basis or contractual or appointed by the RKS. They have to be treated as one class/group. The respondent-State has created the classification within the classification by dividing the HPHS in-service GDOs appointed either on regular basis or on contractual basis or appointed by RKS for the purpose of distribution/allotment of seats. There is no intelligible differentia so as to distinguish one group of Medical officers from the other group. They are all Medical officers and possess essential qualifications to sit in the Post Graduate Courses on the basis of All India Test. The respondent-State has further perpetuated the illegality by introducing new roster as per Annexure P-8 on 16.3.2015, whereby the candidates belonging to GDO (Regular), irrespective of their merit would get the first and second seat. The 3rd seat would go to contractual and the 4th again to regularly appointed GDO. The best available method as per the settled law would have been to fill up the MD/MS/MDS courses, strictly as per the marks obtained by in-service candidates, irrespective of their category.

15. The matter can be considered from yet another angle. The candidate who would be at Sr. No. 3 of the roster may have also secured less marks than the candidate appointed on regular basis but merely on the basis of the point allocated to him, he would be permitted to take MD/MS/MDS, seat.

16. The result of the All India Post Graduate Dental Entrance Examination was declared on 5.2.2015. The result of All India Post Graduate Medical Entrance Examination was declared on 15.1.2015. Thereafter, the Prospectus was issued. The last date of receipt of application form for MD/MS course was 20.3.2015. The same date was prescribed for All India Post Graduate Dental Entrance Examination. The counselings have taken place. Once the prospectus has been issued and the same has been duly notified, it was not open to the respondents to change the terms and conditions contained in the Prospectus mid-way after the issuance of Prospectus. The candidates have taken the examination as per the terms and conditions issued initially at the time of issuance of prospectus.

The respondents are also estopped from changing the conditions.

17. The issue raised in these petitions had also cropped up in CWP No. 2390 of 2014. It was decided on 26.5.2014. The operative portion of the judgment reads as under:

"12. Thus, it is more than clear from the above that allocation of quota to a particular group or sub group is not akin to reservation envisaged under Articles 15(4) and 16(4) of the Constitution. It being so "inter se merit of the candidates in each quota shall be determined based on the merit performance of the candidates belonging to that quota" : Re State of M.P. and others v. Gopal D. Tirthani and others, supra. "There cannot be any circumstance where rule of merit can be compromised": Re Asha v. Pt. B.D. Sharma University of Health Sciences and others, supra. Above all, a more meritorious candidate ought to and must get a preferential right to choose a particular specialty.

13. The rival contention that once the petitioners have elected to participate in the process enunciated under the aforesaid prospectus, they cannot approbate and reprobate, does not hold good in view of the binding nature of the dictum of law laid down by the Hon"ble Apex Court in the judgments referred to hereinabove. It is for the same reason that lack of challenge against sub clause 3.5(i)(iii) of clause 3 of the Prospectus in the writ petition is of no consequence in the peculiar facts and circumstances of the present case.

14. In view of the above, the petition is allowed. Consequently, the counselling held by respondents No. 2 and 3 on 28.3.2014, followed by subsequent counselling, if any, for admission to post graduate MD/MS courses in Indira Gandhi Medical College and Dr. Rajindera Prasad Medical College Kangra at Tanda, vis-?-vis 66.6% quota meant for in service candidates, is quashed with a direction to respondents No. 2 and 3 to hold fresh counselling strictly in order of merit based on the State merit list, Annexure P-11. To be explicit, the candidates belonging to both the sub groups, that is, regular GDOs and contractual GDOs (including appointees of RKS) shown in the merit list shall be called for counselling one by one in order of their merit. To illustrate once candidates at Sr. Nos. 1 to 5 of list Annexure P-11 belonging to the first sub group of regular GDOs are called, the candidate at Sr. No. 6, who belongs to the other sub group of contractual GDOs (including appointees of RKS) shall be called. The process shall proceed further so on and so forth. The entire process shall be completed well within the schedule for admission fixed by the Hon"ble Supreme Court in its order dated 14.3.2014, in Writ Petition (Civil) No. 433 of 2013, Dr. Fraz Naseem and Ors. v. Union of India and Ors. and the connected matters."

