

**HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT
JAIPUR**

D.B. Special Appeal Writ No. 501 / 2018

State of Rajasthan Through Its Principal Secretary, Department of
Medical & Health, Secretariat, Jaipur.

----Respondent-Appellant

Versus

1. Dr. Ajeet Bagra S/o Lallu Ram Bagra, Aged About 27 Years, R/o
Village Biharipura, Sirsali, Via Chomu, Dist Jaipur

2. Dr. Ajaram Chaudhary S/o GR Choudhary, R/o Okananda,
Soyla, Jaipur, Rajasthan- 343022

---Petitioner-Respondents

3. Union of India, Ministry of Health and Family Welfare, Through
Its Secretary.

4. NEET PG Medical & Dental Admission/Counseling Board -2018
And Principal & Controller, SMS Medical College & Attached
Hospitals, Jaipur, SMS Medical College, JLN Marg, Jaipur Through
Its Chairman.

5. Medical Council of India Through Its Secretary, Pocket 14,
Sector 8, Dwarka, New Delhi.

6. National Board of Examinations, Medical Enclave, Ansari Nagar,
Mahatma Gandhi Marg (Ring Road), New Delhi-110029, Through
Its Joint Director.

7. Dr. Mukesh Kumar Chopra S/o Shri Ramchandra Chopra, Aged
About 29 Years, R/o Rajni Vihar, Heerapura, Ajmer Road Jaipur
(Rajasthan).

8. Dr. Jeetendra Singh S/o Shri Jawahar Singh, Aged About 33
Years, R/o VPO Gangroly, Tehsil Nadbai, District Bharatpur.

9. Dr. Sumit Raj S/o Shri Jai Singh, Aged About 34 Years, R/o
Village and Post Ludhawai (Sewar), Tehsil and District Bharatpur.

10. Dr. Munesh Kumar Gaur S/o Shri Gopal Prasad, Aged About 33
Years, R/o MOIC Barkheda Foujdar, Nagar, District Bharatpur.

11. Dr. Parvez S/o Umar Ansari, Aged About 38 Years, R/o H.N. 6
G-88, Vigyan Nagar Extension, Kota Rajasthan.

12. Dr. Brajesh Kumar Dhaker S/o Shri Devilal Dhaker, Aged About
26 Years, R/o Village Parsoli, Tehsil Begun, Distt. Chittorgarh.



13. Dr. Goverdhan Lal Saini S/o Shri Banwari Lal Saini, Aged About 31 Years, R/o Village and Post Prathvipura, Shrimadhopur, District Sikar.

14. Dr. Sunil Kumar Saharan S/o Shri Indra Singh Saharan, Aged About 30 Years, R/o Gouri Shankar Bhawan, Om Colony, Churu.

----Respondents

Connected With

D.B. Special Appeal Writ No. 398 / 2018

1. Dr. Sumit Raj S/o Shri Jai Singh, Aged About 34 Years, R/o Village and Post Ludhawai (Sewar), Tehsil and District Bharatpur.

2. Dr. Goverdhan Lal Saini, S/o Shri Banwari Lal Saini, Aged About 31 Years, R/o Village and Post Prathvipura, Shrimadhopur, District Sikar.

3. Dr. Sunil Kumar Saharan S/o Shri Indra Singh Saharan, Aged About 30 Years, R/o Gouri Shankar Bhawan, Om Colony, Churu.

----Appellants

Versus

1. Dr. Ajeet Bagra S/o Lallu Ram Bagra, Aged About 27 Years, R/o Village Biharipura, Sirsali, Via Chomu, Dist-Jaipur

2. Dr. Ajaram Chaudhary S/o GR Choudhary, R/o Okananda, Sayla, Jalor, Rajasthan-343022.

3. Union of India, Ministry of Health and Family Welfare, Through Its Secretary.

4. State of Rajasthan Through Its Principal Secretary, Department of Medical & Health, Secretariat, Jaipur.

5. NEET PG Medical & Dental Admission/ Counseling Board- 2018 and Principal & Controller, SMS Medical College & Attached Hospitals, Jaipur, SMS Medical College, JLN Marg, Jaipur Through Its Chairman.

6. Medical Council of India Through Its Secretary, Pocket 14, Sector 8, Dwarka, New Delhi.

7. National Board of Examinations, Medical Enclave, Ansari Nagar, Mahatma Gandhi Marg (ring Road), New Delhi-110029, Through Its Joint Director

---Respondents

8. Dr. Mukesh Kumar Chopra S/o Shri Ramchandra Chopra, Aged About 29 Years, R/o Rajni Vihar, Heerapura, Ajmer Road Jaipur (Rajasthan).



9. Dr. Jeetendra Singh S/o Shri Jawahar Singh, Aged About 33 Years, R/o. VPO Gangroly, Tehsil Nadbai, District Bharatpur.

10. Dr. Munesh Kumar Gaur, S/o Shri Gopal Prasad, Aged About 33 Years, R/o MOIC Barkheda Foujdar, Nagar, District Bharatpur.

11. Dr. Parvez S/o Umar Ansari, Aged About 38 Years, R/o. H.N.6 G-88, Vigyan Nagar Extension, Kota Rajasthan

12. Dr. Brajesh Kumar Dhaker, S/o Shri Devilal Dhaker, Aged About 26 Years, R/o Village Parsoli, Tehsil Begun, Distt. Chittorgarh.

-----Proforma Respondents

D.B. Special Appeal Writ No. 399 / 2018

1. Dr. Lokesh Jangir S/o Shri S.M. Jangir, Aged About 31 Years, R/o B-87, Todi Nagar, Sikar

2. Dr. Kaushal Kishor Kumawat S/o Shri Vinod Kumar, Aged About 30 Years, R/o Village Thoi, District Sikar.

3. Dr. Gajendra Singh S/o Late Shri Sayar Singh, Aged About 41 Years, R/o Kaladera, Jaipur

4. Dr. Bharat Sharma S/o Shri Murlidhar Sharma, Aged About 31 Years, R/o V/o Badhadar, District Sikar

-----Appellants-Applicants

Versus

1. Dr. Ajeet Bagra S/o Lallu Ram Bagra, Aged About 27 Years, R/o Village Biharipura, Sirsali, Via Chomu, Dist Jaipur

2. Dr. Ajaram Chaudhary S/o GR Choudhary, R/o Okananda, Sayla, Jalor, Rajasthan

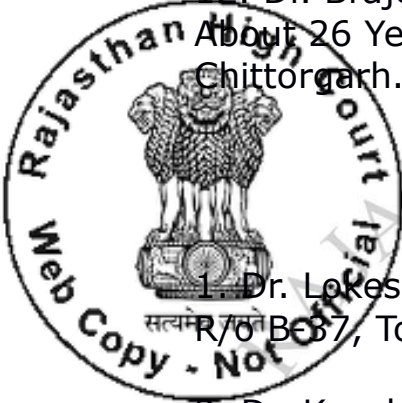
----(Respondents-Writ Petitioners)

3. Union of India, Ministry of Health and Family Welfare, Through Its Secretary

4. State of Rajasthan Through Its Principal Secretary, Department of Medical and Health, Secretariat, Jaipur.

5. NEET PG Medical & Dental Admission/Counseling Board -2018 And Principal & Controller, SMS Medical College & Attached Hospitals, Jaipur, SMS Medical College, JLN Marg, Jaipur Through Its Chairman.

6. Medical Council of India Through Its Secretary, Pocket 14, Sector 8, Dwarka, New Delhi.



7. National Board for Examinations, Medical Enclave, Ansari Nagar, Mahatma Gandhi Marg (Ring Road), New Delhi-110029, Through Its Joint Director.

---Respondents

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9. Dr. Jeetendra Singh S/o Shri Jawahar Singh, Aged About 33 Years, R/o VPO Gangroly, Tehsil Nadbai, District Bharatpur.

10. Dr. Sumit Raj S/o Shri Jai Singh, Aged About 34 Years, R/o Village & Post Ludhawai (Sewar), Tehsil and District Bharatpur.

11. Dr. Munesh Kumar Gaur S/o Shri Gopal Prasad, Aged About 33 Years, R/o MOIC Barkheda Foujdar, Nagar, District Bharatpur

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14. Dr. Goverdhan Lal Saini S/o Shri Banwari Lal Saini, Aged About 31 Years, R/o Village and Post Prathvipura, Shrimadhpor, District Sikar.

15. Dr. Sunil Kumar Saharan S/o Shri Indra Singh Saharan, Aged About 30 Years, R/o Gouri Shankar Bhawan, Om Colony, Churu.

----Proforma Respondents

D.B. Special Appeal Writ No. 487 / 2018

1. Dr. Vikas Marwal S/o Shri Gharsi Ram, Aged About 35 Years, R/o H.No. 80, Samrath Nagar, Pali(Raj.) Presently Working At CMHO Office, Pali(Raj.)

2. Dr. Suresh Yadav S/o Shri Om Prakash Yadav, Aged About 38 Years, R/o A-25, Sain Colony, Ram Babu Ka Hatha, Jaipur(Raj.)

----Appellants-Applicants

Versus

1. Dr. Ajeet Bagra S/o Lallu Ram Bagra, Aged About 27 Years, R/o Village Biharipura, Sirsali, Via Chomu, Dist Jaipur

2. Dr. Ajaram Chaudhary S/o GR Choudhary, R/o Okananda, Sayla, Jalor, Rajasthan

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9. Dr. Jeetendra Singh S/o Shri Jawahar Singh, Aged About 33 Years, R/o VPO Gangroly, Tehsil Nadbai, District Bharatpur.

