

SUPREME COURT OF INDIA

State of M.P.

Vs.

Gopal D. Tirthani

C.A.No.5223 with 5224-5226 of 2003

(R. C. Lahoti and Ashok Bhan, JJ.)

28.07.2003

JUDGEMENT

R. C. LAHOTI, J.:-

1. Leave granted in all the Special Leave Petitions.

2. Imparting instruction and giving education was philanthropy - a pious duty - in the past, and later a service. In recent times it has developed into a business and now it stands recognized as an industry. A sizeable amount of litigation centres around medical education. The national wealth of available seats is scarce while the aspirants, desirous of sharing such wealth, are numerous. Even attempt at laying down criteria for choosing the more deserving out of the several aspirants is subjected to challenge before the Constitutional Courts of the country. This time it is the State of Madhya Pradesh which is at the receiving end and the issue is quota of seats for in-service candidates. Carving out a quota for in-service candidates by the State Government, assigning weightage for rural service, sub-classification within classification for women candidates who have rendered rural service, and holding of a separate eligibility test for determining the merit of in-

service candidates as distinguished from open category candidates, are the issues canvassed before the High Court and reiterated before this Court by the parties especially the State of Madhya Pradesh. For the purpose of this judgment it is not necessary for us to enumerate the facts of each individual petition as there were many before the High Court. It would suffice to note the bones of contention in the backdrop of a few bare essential events in their chronological order.

3. In the State of Madhya Pradesh, as it exists today, subsequent to the reorganization effected on November 1, 2000, leading to carving out of the State of Chhattisgarh, there are five Universities imparting medical education at under-graduate and post-graduate levels of studies. There are 620 under-graduate seats while the seats at post-graduate level of studies are 537, consisting of degree and diploma courses both. A quota of 89 seats is earmarked for in-service candidates, i.e., the doctors in the employment of the State Government.

4. Madhya Pradesh, a State with a large land spread, still lives in villages. The number of inhabited villages is 51,806 divided into 313 Blocks for the purpose of health services administration. There are 8835 sub-health centres which are the smallest rural units of public health service covering a population of 3000 in tribal areas and 5000 in general or non-tribal areas. At each sub-health centre, an ANM (auxiliary nurse midwife) and a multi purpose male health worker is posted. There are 1194 primary health centres which are rural health units providing curative medical care and preventive health care covering a population of around 50,000 of which 20,000 is tribal. One MBBS medical officer with para-medicos is posted at PHCs. There are 229 community health centres situated at Block/Tehsil Headquarters. Ideally, post graduate medical officers in Surgery, Obstetrics and Gynaecology, Anaesthesia, Medicine and specialised in Paediatrics under overall supervision of a block medical officer need to be posted at each such community health centre (CHC). Then there are 169 first referral units (FRU) which are community health centres equipped with new-born care equipment, surgical equipment for emergency obstetric care and care of high risk neonates. Post graduate medical officers specially having qualified in Obstetrics and Gynaecology, Anaesthesia and Paediatrics are required to be posted at such first referral units so as to prevent mother and infant casualties. The total sanctioned posts in the cadre of medical officers called Assistant Surgeons, which includes Physicians as well, is 4670 against which only 3865 posts are presently occupied. The occupants include those medical officers who are recruited as a temporary measure on contract basis for a short term. 805 posts are lying vacant. As to the posts which require PG Degree/Diploma, the position is as under :-

Cadre	Strength	Posted		Vacant
Class-I Specialists	739	530	209	
Class-I Specialists in CHCs	258	82	176	
Medical Officers Class-II with PG Degree	+302	1606+45	134+257	1472

5. To be promoted as 'Specialist/District Health Officer' the candidate must have rendered a particular length of service in the cadre of 'Assistant Surgeon' and should also have secured a post-graduate degree in medical science. So much is to picture the need of doctors in civil services of the State of Madhya Pradesh. The services are starving for qualified personnel. This much is apparent.