18. The SLP was preferred against the judgment dated 28.5.2014, rendered in CWP No. 2390 of 2014. The appeal was allowed on 13.10.2014. The Hon"ble Supreme Court has taken into consideration that the provisions contained in the prospectus dated 20.2.2014 and Notification dated 19.5.2009 were not specifically challenged. In the instant case, the petitioners have specifically

challenged the inter se grouping in HPHS (In-service GDO) and In-service GDO(MO Dental) and the subsequent issuance of roster after the issuance of Prospectus by the respondent-State.

19. Their lordships of the Hon''ble Supreme Court in the case of A.I.I.M.S. Students Union Vs. A.I.I.M.S. and Others, AIR 2001 SC 3262 : (2001) 7 JT 12 : (2001) 5 SCALE 430 : (2002) 1 SCC 428 : (2001) 4 SCT 150 : (2001) AIRSCW 3143 : (2001) 6 Supreme 367 , have held that a candidate who gets more marks than another is entitled to preference for admission. Merit must be the test when choosing the best, according to this rule of equal chance for equal marks. This proposition has greater importance for the higher levels of education like postgraduate courses. It has been held as follows:

"44. When protective discrimination for promotion of equalisation is pleaded, the burden is on the party who seeks to justify the ex facie deviation from equality. The basic rule is equality of opportunity for every person in the country which is a constitutional guarantee. A candidate who gets more marks than another is entitled to preference for admission. Merit must be the test when choosing the best, according to this rule of equal chance for equal marks. This proposition has greater importance when we reach the higher levels and education like post-graduate courses. Reservation, as an exception, may be justified subject to discharging the burden of proving justification in favour of the class which must be educationally handicapped - the reservation geared up to getting over the handicap. The rationale of reservation in the case of medical students must be removal of regional or class inadequacy or like disadvantage. Even there the quantum of reservation should not be excessive or societally injurious. The higher the level of the speciality the lesser the role of reservation."

20. Their lordships in the case of The State of Madhya Pradesh and Others Vs. Gopal D. Tirthani and Others, AIR 2003 SC 2952 : (2003) 6 JT 204 : (2003) 5 SCALE 492 : (2003) 7 SCC 83 : (2003) 1 SCR 797 Supp : (2004) 1 SLJ 348 : (2003) AIRSCW 3636 : (2003) 5 Supreme 473 , while dealing with the issue of in-service candidates and non-service or general category candidates, have laid down the following test to adjudge reasonable classification:

"[21] To withstand the test of reasonable classification within the meaning of Art. 14 of the Constitution, it is well settled that the classification must satisfy the twin tests; (i) it must be founded on an intelligible differentia which distinguishes persons or things placed in a group from those left out or placed not in the group, and (ii) the differentia must have a rational relation with the object sought to be achieved. It is permissible to use territories or the nature of the objects or occupations or the like as the basis for classification. So long as there is a nexus between the basis of classification and the object sought to be achieved, the classification is valid. We have, in the earlier part of the judgment, noted the relevant statistics as made available to us by the learned Advocate General under instructions from Dr. Ashok Sharma, Director (Medical Services), Madhya Pradesh, present in the Court. The rural health services (if it is an