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13. Dr. Brajesh Kumar Dhaker S/o Shri Devilal Dhaker, Aged About 26 Years, R/o Village Parsoli, Tehsil Begun, District Chittorgarh.

14. Dr. Goverdhan Lal Saini S/o Shri Banwari Lal Saini, Aged About 31 Years, R/o Village and Post Prathvipura, Shrimadhapur, District Sikar.

15. Dr. Sunil Kumar Saharan S/o Shri Indra Singh Saharan, Aged About 30 Years, R/o Gouri Shankar Bhawan, Om Colony, Churu.

(Proforma Respondents)

D.B. Special Appeal Writ No. 488 / 2018

All Rajasthan In-Service Doctors Association (ARISDA) Through Its Secretary Vidya Prakash Meena S/o Shri Mani Ram Meena, Aged About 49 Years, Resident of VPO Ranoli, Tehsil Todabhim, Karauli-322220 (Raj.)

----Appellant

Versus

1. Dr. Ajeet Bagra S/o Lallu Ram Bagra, Aged About 27 Years, R/o Village Biharipura, Sirsali, Via Chomu, Dist Jaipur

2. Dr. Ajaram Chaudhary S/o GR Choudhary, R/o Okananda, Sayla, Jalor, Rajasthan

---Respondents-Writ Petitioners

3. Union of India, Ministry of Health and Family Welfare, Through Its Secretary.

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5. NEET PG Medical & Dental Admission/Counseling Board -2018 And Principal & Controller, SMS Medical College & Attached Hospitals, Jaipur, SMS Medical College, JLN Marg, Jaipur Through Its Chairman.

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7. National Board for Examinations, Medical Enclave, Ansari Nagar, Mahatma Gandhi Marg (Ring Road), New Delhi-110029, Through Its Joint Director.

---Respondents

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9. Dr. Jeetendra Singh S/o Shri Jawahar Singh, Aged About 33 Years, R/o VPO Gangroly, Tehsil Nadbai, District Bharatpur.

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15. Dr. Sunil Kumar Saharan S/o Shri Indra Singh Saharan, Aged About 30 Years, R/o Gouri Shankar Bhawan, Om Colony, Churu.



-----Proforma Respondents

For Appellant(s) :Mr. Rajendra Prasad, AAG with
 Mr. A.S. Chauhan (in D.B.SAW No.501/2018)
 Mr. A.K. Sharma, Sr. Adv. with
 Mr. Ashwani Jaiman (in D.B.SAW No.398/2018)
 Mr. R.N. Mathur, Sr. Adv. with
 Mr. Prateek Mathur (in D.B. SAW No.399/2018)
 Mr. Om Prakash Sheoran
 (in D.B.SAW No.487/2018)
 Mr. Tanveer Ahamad(in D.B.SAW No.488/2018)



For Respondent(s):Mr. R.P. Singh, Sr. Adv. with
 Ms. Purvi Mathur, Mr. Kushagra Sharma &
 Mr. Sahir Hussain
 Mr. S.K. Gupta with Mr. Y.S. Jadaun
 Mr. Anurag Kalawatia for Mr. Angad Mirdha

HON'BLE MR. JUSTICE K.S. JHAVERI

HON'BLE MR. JUSTICE VIJAY KUMAR VYAS

Order

10/04/2018

1. By way of these appeals, the appellants have challenged the judgment and order of learned Single Judge whereby learned Single Judge has partly allowed the writ petitions and set aside the notification issued by the State Government on 28.02.2018.

2.1 The facts of the case as stated by counsel for the appellant in appeal No.398/2018 are that on 22.8.2000 in exercise of power conferred by Section 33 read with section 20 of Indian

Medical Council Act 1956, has framed the Post Graduate Medical Education Regulations 2000 (in short "the Regulations of 2000"). Regulation 9 of the Regulations of 2000 was amended and made applicable from academic year 2013-14 on 15.2.2012. Validity of Regulation 9 was upheld by the Hon'ble Supreme Court in case of

State of U.P. vs Dr. Dinesh Singh Chauhan & Ors. 2016(9)

SCC 749 on 16.8.2016. State Government Constituted a committee of four members to identify remote and difficult areas vide orders dated 26.5.2017 & 6.6.2017 and on 6.6.2017 one more member was added to the committee.

2.2 PG Medical Education committee in its meeting on 22.9.2017 considered and decided to include the word "Rural" in Regulation 9 (2) along with the words "remote and/or difficult areas" for giving weightage and the matter was to be placed before the General Body of the Council and on 26.9.2017, letter written by Govt. of India to the Secretary, MCI mentioning that matter of revised NEET Regulations has been discussed with MCI in several meetings and Ministry has already requested to reconsider certain clauses. It was also mentioned that the candidates who serve in rural areas are deprived of incentive benefit therefore the word "Rural" may be inserted before "remote and/or difficult areas" in sub clause (IV) of clause 9 (2) of the Regulations of 2000 for clarity and benefit of rural population.

2.3 General Body of Council approved the recommendations dated 22.9.2017 to insert word "Rural" in Sub Clause (IV) of Clause 9 (2) of the Regulations of 2000 in its

meeting dated 31.10.2017.

2.4 On 5.3.2018, writ petition filed under Article 32 of the Constitution of India by Kerala Government Insurance Medical Officers Association was disposed of by Hon'ble Supreme Court on the statement that necessary amendment in the Regulations of 2000 have been proposed and sent to the Central Government and it is expected that same would be notified in near future.

2.5 A Draft Notification was sent by MCI to the Central Government on 15.3.2018 wherein word "rural" was inserted in sub clause (IV) of clause 9(2) of the Regulations of 2000. Writ petition filed by All Rajasthan In Service Doctors Association on 4.4.2018 was disposed of by the Hon'ble Supreme Court on the submission made by counsel for Union of India that the Central Government has authenticated the amendment to Post Graduate Medical Regulations, 2000 and the word "Rural" has been added in the Regulations. Such Amendments are to be notified within a week. While considering the aforesaid statement it was observed by the Hon'ble Supreme Court that amended regulations will be implemented at an early date by the quarters concerned. On 5.4.2018, amendment in Post Graduate Medical Regulations, 2000 was notified whereby word "Rural" has been inserted in sub clause (IV) of Regulation 9 (2) of the Regulations of 2000.

3. Mr. R.N.Mathur, Sr. Adv. appearing in appeal No.398/2018 submits that in view of decision of Supreme Court which is annexed with the petition that without commenting on merits of the case, in the circumstances we dispose of these



special leave petitions and hold that the admissions made for the present academic year shall not be disturbed. However, by the end of February, 2018 the State Government to consider the remote area as well as difficult areas consider the judgment mentioned supra and also to the extent of percentage of marks in terms of

Reg. 9(IV) may also be specified as may be considered appropriate. He contended that regulation since it has been reproduced in the petition itself more particularly proviso of Regulation 9, which reads as under:



“9. Procedure for selection of candidate for Post graduation courses shall be as follows:

IV. The reservation of seats in medical colleges/institutions for respective categories shall be as per applicable laws prevailing in State/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 graduation courses from the said merit lists only.

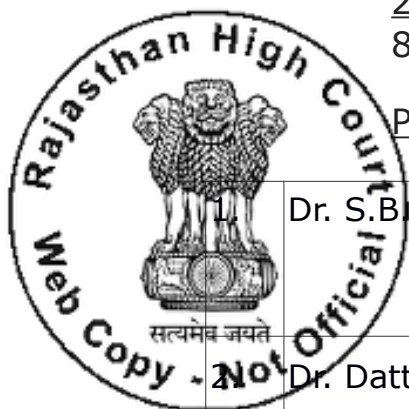
Provided that in determining the merit of candidates who are in-service of Government/public authority, weightage in the marks may be given by Government/Competent Authority as an incentive at the rate of 10% of the marks obtained for each year of service in **remote and/or difficult areas** upto the 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 authority from time to time.”

and he has then taken us through the compilation which is produced today in the Court more particularly he contended that Medical Council in its meeting held on 22.09.2017 and 26.09.2017 of Government of India wrote letters, as under:

**"No.MCI-4(3)/2017-Med./
MEDICAL COUNCIL OF INDIA
POSTGRADUATE MEDICAL EDUCATION
COMMITTEE**

Minutes of meeting of Postgraduate Medical Education Committee held on 22nd September, 2017 at 10:30 AM, in the Council Office, Sector-8, Pocket-14, Dwarka, New Delhi.

Present:



1.	Dr. S.B. Siwach	Chairman, Former Director, Pandit B D Sharma PGI, Rohtak, Haryana
2.	Dr. Datteswar Hota	Professor & HOD, SCB Medical College & Hospital, Cuttack, Orissa
3.	Dr. Deelip Govindrao Mhaisekar	Vice-Chancellor, Maharashtra University of Health Sciences, Nashik
4.	Dr. Dhruva Jyoti Borah	Principal-cum-Chief Suptd., Jorhat Medical College & Hospital, Jorhat (Assam).
5.	Dr. (Mrs.) Rani Bhaskaran	President, Travancore-Cochin Medical Council, Thiruvananthapuram
6.	Dr. Vora Nitin Sumanchandra	Dean, GMERS Medical College Sola, Near New Gujarat High Court, Sola, S.G. Highway, Ahmedabad, Gujarat- 380061

Dr. Reena Nayyar-Secretary(I/c)

The Chairman welcomed the members of the Postgraduate Medical Education Committee.