6. Regulation No. 9 of the Regulations framed by the Medical Council of India reads as follows :

"9. Selection of Postgraduate students

(1) Students for post-graduate medical courses shall be selected strictly on the basis of their academic merit.

For determining the academic merit, the University/Institution may adopt any one of the following procedures both for degree and diploma course :

(i) On the basis of merit as determined by a competitive test conducted by the State Government or by the competitive authority appointed by the State Government or by the University/group of Universities in the same State;

(ii) On the basis of merit as determined by centralised test held at the National level; or

(iii) On the basis of the individual cumulative performance at the first second and third MBBS examinations, if such examinations have been passed from the same University; or

(iv) Combination of (i) and (iii).

Provided that whatever entrance test for postgraduate/admissions is held by a State Government or a university or any other authorised examining body, the minimum percentage of marks for eligibility for admission to postgraduate medical course shall be fifty per cent for all the candidates;

Provided further that in non-Governmental institutions fifty per cent of the total seats shall be filled by the competent authority and the remaining fifty-percent by the management of the institution on

the basis of merit."

(emphasis supplied)

7. It is not disputed that the Regulations are binding and have the force of law. No educational institution can award a degree in medical sciences unless it satisfies the requirement of the Regulations.

8. On 14th January, 2002, the Department of Medical Education, Government of Madhya Pradesh promulgated the Madhya Pradesh Medical and Dental Post Graduation Entrance Examination Rules, 2002 (hereinafter referred to as 'P. G. Entrance Examination Rules 2002', for brief) published in Madhya Pradesh Government Gazette Extraordinary dated 14-1-2002. The relevant part of the rules is extracted and reproduced hereunder :-

"MADHYA PRADESH MEDICAL AND DENTAL POST GRADUATION ENTRANCE EXAMINATION RULES, 2002

Bhopal, the 14th January, 2002

No. F-5-7-2002-LV-M. E.-1. - Department of Medical Education, Government of Madhya Pradesh, Mantralaya Bhopal vide their endorsement No. F-5-7-2002-LV-M.E.-1, dated the 14th January, 2002 make and issue the following Rules for entrance allotment and admission to post graduate Degree/Diploma Course in Medical and Dental College in the State of Madhya Pradesh:-

RULES

1.0 Title - These rules will be known as "Madhya Pradesh Medical and Dental P. G. Entrance Examination Rules, 2002" these Rules will be effective from their publication in "Gazette of Madhya Pradesh".

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8.0 Reservation - 21% seats are reserved for candidates belonging to the Scheduled Tribe, 15% seats are reserved for candidates belonging to Scheduled Caste and 14% seats are reserved for candidates belonging to other backward classes.

8.1 Women's reservation shall be 30% horizontal and floating according to merit-cum-choice.

8.2 The minimum percentage of marks for eligibility for admission to post-graduate medical courses

shall be 40% for SC/ST/OBC candidates and 50% for UNRESERVED category candidates.

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8.6.1 For employees of Government of Madhya Pradesh (In-service) 20% seats in PG Degree/Diploma courses have been reserved.

8.6.2 They are exempted from Pre-PG entrance examination and shall be nominated for doing post-graduation in various Degree/Diploma courses as per selection criteria, terms and condition of employer department.

8.6.3 Selection shall be done on the basis of the individual cumulative performance at the first, second and third MBBS examination if such examination have been passed from the same University.

8.6.4 Further the service period, length of rural service etc. will also be taken into consideration by employer department for nomination.

8.6.5 The In-service candidate will not be entitled for admission for three years (excluding 2002) if nominated and did not join or join but left the seats in mid term due to any reason.