appropriate expression) need to be strengthened. 229 community health centres (CHCs) and 169 first referral units (FRUs) need to be manned by specialists and block medical officers who must be post-graduates. There is nothing wrong in the State Government setting apart a definite percentage of educational seats at post-graduation level consisting of degree and diploma courses exclusively for the in-service candidates. To the extent of the seats so set apart, there is a separate and exclusive source of entry or channel for admission. It is not reservation. In-service candidates, and the candidates not in the service of the State Government, are two classes based on an intelligible differentia. There is a laudable purpose sought to be achieved. In-service candidates, on attaining higher academic achievements, would be available to be posted in rural areas by the State Government. It is not that an in-service candidate would leave the service merely on account of having secured a post-graduate degree or diploma though secured by virtue of being in the service of the State Government. If there is any misapprehension the same is allayed by the State Government obtaining a bond from such candidates as a condition precedent to their taking admission that after completing PG Degree/Diploma Course they would serve the State Government for another five years. Additionally a Bank guarantee of rupees three lakhs is required to be submitted along with the bond. There is, thus, clearly a perceptible reasonable nexus between the classification and the object sought to be achieved."

21. Their lordships of the Hon'ble Supreme Court in the case of *Asha Vs. Pt. B.D. Sharma University of Health Sciences and Others*, AIR 2012 SC 3396 : (2012) 6 JT 283 : (2012) 6 SCALE 287 : (2012) 7 SCC 389 : (2012) AIRSCW 4073 : (2012) 4 Supreme 511 , while dealing with admission to Medical Colleges have held that criteria for selection has to be merit alone and it will be a travesty of the scheme formulated by the Supreme Court and duly notified by the States, if the Rule of Merit is defeated by inefficiency, inaccuracy or improper methods of admission. It has been held as follows:

"21. At this stage, we may refer to certain judgments of the Court where it has clearly spelt out that the criteria for selection has to be merit alone. In fact, merit, fairness and transparency are the ethos of the process for admission to such courses. It will be travesty of the scheme formulated by this Court and duly notified by the states, if the Rule of Merit is defeated by inefficiency, inaccuracy or improper methods of admission. There cannot be any circumstance where the Rule of merit can be compromised. From the facts of the present case, it is evident that merit has been a casualty. It will be useful to refer to the view consistently taken by this Court that merit alone is the criteria for such admissions and circumvention of merit is not only impermissible but is also abuse of the process of law. Ref. *Priya Gupta v. State of Chhatisgarh and Anr.* [CA @ SLP(C) No. 27089 of 2011, decided on 8th May, 2012], *Harshali v. State of Maharashtra and Others* [(2005) 13 SCC 464], *Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others*, AIR 1984 SC 1420 : (1984) 2 LLJ 481 : (1984) 1 SCALE 894 : (1984) 3 SCC 654 : (1984) 3 SCR 942 , *Sharwan Kumar and etc.*

Vs. Director General of Health Services and another, AIR 1992 SC 2202 : (1993) 1 SCC 632 Supp , Dr Preeti Srivastava and Another Vs. State of M.P. and Others, AIR 1999 SC 2894 : (1999) 5 JT 498 : (1999) 4 SCALE 579 : (1999) 7 SCC 120 : (1999) AIRSCW 2795 : (1999) 7 Supreme 81 , Guru Nanak Dev University v. Saumil Garg and Others [2005 (13) SCC 749], A.I.I.M.S. Students Union Vs. A.I.I.M.S. and Others, AIR 2001 SC 3262 : (2001) 7 JT 12 : (2001) 5 SCALE 430 : (2002) 1 SCC 428 : (2001) 4 SCT 150 : (2001) AIRSCW 3143 : (2001) 6 Supreme 367 ."

22. Their lordships of the Hon"ble Supreme Court in the case of Nikhil Himthani Vs. State of Uttarakhand and Others, (2013) 11 JT 300 : (2013) 10 SCALE 174 : (2013) 10 SCC 237 : (2013) 4 SCT 536 , have held that equality of opportunity for every person in the country is the constitutional guarantee and therefore merit must be the test for selecting candidates, particularly in the higher levels of education like postgraduate medical courses, such as MD. Excellence cannot be compromised by any other consideration for the purpose of admission to postgraduate medical courses such as MD/MS and the like because that would be detrimental to the interests of the nation. It has been held as follows:

"[11] The Constitution Bench of this Court has held in Saurabh Chaudri and Ors. v. Union of India and Ors. that giving institutional preference is a matter of State Policy which can be invalidated only in the event of it being violative of Article 14 of the Constitution. Hence, the question that we have to decide in this writ petition is whether clauses 1, 2 and 3 of the Eligibility Criteria in the information bulletin are ultra vires Article 14 of the Constitution of India.