Leave of absence was received from Dr. Bhanu Prakash Dubey, Dr. K S Sharma, Dr. Raja Babu Panwar, Member(s), Postgraduate Medical Education Committee.

At the onset, the Postgraduate Committee resolved that all decisions taken by Central Government, General Body, Executive Committee or any other Sub-Committee of MCI which has a bearing on Postgraduate matters be intimated to Postgraduate Section for appropriate action. The Postgraduate Committee decided that PG Section may send a polite request to the President & Secretary (MCI) to intimate to PG Section all such matters as mentioned above.

To,
The Secretary (I/c)
Medical Council of India
Pocket-14, Sector-8, Dwarka Phase-I
New Delhi-110077, dated – 26.09.2017
Subject: Regarding NEET Regulations and
Caluse 9(2) of PGMER, 2000 for
incentives to in-service candidates.

Madam,

I am directed to inform that the matter of revised NEET Regulations has been discussed with MCI in several meetings. This Ministry has already requested to reconsider certain clauses and to provide revised NEET Regulations. However, the same is still awaited.

2. This Ministry has also received references from some States that benefit of marks incentives is limited to the doctors who serve in remote and/or difficult areas only. The candidates who serve in rural areas are deprived of incentive benefit. Therefore, the word "rural" may be inserted before 'remote and/ or difficult areas' in sub Clause (IV) of Clause 9 (2) or Post Graduate Medical Education Regulations for clarity and benefit for rural population.

3. You are requested to provide NEET Regulations duly considering the above provision of rural service too, for approval of this Ministry."

4. The General Body Meeting of the Medical Council of India on 31.10.2017 has approved the decision more particularly Item No.16 which reads as under:

"The Postgraduate Medical Education Committee considered the matter pertaining to inclusion of word "Rural in Regulation 9(2) alongwith the words "remote and/or difficult areas" for weightage and decided that the word Rural may be included in regulation 9(2) sub clause (IV) along with remote and/or difficult areas"

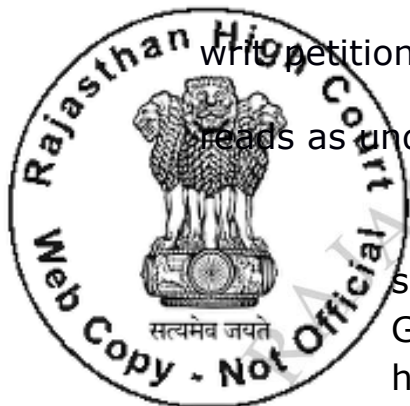
and contended that the notification and intention of the parties was very clear that they were intended to give the benefit from 26.09.2017 and therefore, the notification issued on 05.04.2018,



the benefit should relate back to the date of consideration of the first Meeting of the Council.

5.1 Counsel for appellant has also taken us to the different Supreme Court orders: **Kerala Government Insurance Medical Officers Association vs. Medical Council of India and Anr.,**

write petition (s) (civil) No.105/2018 decided on 5.3.2018, which reads as under:



“Learned counsel for the respondents states that necessary amendment in the Post Graduate Medical Educational Regulations, 2000, have been proposed and sent to the Central Government and it is expected that the same would be notified in the near future.

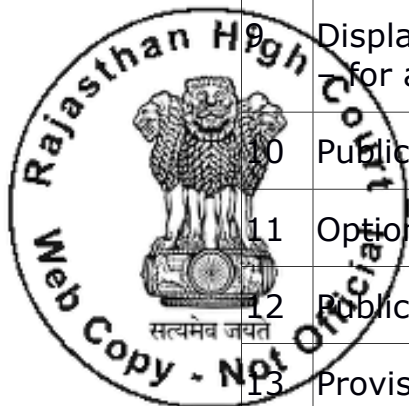
In view thereof, this petition stands disposed of.”

5.2 The subsequent order of the Supreme Court in **Dr. Kriti Lakhina and Ors. Vs. State of Karnataka and Ors.,** write petition (Civil) No(s) 204/2018 decided on 27.03.2018, which reads as under:

Heard learned counsel for the parties.
Application for impleadment are allowed.
Judgment reserved.
However, the following is the calendar of events showing the schedule:

Calendar of Events		
1	Date of Notification	9 th March, 2018
2	Release of Brochure	10 th March, 2018
3	Online Registration	10 th -13 th March, 2018, 11:59 pm
4	Last date to pay the registration fees	14 th March 4 pm (Banking hours)

5	Informative SMS to paid candidates	14 th March 6 pm
6	Editing Online Registration Data	15 th -16 th March 8 pm
7	Intimation of Verification schedule	17 th March, 2018
8	Offline Verification of documents (based on serial number wise merit list)	19 th -23 rd March, 2018
9	Display of Sea: Matrix and Fee Structure for all disciplines	20 th March, 2018
10	Publication of verified candidate list	24 th March, 2018
11	Option Entry by eligible candidates	25 th March, 2018
12	Publication of Mock Allotment Results	30 th March, 2018
13	Provisions to change options if any by candidates	2 nd April, 2018
14	Publication of first round allotment result	5 th April, 2018
15	Exercise of Choice	6 th April, 2018
16	Payment of fees, Submission of Original Documents and Collection of Admission Order (Choice - 1 Candidates only)	7 th -10 th April 4 pm
17	Last date for reporting at the Allotted Medical/Dental College (Choice -1 Candidates only)	12 th April 4pm



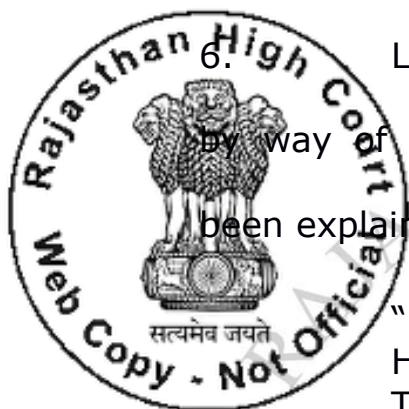
We stay the process on or after 30.3.2018. There shall be no publication of Mock Allotment Results on 30.3.2018 and no further proceedings onward shall take place till the judgment is delivered.

Written submissions, if any, be filed within by tomorrow."

and contended that the Schedule is over by 05.04.2018.

5.3 In that view of the matter, the benefit is required to be granted to the applicant/s. Counsel for the appellant has also taken us to the Principle of Estoppel and has contended that the

State is estopped from taking contrary view. In view of the benefit granted to the applicant/s in service benefit, they were instructed/directed and taken service in rural area only with a view to get advantage of this initiative of additional marks in admission to the P.G. Courses.



6. Learned counsel Mr. R.N. Mathur, Sr. Adv. submits that by way of the notification dated 28.04.2017 the definition has been explained which reads as under:

"Rural Area" means a place other than Tehsil Head Quarter and which is not a Municipal Town."

and other notification dated 26.12.2017 for grant of Special Pay (Rural Allowance) is as under:

**Government of Rajasthan
Finance Department
(Rules Division)**

Notification

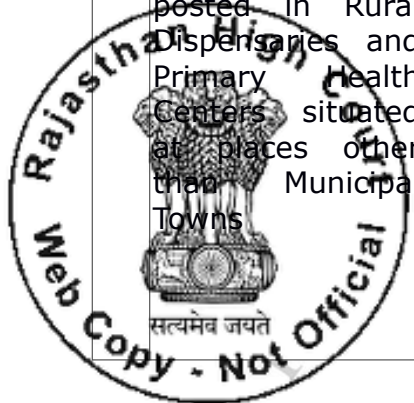
Jaipur, dated 26 Dec2017

No. F. 14(92)FD/Rules/2008

In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Rajasthan is pleased to make the following rules to amend further the Rajasthan Civil Services (Revised Pay) Rules, 2008, namely:-

1. These rules may be called the Rajasthan Civil Services (Revised Pay)(Fifth Amendment) Rules, 2011.
2. These rules shall be deemed to have come into force with effect from 20.12.2011.
3. In the Rajasthan Civil Services (Revised Pay) Rules, 2008, in Schedule II Special Pay - the existing entry appearing at S. No. 10 under heading "Medical Department - (i) General Branch" shall be substituted by the following, namely:

S. No	Name of the Post	Rate of Special Pay in rupees per month	Remarks
1	2	3	4
10	Medical Officer/Senior Medical Officer posted in Rural Dispensaries and Primary Health Centers situated at places other than Municipal Towns	500	The grant of Special Pay (Rural Allowances) shall be subjected to the fulfillment of following conditions:- (i)that the places are not Tehsil Headquarters. (ii)that the places are Tehsil Headquarters but have population below 5000. (iii)Medical Officer/ Senior Medical Officer resides at the place as in (i) or (ii) above.