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9. The Public Health and Family Welfare Department of Government of Madhya Pradesh promulgated the Madhya Pradesh Medical and Dental Post-Graduation Admission (In-service) Rules, 2002 (hereinafter referred to as 'PG Admission (In-service) Rules, 2002,' for brief) published in the Madhya Pradesh Government Gazette Extraordinary dated 28th March, 2002. Relevant part of these rules is extracted and reproduced hereunder :-

"MADHYA PRADESH MEDICAL AND DENTAL POST-GRADUATE ADMISSION (IN-SERVICE) RULES, 2002

No. F-2-1-2002-XVII-M.-1. - Vide Endorsement No. F-5-7-2002-LV-M.E.-1, dated 14th January,

2002, Department of Medical Education, Government of Madhya Pradesh, have issued "Madhya Pradesh Medical and Dental Post-Graduate Entrance Examination Rules, 2002," for entrance allotment and admission to Post-Graduate Degree/Diploma courses in Medical and Dental Colleges in the State of Madhya Pradesh.

These rules provide for reservation of 20% seats in Post-Graduate Degree/Diploma courses for in-service employees of Government of Madhya Pradesh. It is further provided in the rules that the nomination of candidates for doing post-graduation in various degree/diploma courses will be as per selection criteria, terms and conditions of employer department.

Therefore, it has become necessary to formulate rules providing for selection criteria, terms and conditions for nomination of candidates serving under the State Government, for Degree/Diploma courses in various Medical and Dental Colleges in the State of Madhya Pradesh.

Accordingly, the State Government, vide Endorsement No. F.-2-1-2002-XVII-M.-1, dated 28-3-2002, of the Department of Public Health and Family Welfare, Government of Madhya Pradesh Mantralaya, Bhopal, make and issue the following rules for admission to Post-Graduate Degree/Diploma courses in Medical and Dental Colleges in the State of Madhya Pradesh.

Title.- These rules will be known as "Madhya Pradesh Medical and Dental Post-Graduate (In-service) Admission Rules, 2002." These rules will come into force from the date of their notification in the Gazette of Madhya Pradesh and will apply to doctors serving under various departments of the State Government.

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Selection criteria.- 1. Only those candidates who have completed 5 years of service under the Government of Madhya Pradesh and who are not serving on contractual basis will be eligible for selection as candidates who are in-service.

Women candidates, who have served for three consecutive years in rural areas, will also be eligible even if they have not completed a total of five years of service.

Relaxation for such women candidates with less than five years of service will, however, be subject

to the condition that they will be entitled to selection for post-graduate courses in Obstetrics and Gynaecology and Anaesthesia only.

2. For the purpose of selection of candidates who are in-service, following weightage in marks will be assigned :

a. 30% marks on the basis of individual integrated performance at the first, second and third MBBS examination.

b. 30% marks will be given on the basis of length of service in the rural/tribal areas.

* 2 marks will be awarded for every 6 months of service in a rural area.

1 additional mark will be given if this area falls under the tribal sub-plan.

* Thus any candidate, who has served for five years in a rural area under a tribal sub-plan area, can earn a maximum of 30 marks under this criterion, similarly, for serving five years in a rural area other than tribal sub-plan area, the candidate will get a maximum of 20 marks.

c. 40% marks will be awarded on the basis of a written examination conducted by Madhya Pradesh Professional Examination Board.

* This will be a separate and limited examination confined who are in-service, for selection from amongst themselves.

3. The maximum age limit for selection as candidates who are in-service shall be 45 years.

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Terms and Condition.- 1. Every candidate who is in-service will have to deposit an examination fee as stipulated by the Madhya Pradesh Professional Examination Board.

2. Such candidates will have to furnish a bond of serving the State Government for another 5 years after completing P.G. Degree/Diploma course.

* They will also submit a bank guarantee of Rs. 3.00 lakhs along with the bond."

(Emphasis supplied)