[12] Article 14 of the Constitution guarantees to every person equality before law and equal protection of laws. In Dr. Jagadish Saran and Others Vs. Union of India (UOI), AIR 1980 SC 820 : (1980) 2 SCC 768 : (1980) 2 SCR 831 , Krishna Iyer J, writing the judgment on behalf of the three Judges referring to Article 14 of the Constitution held that equality of opportunity for every person in the country is the constitutional guarantee and therefore merit must be the test for selecting candidates, particularly in the higher levels of education like post-graduate medical courses, such as MD. In the language of Krishna Iyer, J.:

"23. Flowing from the same stream of equalism is another limitation. The basic medical needs of a region or the preferential push justified for a handicapped group cannot prevail in the same measure all the highest scales of speciality where the best skill or talent, must be handpicked by selecting according to capability. At the level of Ph.d. M.D., or levels of higher proficiency, where international measure of talent is made, where losing one great scientist or technologist in-the-making is a national loss, the considerations we have expanded upon as important lose their potency. Here equality, measured by matching excellence, has more meaning and cannot be diluted much without grave risk...."

[13] Relying on the aforesaid reasons in Dr. Jagadish Saran and Ors. v. Union of

India a three Judge Bench of this Court in Dr. Pradeep Jain's case held that excellence cannot be compromised by any other consideration for the purpose of admission to postgraduate medical courses such as MD/MS and the like because that would be detrimental to the interests of the nation and therefore reservation based on residential requirement in the State will affect the right to equality of opportunity under Article 14 of the Constitution but:

"22.a certain percentage of seats may in the present circumstances be reserved on the basis of institutional preference in the sense that a student who has passed MBBS course from a medical college or university, may be given preference for admission to the post-graduate course in the same medical college or university....."

This view expressed in Dr. Pradeep Jain's case has been reiterated by another three Judge Bench of this Court in Magan Mehrotra and Ors. v. Union of India and Ors. after a reconsideration and independent examination."

23. Their lordships of the Hon"ble Supreme Court in the case of Vishal Goyal and Others Vs. State of Karnataka and Others, (2014) AIRSCW 3574 : (2014) 7 JT 200 : (2014) 5 SCALE 706 , have held that at post graduate level even partial reservation based on residence requirement is impermissible. It has been held as follows:

"10. We have considered the submissions of learned counsel for the parties and we find that the basis of the judgment of this Court in Dr. Pradeep Jain's case (supra) is Article 14 of the Constitution which guarantees to every person equality before the law and equal protection of the laws. As explained by this court in paragraphs 12 and 13 10 Page 11 of the judgment in Nikhil Himthani v. State of Uttarakhand and Others (supra):

"12. Article 14 of the Constitution guarantees to every person equality before law and equal protection of laws. In Dr. Jagadish Saran and Others Vs. Union of India (UOI), AIR 1980 SC 820 : (1980) 2 SCC 768 : (1980) 2 SCR 831 , Krishna Iyer, J., writing the judgment on behalf of the three Judges referring to Article 14 of the Constitution held that equality of opportunity for every person in the country is the constitutional guarantee and therefore merit must be the test for selecting candidates, particularly in the higher levels of education like postgraduate medical courses, such as MD. In the language of Krishna Iyer, J. (SCC pp. 778-79, para 23)

"23. Flowing from the same stream of equalism is another limitation. The basic medical needs of a region or the preferential push justified for a handicapped group cannot prevail in the same measure all the highest scales of specialty where the best skill or talent, must be handpicked by selecting according to capability. At the level of PhD, MD, or levels of higher proficiency, where international measure of talent is made, where losing one great scientist or technologist in-the-making is a national loss, the considerations we have expanded upon a important lose their potency. Here, equality, measured by

matching excellence, has more meaning and cannot be diluted much without grave risk."