7. Counsel for the appellant, Mr. A.K. Sharma, Sr. Adv. appearing in SAW No.398/2018 submitted that notification which was issued on 15.03.2018 clearly stated as under:

**"Office of the Chairman,
NEET PG Medical & Dental Admission
/Counseling Board-2018 and Principal &
Controller, SMS Medical College & Attached
Hospitals, Jaipur**

**Notification
State Medical & Dental P.G. Seats
On-line Allotments- 2018**

The allotment procedure (or various PG Medical degree/diploma and Dental courses will be carried out on-line, as directed by Medical Education Department, Government of Rajasthan. The schedule for on-line allotment will be below.

**SCHEDULE FOR ON-LINE ALLOTMENT
PROCESS**

S. N.	Event	Date(s) for Medical Courses	for	Date(s) for Denial Courses	for	Date(s) for 6 months Ultra Sound Courses under PCPNDT Act
1.	Deposition of the registration fee through e-Mitra network	18.3.2018 to 25.3.2018	to by	29.3.2018 to 4.4.2018	to by	18.03.2013 to 25.03.2018

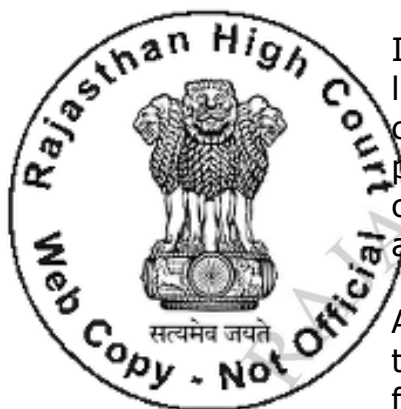
		4.00pm	4.00pm	4.00pm
2.	On-line registration & information form filling by the candidates	18.3.2018 to 25.3.2018 5.00pm	to 29.3.2018 by 4.4.2018 5.00pm	18.03.2013 to 25.03.2018 by 5.00pm
3.	Verification of Disability percentage of all Physically Handicapped candidates of all categories (by Medical Board, 9.00am to 10.00am sharp at Lecture [heatre No. 1 of SMS Medical College, Jaipur]	30.03.2018	9.04.2018	
4.	Verification of status of Rajasthan of MRB applicants at 9.00am sharp at Principal Office, SMS Medical College, Jaipur	30.03.2018	9.04.2013	
4.	Verification Allotment and Joining of Sr Demonstrators candidates for In-Service Quota (sub quota), before the Board, 9.00am sharp at Principal Office, SMS Medical College, Jaipur) (after registering as per serial 1 and 2)	30.03.2018	9.04.2018	
5.	On-line choice filling and locking by the candidates	30.03.2018 to 01.04.2018 5.00pm	to 9.04.2018 by 11.04.2018 by 5.00pm	
6.	First round of seat allotment and verification by Admission Board-2018	04.04.2018 to 05.04.2018	to 14.04.2018 to 15.04.2018	Date(s) to be declared later
7.	Declaration of the result & generation of on-line allotment letters	05.04.2018	15.04.2018	
8.	Reporting and document verification at the allotted college alongwith print out of allotment letter, all original documents, deposition of prescribed admission fee and required bonds	06.04.2018 to 12.04.2018 5.00pm	to 16.04.2018 to 22.04.2013 by 5.00pm	
9.	Commencement of academic session	01.05.2018	01.05.2018	

Candidates are required to deposit non refundable registration fee of Rs. 3000/- (Rs. 1500 for SC, ST category of Rajasthan State) at any e-Mitra center authorized by the Government of Rajasthan or they can make online payment of registration fee using Debit Card/Credit Card/Net-Banking

For registration and other relevant information, the candidates are advised to visit www.education.rajasthan.gov.in/medicaleducation/www.rajprepg2018.in

For verification, candidate belonging to PH//NRI//Senior Demonstrator category must present personally along with relevant documents at given place and time.

The candidate are advised to read the instruction booklet, FAQs (Frequently Asked Questions) etc. given on the website, very carefully and should also visit the websites regularly.



If a candidate does not submit his/her choice by the last date of filling the choices, he/she will lose chance of participation in the online allotment process. The choices are required to be filled very carefully as the choice filled shall be final for online allotments.

Any candidates opting the subject not recognized by the MCI/DCL. New Delhi will not be allowed to claim for any change on this ground, except during subsequent allotment depending upon his/her merit and as per preference only.

No separate information shall be sent to individual candidates regarding the allotment etc.

The allotment of the subject and college shall be made strictly on the basis of merit cum preference and In accordance with the rules and directions laid down by MCI/DCI/Hon'ble Supreme Court of India/Hon'ble High Court of Rajasthan/Government of Rajasthan and Rajasthan University of Health Sciences, Jaipur.

The selected candidates will have to report and join at the allotted college as notified in the allotment letter. If a candidate fails to join the allotted courses and college within the stipulated time, his/her candidature for subsequent allotments will be deemed cancelled and he/she will not be eligible for any further allotment.

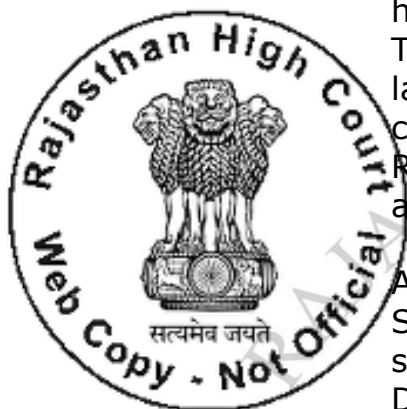
At the time of reporting, the candidate must present all the original documents(as given in the instruction booklet available at the website) and accepted resignation from the institution he/she is pursuing studies at present or from the college allotted through any other counseling including All India PG counseling. Failure to do, so will result in disqualification for admission.

Applicable for Govt. Colleges-

At the time of reporting, the selected candidates under both the All India and State Quota for the PG courses (for the academic session 2018-19) will

have to submit a surely bond of Rs. 5.00 lacs (Rupees five lacs) in favour of Principal of the allotted college. At the time of final joining, a separate Bank Guarantee for Rs. 1.5 lacs and Bond for Rs. 3.5 lacs is to be submitted (surely bond of Rs. 5 lacs submitted earlier will be returned).

The students so selected under both the All India and State Quota for the PG courses (for the academic session 2018-19) in medical fraternity will have to fill a bond amounting to Rs. 25 lacs (Rupees Twenty Five Lacs) for a Degree courses and Rs. 5 lacs (Rupees five lacs) for a Diploma course, for commitment to serve the State Government of Rajasthan for a period of Five (5) years bond format available the website).



As per Gov. order dated 31.03.2107 and 5.04.2017 Senior Demonstrators working in non-clinical subjects will be given priority (in the same Department in which they are working) as per merit of NEET PG -2018.

The norms of reservation of the State Government of Rajasthan will be applicable only for bonafide candidates of the State of Rajasthan. They will have to produce a valid certificate as per State Gov. rules.

Date for second round of counseling will be notified after first round of allotment. Candidates are advised to follow above referred websites and advertisement(s) in newspapers, regularly.

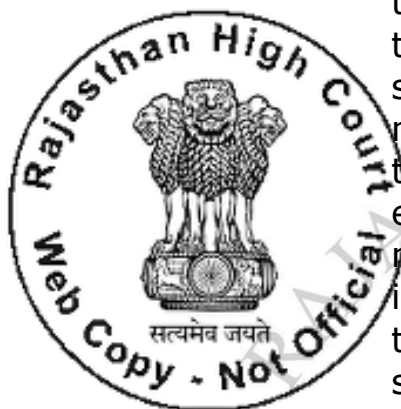
The decision of the PG Admission Board-2018 will be final and binding on all the candidates. In case of any dispute, the area of jurisdiction will be Hon'ble Rajasthan High Court only.

In case any difficulty during registration/ choice filling, contact the Helpline (7733889594) or send an email at rajprepg2018@gmail.com

then he has taken us to the decision of Supreme Court in **State of U.P. vs. Dr. Dinesh Singh Chauhan and Ors., 2016 (9) SCC 749**, wherein it has been observed as under:

"29. 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 in 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.



30. Coming to the next decision pressed into service in the case of State of M.P. & Ors. Vs. Gopal D. Tirthani & Ors.[4], 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) Vs. Motilal Nehru Medical College[5], Snehelata Patnaik (Dr.) Versus State of Orissa[6], Narayan Sharma (Dr.) Versus Pankaj Sharma Kr. Lenkar[7] and State of U.P. Versus Pradip Tandon[8].

The Court in paragraph 33 observed thus:

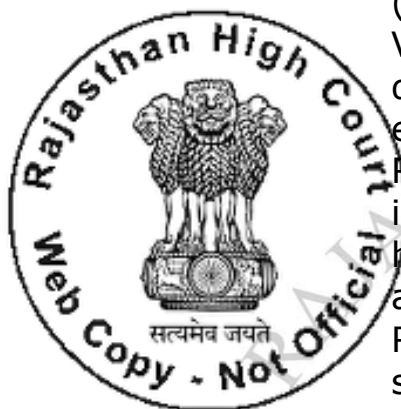


".....The case at hand presents an entirely different scenario. Firstly, it is a case of post-graduation within the State and not an all- India quota. Secondly, it is not a case of reservation, but one of only assigning weightage for service rendered in rural/tribal areas. Thirdly, on the view of the 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)

32. 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](#)[9]; also see [MCI V. State Of Karnataka](#)[10]). 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.