10. It is not disputed that the abovesaid two rules, though called 'rules,' are not statutory; they have the effect of instructions or guidelines issued in exercise of executive power of the State Government. In the P.G. Entrance Examination Rules, 2002 which make provisions for the entrance test being conducted by the State Government, 20% seats are allocated for in-service candidates i.e. for medical graduates who are in the employment of the State Government. They are exempted from taking PG entrance or Pre-PG examination. Such candidates are obviously governed by the service rules of the State. Being subject to such Conduct Rules they cannot sit in any examination or divert themselves to educational studies except by the leave of the department which they are serving and in accordance with the relevant Service Rules. The Department has laid down its own criteria for selecting such in-service Assistant Surgeons as would be allowed to prosecute PG studies against the seats available in that quota. The P.G. Admission (In-service) Rules, 2002 lay down and declare the policy of the State Government in the matter of permitting in-service candidates for acquiring post-graduate qualifications and the eligibility criteria subject to satisfaction whereof the candidates will be selected and permitted to take up the entrance examination and prosecute post-graduate course of studies. The provisions contained in the two sets of rules are overlapping and are also inconsistent to some extent. The rules framed by Department of Medical Education called P.G. Entrance Rules, 2002, vide Rule 8.6.2 exempt the in-service candidate from Pre-PG entrance examination and allow their entry in post-graduate classes within the allocated quota only upon nomination being made by the State Government, subject to their fulfilling selection criteria and the terms and conditions of their employer department. The PG Admission (In-service) Rules framed by the Public Health and Family Welfare Department, vide Rule 2 under selection criteria, provide for a different mechanism including 40% marks to be awarded on the basis of a written examination conducted by Madhya Pradesh Professional Examination Board which is to be held separately for in-service candidates. This overlapping and inconsistency (though we have pointed it out) need not detain us as it is immaterial in so far as the controversy arising for decision in the present case is concerned and in view of the law as is being stated hereinafter.

11. For the sake of convenience, we would refer in this judgment to the Assistant Surgeons in the employment of the State Government as 'in-service candidates' and to the doctors taking up the P.G. entrance examination, who are not in the employment of the State Government, as 'open category

candidates.' The qualifying examination for entrance to post-graduate is called Pre-P.G. Entrance Examination and is conducted by M.P. Professional Entrance Test Board ('PET Board,' for short), an autonomous body. On 24-3-2002, examination for the year 2002-03 (hereinafter referred to as '2002 Entrance Test,' for short) was held for open category candidates. The entrance test for in-service candidates was held on 16-6-2002. Thus, two separate entrance tests were held; one for open category candidates, and the other for in-service candidates. However, much before the holding of the tests, writ petitions were filed in the High Court of Madhya Pradesh laying challenge to the constitutional validity of P.G. Entrance Examination Rules, 2002 and P.G. Admission (In-service) Rules, 2002. The High Court, by interim orders passed in the writ petitions, permitted the entrance examinations being held as scheduled but directed the declaration of results to remain stayed. On 20th February, 2003, the High Court pronounced its decision disposing of a batch of writ petitions. The High Court struck down as ultra vires the P.G. Admission (In-service) Rules, 2002 based on the following findings arrived at by it :-

"(a) There can be reservation for in-service employees for post-graduate medical courses and reservation made for the said employees in 2002 Rules does not suffer from any constitutional invalidity.

(b) There has to be common entrance examination for admission in post-graduate medical course so as to test the comparative merit.

(c) The "In-services Rules" which provide for separate and limited examination for in-services candidates contravenes the basic tenet and principle enunciated in the Regulations framed by the Medical Council of India and, therefore, the same is ultra vires.

(d) Conferral of benefit by grant of weightage to some in-service candidates/employees on the basis of their rendering services in rural areas is hit by Art. 14 of the Constitution as well as stands in oppugnation to the Regulation framed by the Medical Council of India and hence, is invalid and is liable to be struck down.

(e) The distinction made between the in-service women employees/women candidates who have served in rural areas for three years and other women candidates who have rendered service in other areas is discriminatory.

(f) The stance put forth by some of the petitioners that there has to be some reservation for the category of employees who are the 'Assistant Surgeons from amongst the quota meant for 'in-service candidates' is devoid of any substance and hence, deserves rejection.

(g) The limited and separate examination which has already been held cannot be given the stamp of approval because we have already held that in-service candidates Rules, 2002 are unconstitutional."