13. Relying on the aforesaid reasons in Jagdish Saran v. Union of India, a three-11 Page 12 Judge Bench of this Court in Pradeep Jain case held excellence cannot be compromised by any other consideration for the purpose of admission to postgraduate medical courses such as MD/MS and the like because that would be detrimental to the interests of the nation and therefore reservation based on residential requirement in the State will affect the right to equality of opportunity under Article 14 of the Constitution....."

In Magan Mehrotra v. Union of India (supra) and Saurabh Chaudri v. Union of India (supra) also, this Court has approved the aforesaid view in Dr. Pradeep Jain's Case that excellence cannot be compromised by any other consideration for the purpose of admission to postgraduate medical courses such as MD/MS and the like because that would be detrimental to the interests of the nation and will affect the right to equality of opportunity under Article 14 of the Constitution.

11. Mr. Mariarputham is right that in Saurabh Chaudri v. Union of India (supra), this Court has held that institutional preference can be given by a State, but in the aforesaid decision of Saurabh Chaudri, it has also been held that decision of the State to give institutional preference can be invalidated by the Court in the event it is shown that the decision of the State is ultra vires the right to equality under Article 14 of the Constitution. When we examine sub-clause (a) of clause 2.1 of the two Information Bulletins, we find that the expression "A candidate of Karnataka Origin" who only is eligible to appear for Entrance Test has been so defined as to exclude a candidate who has studied MBBS or BDS in an institution in the State of Karnataka but who does not satisfy the other requirements of sub-clause (a) of clause 2.1 of the Information Bulletin for PGET-2014. Thus, the institutional preference sought to be given by sub-clause (a) of clause 2.1 of the Information Bulletin for PGET-2014 is clearly contrary to the judgment of this Court in Dr. Pradeep Jain's case (supra).

12. To quote from paragraph 22 of the judgment in Dr. Pradeep Jain's case:

"..... a certain percentage of seats may in the present circumstances, be reserved on the basis of institutional preference in the sense that a student who has passed MBBS course from a medical college or university, may be given preference for admission to the postgraduate course in the same medical college or university....."

13. Sub-clause (a) of clause 2.1 of the two Information Bulletins does not actually give institutional preference to students who have passed MBBS or BDS from Colleges or Universities in the State of Karnataka, but makes some of them ineligible to take the Entrance Test for admission to Post Graduate Medical or Dental courses in the State of Karnataka to which the Information Bulletins apply.

14. We now come to the argument of Mr. Mariarputham that the scheme

formulated by this Court in *Dr. Dinesh Kumar and Others v. Motilal Nehru Medical College, Allahabad and Others* (supra) pursuant to the judgment in *Dr. Pradeep Jain's case* (supra) is confined to medical and dental colleges or institutions run by the Union of India or a State Government or a Municipal or other local authority and does not apply to private medical and dental colleges or institutions. Paragraph (1) of the scheme on which Mr. Mariarputham relied on is extracted hereinbelow:

"(1) In the first place, the Scheme has necessarily to be confined to medical colleges or institutions run by the Union of India or a State Government or a municipal or other local authority. It cannot apply to private medical colleges or institutions unless they are instrumentality or agency of the State or opt to join the Scheme by making 15 per cent of the total number of seats for the MBBS/ BDS course and 25 per cent of the total number of seats for the postgraduate course, available for admission on the basis of All India Entrance Examination. Those medical colleges or institutions which we have already excepted from the operation of the judgment dated June 22, 1984 will continue to remain outside the scope of the Scheme."