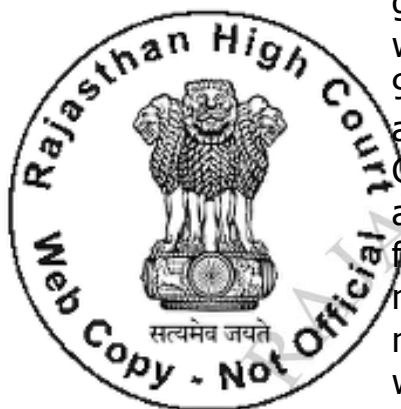
40. The matter does not end here. In the present proceedings, however, large number of candidates who earlier found place in the merit list have been affected by the fresh merit list prepared in terms of Order of this Court dated 12.05.2016. As a result of giving effect to Regulation 9, the fresh list 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

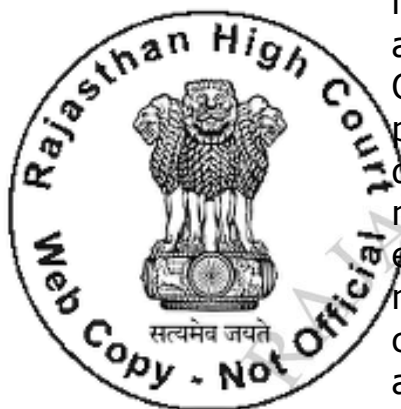


been felt for quite some time for which the provision in the form of proviso to Clause IV of Regulation 9 was necessitated. This concern was even echoed in the Rajya Sabha.

42. 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.

44. 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."

and contended that in view of the decision of Supreme Court the in service persons who have rendered the service in rural area are

required to be granted benefit of service rendered and surplus marks are required to be given to the in service candidates.

7.1 He has also taken us to the judgment of the Supreme Court passed in **Dr. Amit Bagra and Ors. vs. State of Rajasthan and Ors.**, Petition (s) of Special Leave to Appeal (C)

No/SA/1692/2017, decided on 15.12.2017 wherein it has been observed as under:



"Without commenting on merits of the case, in the circumstances, we dispose of these special leave petitions and hold that the admissions made for the present academic year shall not be disturbed. However, by the end of February, 2010, the State Government to consider the remote as well as difficult areas consider the judgments mentioned supra and also the extent of percentage of marks in terms of Reg.9(IV) may also be specified as may be considered appropriate.

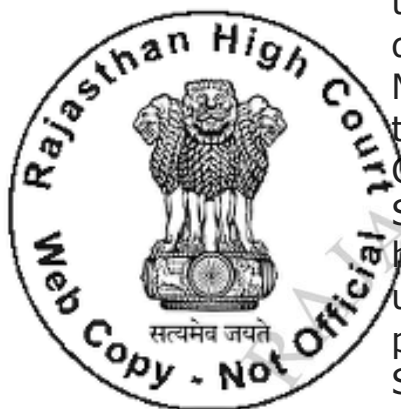
Accordingly, the petitions are disposed of. No Costs."

and contended that this is not a PIL and this should be restricted to the petitioner and the judgment of the learned Single Judge, the benefit should be restricted to the petitioners themselves and not to the fence sitters.

8. Learned counsel for appellant Mr. R.N. Mathur, Sr. Adv. relied upon the decision in **Dr. Himanshu Shekhar Sahoo and Ors. vs. State of Odisha and Ors., 2013 (4) LLN 378 (ORI)**, wherein it has been observed as under:

"1. In this batch of writ petitions, the petitioners herein are the Doctors who have served under the State Government for more than "five years" and they seek to challenge the guidelines framed by the State Government for allotment

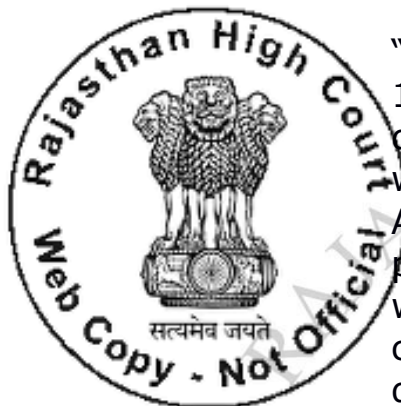
of candidates for Post Graduate (Medical) Course, 2013 in Odisha, communicated under cover of letter dated 27.5.2013 and further seek to challenge the decision of the State Government to treat the Doctors who have served for "three years" under the "in-service category" for admission into Post Graduate (Medical) Course in the academic year 2013-14. Learned counsel for the petitioners submits that the petitioners after completing of their M.B.B.S. degree registered themselves under the Orissa Medical Council as registered doctors and after they were selected by the Orissa Public Service Commission (OPSC) were appointed as Asst. Surgeons under the service of the State and have all completed five or more years of service under the State. It is stated on behalf of the petitioners that in exercise of the power under Section 33 of the Indian Medical Council Act, 1956, the Medical Council of India passed a regulation called "Post Graduation (Medical) Education Regulation 2000" which have been amended from time to time and by amendment made by the Notification dated 21.12.2010, the Medical Council of India decided by way of regulation to hold a common National Eligibility cum Entrance examination for admission into the P.G. (Medical) Courses throughout the country each year. Such examination is called as the "National Eligibility cum Entrance Test (NEET) for Admission to P.G. (Medical) Courses". To conduct the aforesaid examination, the National Board of Examinations (NBE) was constituted and such common eligibility test was to be given effect to from the session 2013-14."



9. Mr. Rajendra Prasad, AAG appearing for State Government has taken us to the Section 5(3) of the General Clauses Act and contended that Section 5(3) of the General Clauses Act, reads as under:

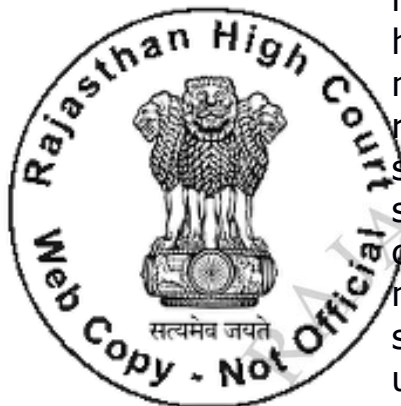
"5(3) unless the contrary is expressed, a 9 [Central Act] or Regulation shall be construed as coming into operation immediately on the expiration of the day preceding its commencement."

Therefore, it has come into force at midnight of 4th and 5th April. In that view of the matter, he has also taken us to the Regulation 9(IV) and contended that in view of the decision of the Supreme Court in **Channan Singh and anr. vs. Smt. Jai Kaur, AIR 1970 SC 349**, wherein it has been observed as under:



"4. It appears to us that the Amendment Act of 1964 was merely of a clarificatory or declaratory nature. Even in the absence of the words which were inserted by the Amendment Act of 1964 in Section 15(2)(b) the only possible interpretation and meaning of the words "in the son or daughter off such female" could have reference to and cover the son or daughter of the husband of the female. The entire scheme of Sub-section (2) of Section 15 is that the right of pre-emption has been confined to the issues of the last male holder from whom the property which has been sold came by inheritance. Looking at Clause (a) of Sub-section (2) where the property which has been sold has come to the female from her father or brother by succession the right of pre-emption has been given to her brother or brother's son. As has been observed in Mote Singh v. Prem Parkash Kaur and Ors. I.L.R. [1961] Punj.614 the predominant idea seems to be that the property must not go outside the line of the last male holder and the right has been given to his male lineal descendants. Where the sale is by the son or the daughter of such female the right is given to the mother's brother or their sons. The principle which has been kept in view is that the person on whom the right of pre-emption is conferred must be a male lineal descendant of the last male holder of the property sold. This is so with regard to Clause (a) of Sub-section (2). Coming to Clause (b) where the sale is by a female of land or property to which she has succeeded through her husband or through her son in case the son has inherited the same from his father the right of pre-emption is to vest firstly in the son or daughter of such female and secondly in the husband's brother or husband's brother's son of such female. Now if the son or daughter of the female who has sold the property could refer to her son or daughter from a husband other than

the one from whom the property devolved on her, it would be contrary to the scheme and purpose of Sub-section (2) which essentially is to vest the right of pre-emption in the lineal descendants of the last male holder. Similarly it is unthinkable that a husband's brother or husband's brother's son should have reference to a husband to whom the property never belonged. In other words it could never be intended that if a female has had a previous husband who has either died or with whom the marriage has been dissolved and the female has remarried and succeeded to the property of her second husband the brother or the brother's son of her previous husband should be able to claim the right of pre-emption when they had nothing whatsoever to do with the property sought to be pre-empted. It would follow that under Clause (b) the right of pre-emption would vest firstly in the son or daughter of the husband of the female meaning thereby either her own off-spring from the husband whom she has succeeded or the son or daughter of that husband even from another wife.



5. If the above discussion is kept in view there is no difficulty in attributing a retroactive intention to the legislature when the Amendment Act of 1964 was enacted. It is well settled that if a statute is curative or merely declares the previous law retroactive operation would be more rightly ascribed to it than the legislation which may prejudicially affect past rights and transactions. We are in entire agreement with the following view expressed in a recent full bench decision of the Punjab High Court in *Moti Ram v. Bakhwant Singh and Ors.* I.L.R.[1968] 1 Punj 104 in which a similar point came up for consideration :

A close analysis of paragraphs (First) and (Secondly) of Clause (b) of Sub-section (2) of Section 15 before the amendment introduced by Punjab Act 13 of 1964 would demonstrate that a son of the husband of a female vendor though not born from her womb would be entitled to pre-empt, particularly when the husband's brother and even the son of the husband's brother of that female are accorded the right of pre-emption. To reiterate, the right of pre-emption is accorded manifestly on the principle of consanguinity, the property of the

female vendor being that of her husband, and there is no reason why the step-son should be excluded and the nephew of the husband included. From this alone it must be inferred that the Legislature had intended to include a step-son and consequently retrospective operation had to be given to the amending Act as such a construction appears to be in consonance and harmony with the purpose of the Act."

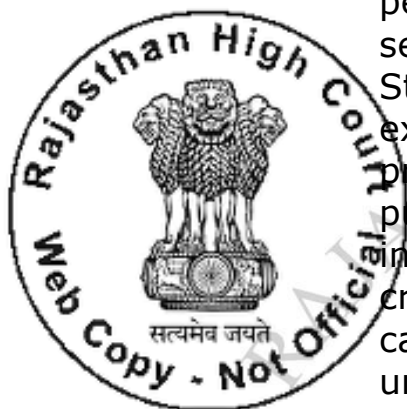


10.

Mr. Rajendra Prasad, AAG has also referred the decision of Supreme Court which has been sought to be relied upon by counsel for the appellant Mr. A.K. Sharma in **State of Uttar Pradesh and Ors. vs. Dinesh Singh Chauhan, 2016 (9) SCC 749**, wherein it has been observed as under:

"35. 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."



and contended that the Government has decided to give benefit to the doctors serving in rural area and notification was issued in view of the decision of Supreme Court and the benefit is to be granted to the in service people.

11. Learned counsel for appellant, Mr. Tanveer Ahmad, has taken us to the grounds of appeal memo of SAW No.488/2018 which reads as under:

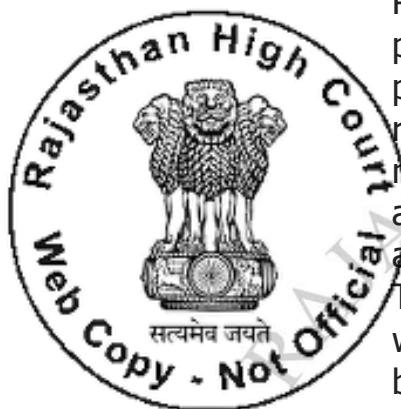
"(A) That this Honorable Court has held, in the case of State of M.P. Ors. vs. Gopal D. Tirthani & Ors. 2003 (7) SCC 83, that "we find merit and much substance in the submission of the learned Advocate-General for the State of Madhya Pradesh that Assistant Surgeons (i.e. medical graduates entering the 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."

Thus intervention by the learned Single Judge the notification dated 28.02.2018 was unwarranted and unjustified and therefore, the impugned order dated 20.03.2018 is liable to be quashed and set aside.

(B) That the Hon'ble Court recognising the services rendered by the in-service doctors in Public Sector/Government hospital observed in Pre-PG Medical Sangharsh Committee v. Dr. Bajrang Soni, (2001)8SCC694 that

"The doctors, who are in-service candidates in various medical institutions run and maintained by the Government or Government Departments, have wide area and horizon of exposure on the practical side and they may not have the required extra time to keep themselves afresh on the theoretical side like an open candidate who may have sufficient time at his disposal to plod through books. The in-service candidates in contrast to the fresh or open candidates have to spend much of their time on attending and treating the patients in the Hospitals they serve gaining excellence on the practical side and, in our view, they would constitute a distinct class by themselves to be given a special treatment and no grievance can be made out on the ground that the minimum



eligibility marks for their selection in respect of seats earmarked for them should also be the same as that of the fresh or open candidate We could see no discrimination or arbitrariness involved in the special provision made to meet a just and appropriate need in public interest.....”

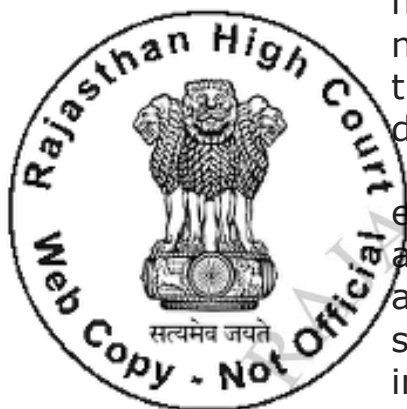
The Hon'ble Court in *Ajay Kumar Singh And Others vs State of Bihar, 1994 (4)SCC401* while holding that academic performance alone will not help in making good doctors and recognising the practical experience gained by the in-service doctors held that

“the academic performance is no guarantee of efficiency in practice. We have seen both in law and medicine that persons with brilliant academic record do not succeed in practice while students who were supposed to be less intelligent come out successful in profession/practice. It is, therefore, wrong to presume that a doctor with academic record is bound to prove a better doctor in practice. It may happen or may not.”

Hence the practical knowledge of the in-service doctors entering the PG course in no way jeopardize the merit based selection but will add more value to it and thus the service with devotion/dedication is to be honoured in comparison to mere service and therefore, those who have rendered their service to the rural areas of this country are required to be protected by way of considering them entitled for the bonus marks which has been decided to be granted by the State Government but has been interfered by the learned Single Judge under the impugned order dated 20.03.2018 which deserves to be quashed and set aside.”

and contended that the definition of difficult and remote area is required to be redefined. The rural areas are also required to be included in it. He has also supported contentions raised by all the appellants hereinabove.

12. Learned Counsel Mr. R.P. Singh, appearing for the original petitioner – respondent herein has taken us to the writ



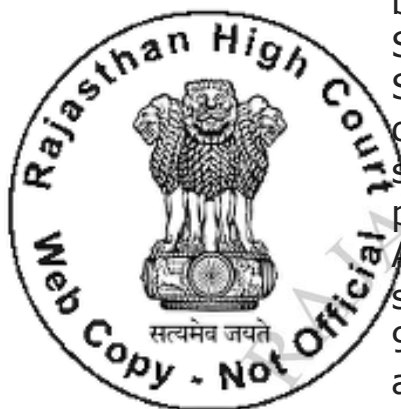
petition which reads as under:

"7. That, by a perusal of the impugned notification it is evident that none of the direction given by the Hon'ble Supreme Court has been followed by the State Government. Also it is evident that the State has hurriedly carried out the exercise of notifying the remote and/or difficult areas in the State of Rajasthan, as on 5/03/2018 when the Director Medical Health was called upon by this Hon'ble Court, he made a statement before this Hon'ble Court that he was not aware about any notification, which the state government, on 07/03/2018 claims to have been published on 28/02/2018."



from which it was clear that the notification dated 28.02.2018 was not available with the Medical Superintendent on the date on which has appeared before. Thereafter, he has also taken us to the rejoinder filed by him along with the affidavit of the State Government which was filed in the earlier proceedings in case of **Dr. Amit Bagra and ors. vs. State of Rajasthan and Ors., Special Leave Petition (c) No.11692 of 2017**, wherein it has been observed as under:

"2. That it is submitted that present Special Leave Petition is filed by the 'non-service' candidates against the impugned final judgment and order dated 07.04.2017 passed in D.B. Civil Writ Petition No. 4518 of 2017 wherein Hon'ble High Court while allowing the Appeal of the respondent no. 1 quashed the para no. 3 and 4 of the notification dated 20.03.2017 of State Government, and directed to grant the weightage of bonus marks (maximum upto 30) to 'in-service candidates' in PG Medical Courses in the form of incentive, for determining their merit in NEET Examination, 2017 in terms of Reg. 9 (IV) of the Regulation, 2000, however, if 30% weightage is granted to the 'in-service' candidates then the quality of merit/higher qualification be compromised.



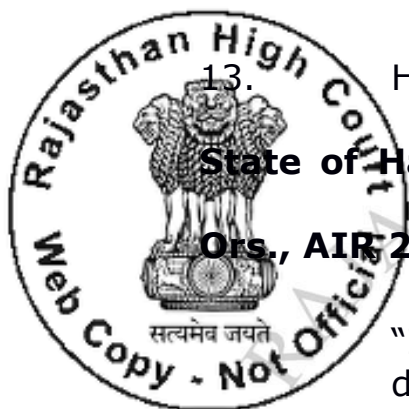
3. That It is submitted that if 30% maximum weightage marks as per proviso of clause (IV) of Regulation 9 is granted to the 'in service' candidates then the merit of all candidates who could secured high marks and rank in NEET 2017 has been jeopardized. The Non-Service candidate, who secured NEET merit of 126 (NEET marks of 1190.5724) has been relegated to merit rank of 197 in the State Merit List and on the contrary one 'In-Service' candidate, who had a NEET merit rank of 1700 (NEET marks of 1104.5528) now stands at 1st rank in the State Merit List so prepared. Another example is that one 'Dr. Abhishek Bansal', 'In-Service' Candidate, who secured NEET rank of 19951 (NEET marks of 917.226) has the State rank of 195 and stands above the NEET topper of the State, Dr. Anurag Gupta (an appreciable difference of 273.3468 marks).

4. That it is respectfully submitted that State Government has rightly reserved 50% of the State Quota PG Diploma seats (i. e. 25% of total seats) for the candidates holding MBBS degree from Rajasthan University of Health Sciences and Rajasthan University as per para 3 of notification dated 20.03.2017. The State of Rajasthan vide notification dated 20.03.2017 fairly balanced the seats between 'in-service' and 'non- service' candidates keeping in view to maintain the quality of education, however, Hon'ble High Court wrongly quashed and set aside the said para no. 3 of Government order dated 20.03.2017.