This Court has, thus, said in the aforesaid paragraph (1) of the scheme that the scheme cannot apply to private medical and dental colleges or institutions unless they are instrumentalities or agencies of the State or opt to join the scheme. The reason for this is that private medical and dental colleges or institutions not being State or its instrumentalities or its agencies were not subject to the equality clauses in Article 14 of the Constitution, but the moment some seats in the private medical and dental colleges or institutions come to the State quota, which have to be filled up by the State or its instrumentality or its agency which are subject to the equality clauses in Article 14 of the Constitution, the principles laid down by this Court in *Dr. Pradeep Jain's case* (supra) will have to be followed while granting admissions to the seats allotted to the State Quota in post graduate medical and dental courses even in private colleges.

15. In the result, we allow the writ petitions, declare sub-clause (a) of clause 2.1 of the two Information Bulletins for post graduate medical and dental courses for PGET-2014 as ultra-vires Article 14 of the Constitution and null and void. The respondent will now publish fresh Information Bulletins and do the admissions to the post graduate medical and dental courses in the Government colleges as well as the State quota of the private colleges in accordance with the law by the end of June, 2014 on the basis of the results of the Entrance Test already held. We also order that the general time schedule for counselling and admissions to post graduate Medical Courses in our order dated 14.03.2014 in *Dr. Fraz Naseem and Ors. v. Union of India* will not apply to such admissions in the State of Karnataka for the academic year 2014-2015. Similarly, the general time schedule for counselling and admissions for post graduate dental courses will not apply 16 Page 17 to such admissions in the State of Karnataka. The parties shall bear their own costs."

24. Their lordships of the Hon^{ble} Supreme Court in the case of Dr. Kulmeet Kaur Mahal and Others Vs. State of Punjab and Others, (2013) 11 SCALE 260 : (2014) 1 SCJ 195 : (2013) 4 SCT 490 , have held that additional weightage given to in-service candidates in open category defeats rule of merit.

25. Their lordships of the Hon^{ble} Supreme Court in the case of Union of India (UOI) Vs. Atul Shukla , have held that the classification of employees based on the method of their recruitment has long since been declared impermissible. There can be no differential treatment between an employee directly recruited vis-?-vis another who is promoted. It has been held as follows:

"17. The Tribunal has rejected both the reasons aforementioned and, in our opinion, rightly so. Classification of employees based on the method of their recruitment has long since been declared impermissible by this Court. There can be no differential treatment between an employee directly recruited vis-?-vis another who is promoted. So long as the two employees are a part of the same cadre, they cannot be treated differently either for purposes of pay and allowances or other conditions of service, including the age of superannuation. Take for instance, a directly recruited District Judge, vis-?-vis a promotee. There is no question of their age of superannuation being different only because one is a direct recruit while the other is a promotee. So also an IAS Officer recruited directly cannot for purposes of age of superannuation be classified differently from others who join the cadre by promotion from the State services. The underlying principle is that so long as the officers are a part of the cadre, their birth marks, based on how they joined the cadre is not relevant. They must be treated equal in all respects salary, other benefits and the age of superannuation included.

18. In the case at hand, Group Captains constitute one rank and cadre. The distinction between a Group Captain (Select) and Group Captain (Time Scale) is indicative only of the route by which they have risen to that rank. Both are promotees. One reaches the rank earlier because of merit than the other who takes a longer time to do so because he failed to make it in the three chances admissible to them. The select officers may in that sense be on a relative basis more meritorious than time scale officers. But that is bound to happen in every cadre irrespective of whether the cadre comprises only directly recruited officers or only promotees or a mix of both. Inter se merit will always be different, with one officer placed above the other. But just because one is more meritorious than the other would not by itself justify a different treatment much less in the matter of age of superannuation.

19. It is common ground that Time Scale Officers do not get to the higher rank only because of the length of service. For purposes of time scale promotion also the officers have to maintain the prescribed minimum standard of physical fitness, professional ability, commitment and proficiency. Rise to the next rank by time scale route is, therefore, by no means a matter of course. It is the length of service and the continued usefulness of the officer on the minimal requirements

stipulated for such promotion that entitles an officer to rise to higher professional echelons. Suffice it to say that while better inter se merit would earn to an officer accelerated promotion to the Group Captain's rank and resultant seniority over Time Scale Officers who take a much longer period to reach that position, but once Time Scale Officers do so they are equal in all respects and cannot be dealt with differently in the matter of service conditions or benefits. All told the submission of the Time Scale Officers that because of their long years of service and experience, they make up in an abundant measure, for a relatively lower merit cannot be lightly brushed aside. That Group Captains (Time Scale) wear the same rank, are paid the same salary and allowances and all other service benefits admissible to Group Captains (Select) supports that assertion for otherwise there is no reason why they should have been equated in matters like pay, allowances and all other benefits including the rank they wear if they were not truly equal. Once it is conceded that the two are equal in all other respects as indeed they are, there is no real or reasonable basis for treating them to be different for purposes of age of retirement.

24. The principles stated in the above decisions lend considerable support to the view that classification of Group Captains (Select) and Group Captains (Time Scale) in two groups for purposes of prescribing different retirement ages, is offensive to the provisions of Articles 14 and 16 of the Constitution of India. These appeals must, on that basis alone, fail and be dismissed, but, for the sake of a fuller treatment of the subject, we may as well examine whether the classification has any nexus with the object sought to be achieved by the Government decision taken in the wake of the AVS Committee recommendations."

26. The quota of 66.6% prescribed for the in-service candidates stricto sensu cannot be termed as reservation. It is only a source/channel for admission to educational institution(s). The in-service candidates and non-service or general category candidates are two separate classes based on intelligible differentia, having a rationale relation with the object sought to be achieved, however, there could not be further micro classification on the basis of source of recruitment qua in-service candidates under 66.6% quota.

27. The goal to be achieved by classification is that only meritorious candidates are admitted in postgraduate courses. The methodology adopted by the respondents by prescribing the roster points would promote only mediocrity and not merit. It is discriminatory, arbitrary and unreasonable. The purpose of prescribing a source from in-service candidates is to ensure that they improve their qualifications to serve people at large more efficiently. Thus, allocation/distribution of seats on the basis of groups/sub-groups under clause 3.1(A)(i) of the Prospectus for HPHS (In-service GDO) Group and In-service GDO(MO Dental) Group seats is unreasonable and unconstitutional. It is reiterated that these groups should have been treated as one group for the purpose of admission to MD/MS/MDS courses.

28. Accordingly, the Writ Petitions are allowed. The allotment of seats/roster points on the basis of sub-groups comprising of regularly appointed Medical Officers, contractual and Rogi Kalyan Samiti appointees and sub groups comprising of regular Medical Officers (Dental) and second group comprising of contractual and Rogi Kalyan Samiti appointees as per clause 3.1(A)(i) of the Prospectus-cum-Application Form for counselling and admission for postgraduate Degree(MD/MS) Courses and clause 3.6(b)(iii) of the Prospectus-cum-Application Form for counselling and admission for postgraduate Degree(MDS) Courses for the academic session 2015-18, respectively, are quashed and set aside. The admissions made to MD/MS/MDS courses on the basis of the first counselling, second counselling and 3rd counselling under clause 3.1(A)(i) of both the Prospectus under HPHS (In-service GDO) Group and in-service GDO (MO Dental) Group seats are also quashed and set aside. The respondents are directed to re-do the entire selection process by filling up the MD/MS/MDS seats, strictly as per the merit list on the basis of All India Post Graduate Medical Entrance Examination and All India Post Graduate Dental Entrance Examination, within a period of one week from today in order to adhere to the time schedule framed by the Hon''ble Supreme Court of India qua HPHS (In-service GDO) Group and in-service GDO (MO Dental) Group. Pending application(s), if any, shall also stand disposed of.