5. That f 30% maximum weight age marks as per proviso of clause (IV) of Regulation 9 is granted then it was observed that no 'Non-Service' candidates could get the clinical subjects of their choice namely, Radio-Diagnosis, Dermatology and Venereology, Orthopedics, Pediatrics and Obstetrics and Gynecology. The candidate who has been placed 1st in the State Merit List, so prepared, has secured 1466 marks (out of 1500) after adding an extra weightage of 30% marks. Dr. Shabnam S. had secured 1248.5079 marks out of a maximum of 1500 and stood 1st across the nation in NEETPG, 2017 who has been superseded by Dr. Subhash Nandal with

NEET merit rank of 1700 (NEET marks of 1104.5528).”

and contended that the State Government is not clear what steps thereupon to take.



13. He has also taken us to the guidelines of Rural Area in **State of Haryana and Anr. Etc. vs. Dr. Narender Soni and Ors., AIR 2017 SC 2892**, reads as under:

“It is, therefore, apparent that the Notification dated 05.05.2017 is based on a completely flawed process of identification, appearing irrelevant criteria and ignoring relevant considerations. The High Court has rightly observed that the State power for transfer and posting is sufficient to take care of the unwillingness of Doctors to join at specified locations. The identification and criteria, will naturally vary from State to State to some extent, despite identification of certain common criteria.”

and then he has pointed out that the contention that the programme was fixed by the State Government on 15.03.2018 contrary to record is not correct inasmuch as dated 10.10.2017 where the Ministry of Health and Family Welfare issued notification fixed programme as under:

“In continuation of meeting notice dated 05.10.2017 for Video Conference at 10.00 AM on 16.10.2017, please find enclosed minutes of the meeting chaired by Joint Secretary (Medical Education) on 27.09.2017 regarding conduct of NEET and review of counseling and admission process.

This will constitute the agenda for scheduled Video Conference on 16.10.2017. All States/UTs are requested to prepare accordingly.

Any other agenda to be discussed may be intimated to the Ministry by 12.10.2017.

(xv) The schedule for completion of admission for PG courses was discussed and decided as following:-

S.	Schedule for admission	Central Counselling		State Counselling
		All India Quota	Deemed +CI	
	Conduct for Exam	By 10 th January		
	Declaration of Result	By end of January		
	1 st round of counselling	12 th March-24 March	12 th March-24 th March	25 th March-5 th April
	Last date of joining	3 rd April	3 rd April	12 th April
	II round of counselling	6 th April -12 th April	6 th April -12 th April	15 th April -26 th April
	Last date of joining	22 nd April	22 nd April	3 rd May
	Mop-up-Round		12 th May - 22 nd May	4 th May - 8 th May
	Last date of joining		26 th May	12 th May
	Names list to Colleges		27 th May	13 th May
	Last date of joining		31 st May	18 th May

(xvi) The Following Matrix was proposed with regard to permissibility to to students to exercise fresh choice during counselling:-

Round	Free Exit	Exit with forfeiture of fees	Ineligible for further counselling	Amount of registration fee
AIQ I/Deemed	☐			
AIQII/Deemed		If not joined	If joined	Government -Rs.25,000/(half for SC/ST/OBC) Deemed -Rs. 2,00,000

State Quota I	☐			
State Quota II		If not joined	If joined	Government -Rs.25,000/(half for SC/ST/OBC) Private -Rs. 2,00,000
State Quota Mop-			☐	
Deemed Mop-up			☐	



14 He has also taken us to the judgment of Supreme Court in **Dinesh Singh Chauhan (supra)**, wherein it has been observed as under:

"24. 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 muchless 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.\[2\]](#)). 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.

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

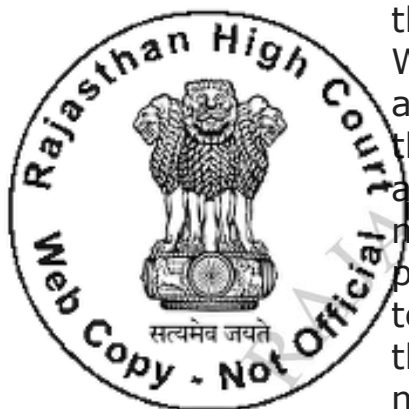
and contended that para 24 is very clear that the State Government has no right to go contrary to it.

15. He has also relied upon the decisions in

1. **State of Punjab and Anr. vs. Rajesh Kumar and Ors., (2017) 14 SCC 655**, wherein it has been

observed as under:

"16. The first round of counselling for admission to postgraduate courses was completed on 13th, 14th and 15th of April, 2017. Doctors who were selected for admission have paid their fees and joined the courses. We are also informed that certain doctors who secured admission in institutions outside the State have given up their admissions to join the postgraduate course in the State of Punjab. We are not inclined to interfere with the admissions made to postgraduate courses for this year. As we are not interfering with the admissions for this year, we do not deem it necessary to decide the other two points pertaining to the applicability of the incentive to Private Medical Colleges and the validity of the action of the government in prescribing the minimum service in the remote/difficult areas as eligibility criteria."



2. Dr. Himanshu Shekhar Sahoo and Ors. vs. State of Odisha and Ors., 2013 (4) LLN 378 (ORI), wherein it has been observed as under:

"15. Since applications had been called for by the NBE between 4th October 2012 to 12th November, 2012 i.e. before midnight of 12th November 2012, the law prevailing at the time of submission of application would alone be relevant and no subsequent law or policy. Although it is contended by the State that the State was contemplating amendment to the eligibility criteria of "in-service candidates" from five years to three years in the counter affidavit in Paragraph-21, the stand of the State is unambiguous and clear. We can do no better than to extract Paragraph-20 of the counter affidavit of the State which is as follows:

20. That, the State Government had not issued any guideline for allotment of candidates for Post Graduate (Medical) courses in the Govt. Medical Colleges of Odisha as the NEET (Post Graduate) for MD/MS/Post Graduate Diploma Courses 2013 admission sessions which was challenged before the Hon'ble Supreme Court and the Hon'ble Supreme Court order dated 13.12.2012 in which the Hon'ble Supreme Court had given liberty to hold the examination and directed not to declare the



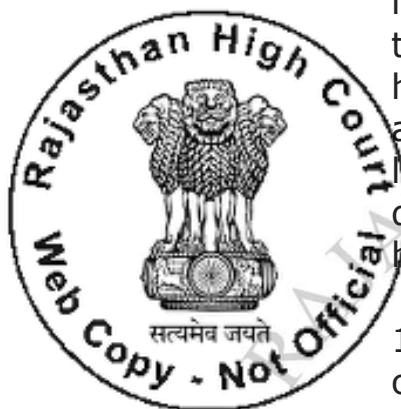
results. The State Government though had taken a policy decision to hold to the counseling only was able to issue the Guideline on 27.05.2013 after the order dated 13.05.2013 was passed wherein the Hon'ble Supreme Court had lifted the bar imposed on 13.12.2012 and allowed the results already conducted to be declared to enable the students to take advantage of the same for the current year. But the decision was taken by the Government, regarding the guidelines for admission counseling for admission to the P.G. course, 2013. The DMET, Odisha had moved the file for approval of the guidelines for admission to P.G. courses on 11.04.2012 which was finally decided on 29.04.2013 by the Government regarding the conditions/eligibility etc. for admission to the course, where in it was decided that 3 years continuous service will be taken for consideration instead of five years for in-service doctors and the said decision of the Government was communicated along with the guideline to the DMET, Odisha on 27.05.2013 in continuation to the earlier letter of the Government which was issued to DMET by the Government. xx xx

17. In this respect, it is important to refer to the judgment of this Court in the case of Bishnu Charan Mohanty v. State of Orissa and others, : AIR 1973 ORI. 199, where this High Court after referring to various leading judgments of the Hon'ble Apex Court dealt with the scope of Article 166(3) of the Constitution of India and concluded that while Article 163(3) of the Constitution lays down that "until such an order reaches the person concerned, it does not attain any finality. It is open to Government even to recall a letter sent to another office before it reaches the person concerned. When, however, the order is communicated to the person concerned, the order becomes final."

Therefore, the decision of the State Government though signed by the Hon'ble Minister on 29.4.2013, was approved by the Hon'ble Chief Minister on 21.5.2013 and communicated to the person concerned i.e. DMET, Odisha on 27.5.2013 and, therefore, the date 27.5.2013 has to be held the date on which the order was given effect to. Much prior thereto applications had been called for, examination had been held and results had also been declared. The law that was applicable

to the State of Odisha, on the date of applications were made prior to midnight of 12.12.2012 and such law and/or policy prevailing at that time alone will govern the matter of admission for PG (Degree) Course for the year 2013.

We are further of the considered view that even though the impugned guideline have been issued by the State prior to the counseling for the year 2013, yet, the selection process having already commenced on the date of application i.e. 12.11.2012, the law/policy/guideline as it prevailed on the last date of application would govern the case at hand.



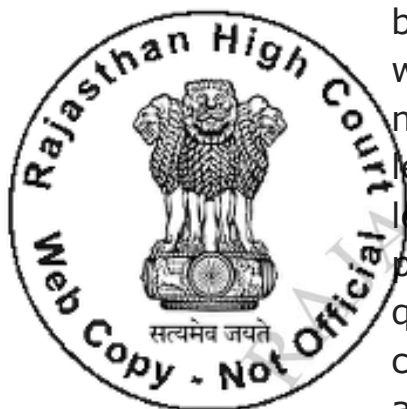
18. Taking into consideration of the judgments of the Hon'ble Supreme Court in the case of Secretary, A.P. Public Service Commission (supra), K. Manjusree (supra) and Mohd. Raisul Islam and others (supra), it is well settled principle of law that once the process of selection has started, the prescribed selection criteria cannot be changed and further that, introducing of any change into eligibility criteria after the selection process has commenced, would amount to changing the game after the game has been played. It is also further well settled that in the present case, the selection process commenced from 12th November, 2012 (i.e. the last date of making online application) and therefore, any requirement/selection has to be made on the basis of the process/policy/law existing on the said date. We are of the further considered view that while the State is at liberty to change its policy and we are not required to comment upon the justifiability and reasonability of such a change of policy. We are of the view that the impugned guidelines/policy would operate only prospectively i.e. from 27.5.2013 for future examinations that may be conducted but insofar as admission of P.G. (Medical) Course for "in-service candidates are concerned for the year 2013, Clause-F-2 of the impugned guidelines cannot be made to apply to such admissions into the seats reserved for "in-service candidates" for the year 2013-14."

3. Secretary A.P. Public Service Commission vs. B. Swapana and Ors., (2005) 4 SCC 154, wherein

it has been observed as under:

“14. The High Court, has committed an error in holding that the amended rule was operative. As has been fairly conceded by learned counsel for the applicant-respondent No. 1 it was un-amended rule which was applicable. Once a process of selection starts, the prescribed selection criteria cannot be changed. The logic behind the same is based on fair play. A person who did not apply because a certain criteria e.g. minimum percentage of marks can make a legitimate grievance, in case the same is lowered, that he could have applied because he possessed the said percentage. Rules regarding qualification for appointment if amended during continuance of the process of selection do not affect the same. That is because every statute or statutory rule is prospective unless it is expressly or by necessary implication made to have retrospective effect. Unless there are words in the Statute or in the Rules showing the intention to affect existing rights the rule must be held to be prospective. If the Rule is expressed in a language which is fairly capable of either interpretation it ought to be considered as prospective only. (See P. Mahendran and Ors. v. State of Karnataka and Ors. etc. : AIR1990SC405 and Gopal Krishna Rath v. M.A.A. Baig (dead) by Lrs. and Ors.

15. Another aspect which this Court has highlighted is scope for relaxation of norms. Although Court must look with respect upon the performance of duties by experts in the respective fields, it cannot abdicate its functions of ushering in a society based on rule of law. Once it is most satisfactorily established that the Selection Committee did not have the power to relax essential qualification, the entire process of selection so far as the selected candidate is concerned gets vitiated. In P.K. Ramchandra Iyer and Ors. v. Union of India and Ors. : (1984)ILLJ314SC this Court held that once it is established that there is no power to relax essential qualification, the entire process



of selection of the candidate was in contravention of the established norms prescribed by advertisement. The power to relax must be clearly spelt out and cannot otherwise be exercised."

and lastly contended that in view of the notification which is sought to be relied upon was upheld. In that view of the matter,

the benefit of this will be made applicable only from the date of uploading and not from the date of notification.

16. Mr. S.K. Gupta, counsel for the Counseling Board contended that out of 768 posts, 688 posts were finalized. He has relied upon following data:

Total State Quota Seats (Medical)

	Gov.		Private	
MD/MS	492	+	245	737
Diploma	30	+	1	31
				768
After Ist Counseling vacant seats				80
Total Allotment (College) 1 st Counseling on 4 th April 2018 verification/ list sent to respective Medical Colleges- 5.04.2018				688

On 10.04.2018 at 3 PM Reporting Position:-

RNT Udaipur	34
SNMC Jodhpur	46
Gov. Medical College, Kota	36
JLN Ajmer	37
SPMC Bikaner	38
SMS Jaipur	110
Chalawar Medical College	23
MGMC Jaipur	5
Total Reported	329



10.04.2018

	Govt.		Private	
MD/MS	536	+	245	781
Diploma	30	+	1	31
Total Seats				812
Vacant after 1 st Counseling				80
Total Allotments 1 st Counseling				732

Reporting Position on 10.04.2018 at 3 PM

Udaipur	34
Jodhpur	46
Kota	36
Ajmer	37
Bikaner	38
Jaipur	110
Jhalawar	23
MGMC	5
Total	329



and contended that majority of seats were finalized on 4th April, 2018.

17. Counsel for respondent Mr. R.P. Singh has argued that since notification was published on 05.04.2018, their rights cannot be said to be accrued. Rights of the candidates who were interviewed on 04.04.2018 are crystallized and in that view of the order in view of order passed on interim stage of these appeals the admissions are subject to decision of these appeals.

18. We have heard learned counsel for both the sides.

19. Before proceeding with the matter, it will not be out of place to mention that in one original writ petition for the issue raised, the petitioner before the learned Single Judge has prayed for the following relief:

“It is, therefore, most humbly prayed that this Hon’ble Court be pleased to accept and allow this writ petition and by issuing an appropriate writ, order or/and direction.

I) Call for the record on the basis of which the

respondent-State has come out with the impugned Notification dated 28.2.2018.

II) Strike down the Notification dated 28.2.2018.

III) Strike down the condition whereby all in service doctors who had served in any rural area prior to the issuance of the impugned notification dated 28.2.2018 have been granted the benefit of the incentive.

IV.) Pass such other and further orders or directions, as this Hon'ble Court, may deem just and proper in the facts and circumstances of the case in favour of the petitioner."



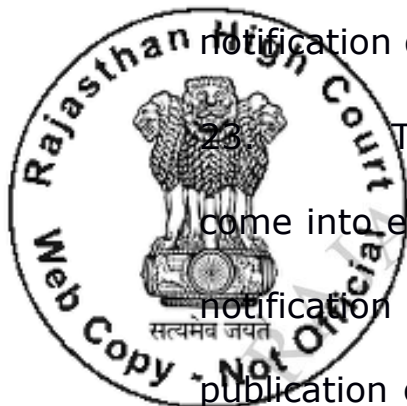
Over and above the reasons while confirming the order of Id. Single Judge, we add the reasoning of first notification dated 28.02.2018 as directed by the Supreme Court in earlier writ

proceedings which was subject matter of challenge. In the earlier litigation, in service people were granted the benefit of rural remote and difficult area though it was not part of the Regulation 9 in view of Para 24 of the Supreme Court judgment in the case of Dinesh Singh Chauhan's case (supra) which has been reproduced hereinabove clearly prohibit such practise.

21. In our considered opinion, notification which came to be issued for remote and difficult area was further interpreted in the earlier proceedings though Supreme Court has not interfered but has directed to come out with the notification and since they have come out with the notification on 5.4.2018, the in service candidate may not get undue advantage which is granted earlier.

22. In our considered opinion, the Medical Council have passed Regulation which is statutory while approving Regulation 9 which was not amended till 05.04.2018. Merely because of the P.G. Medical Education Committee decision which was considered

on 22.09.2017 and later on approval by the Central Government on 26.09.2017 and further decision of the General Body of Council on 31.10.2017 will not affect unless the statutory Regulation is amended in accordance with law and as procedure under Regulation 9 was amended for the first time in rural area by notification dated 05.04.2018.



23 Though contention raised by Mr. R.P. Singh that it has come into effect on 07.04.2018, but in our considered opinion the notification mentioned as 05.04.2018, it is presumed that this publication of 05.04.2018 will be effective since final Gazette was not produced on record before us. In view of the matter, the Regulation came into force on 05.04.2018 and regarding the declaration on 05.04.2018 has rightly accrued.

23.1 In our considered opinion, the procedure was over on 04.04.2018 and all formalities were required to be done by 04.04.2018. Though we have made it subject to result of the appeals but even if we take decision of the present appeals, right to consider has accrued on 05.04.2018 – the date on which word 'rural area' has been added in Regulation 9. In that view of the matter, the contention of the appellant is that it will have taken effect even prior to 05.04.2018 is empty formalities otherwise everything was finalized on 04.04.2018, by counseling every branch and all seats of different medical colleges and different medical branches as referred hereinabove were finalized. They were given time to deposit the fees up to 12.04.2018 but in our considered opinion the process of finalization of the branch and

everything was done on 04.04.2018.

24. Even otherwise, we are making it prospective in view of the fact that when on 10.10.2017 notification came into force since the Regulation was pending and the notification was issued on 28.02.2018 and now notification has come, we give benefit from 05.04.2018 not retrospectively.

25. In that view of the matter, we uphold the order passed by the learned Single Judge to the extent it provides the contrary to the Regulation.

26. All these appeals are disposed of with the following direction:

The admissions which are given pursuant to the notification dated 15.03.2018 up to 04.04.2018 will go on the basis of unamended Regulation 9 and from 05.04.2018 whenever post is vacant out of 688 will be governed by the amended regulation and the Government will act accordingly.

27. No order as to cost.

28. Copy of this order be placed in other connected files.

(VIJAY KUMAR VYAS) J.

(K.S. JHAVERI)J.