12. In substance, the High Court upheld the validity of reservation of 20% seats out of the total in favour of in-service candidates. It held that the in-service candidates and open category candidates had to be subjected to one common entrance test for determining the comparative merit for entrance into the post-graduate courses of study, and that the holding of two separate tests - one for in-service candidates and one for open category candidates - was unsustainable, being in contravention of the Regulations framed by the Medical Council of India and the pronouncement of this Court in Dr. Priti Srivastava's case (infra). The weightage given to in-service candidates, male or female, in lieu of rendering services in rural areas was violative of Art. 14 of the Constitution. The claim of the writ petitioners who were Assistant Surgeons, as distinguished from Physicians and discharging duties in various disciplines of medical and health services other than surgery, for carving out a quota meant exclusively for them was declined. This aspect of the controversy has not been pursued further and stands buried with the judgment of the High Court. AIR 1999 SC 2894 : 1999 AIR SCW 2795 : 1999 All LJ 1947

13. While the abovesaid writ petitions were pending in the High Court and the fate thereof was awaited, the time became ripe for commencing the process of admission to post-graduation seats of 2003-2004. On 18th February, 2003, the State Government promulgated the Madhya Pradesh Medical and Dental Post-Graduation Entrance Examination Rules, 2003 (hereinafter referred to as 'PG Entrance Examination Rules, 2003,' for short) published in the Madhya Pradesh Government Gazette Extraordinary dated 18-2-2003. The rules are stated to have been framed in exercise of powers conferred by S. 10 of the Madhya Pradesh Chikitsa Shiksha Sanstha Niyantaran Adhiniyam, 1973 (M.P. Act No. 19 of 1973). However, it was stated at the Bar that it is doubtful whether S. 10 of Act No. 19 of 1973 confers powers on the State Government to frame such rules as that Act provides for proper regulation of institutions of medical education in the State and does not deal with admissions to the institutions of medical education. However, that is not the ground of challenge and we need not dwell any further on that issue; for, the rules, if not statutory, would yet have the effect of executive instructions or guidelines issued in exercise of the executive power of the State. The fact remains that these rules, once they came into effect, repealed and superseded the preceding rules, i.e. P.G. Entrance Examination Rules, 2002, by necessary implication though the Rules of 2003 do not specifically incorporate a repealing clause. This factual position was not disputed and was rather agreed to at the Bar. The relevant part of P.G. Entrance Examination Rules, 2003 is extracted and reproduced hereunder :-

"MADHYA PRADESH MEDICAL AND DENTAL POST-GRADUATION ENTRANCE EXAMINATION RULES, 2003

No. F-5-62-02-LV-ME-1.- In exercise of powers conferred by S. 10 of Madhya Pradesh Chikitsa

Shiksha Sanstha Niyam Adhiniyam, 1973 (Madhya Pradesh Act No. 19 of 1973), the State Government hereby makes the following rules to carry out the purpose of the Adhiniyam i.e. the Entrance to Post-Graduate Medical (MD and MS), Post-Graduate Diploma and Dental (MDS) Course in Medical and Dental Colleges in the State of Madhya Pradesh :-

1.0 Title.- These rules may be called as "Madhya Pradesh Medical and Dental P.G. Entrance Examination Rules, 2003." These rules will be effective from their publication in the "Gazette of Madhya Pradesh."

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8.0 RESERVATION.- 20% seats are reserved for candidates belonging to Scheduled Tribe, 16% seats are reserved for candidates belonging to Scheduled Caste and 14% seats are reserved for candidates belonging to Other Backward Classes of Madhya Pradesh.

8.1 Reservation for female candidates shall be 30% horizontal according to merit-cum-option.

8.2 The minimum percentage of marks for eligibility for admission to post-graduate medical courses shall be 40% for SC/ST/OBC candidates and 50% for UNRESERVED category candidates.

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8.5 In PG Degree and Diploma Courses 20% seats are reserved for Assistant Surgeons sponsored by the Government of Madhya Pradesh (in-service candidate-Table Nos. 3 and 4) for which separate rules have been framed by the Public Health and Family Welfare Department, Government of Madhya Pradesh."

14. The process for conducting entrance examinations so as to select the candidates for post-graduation courses commencing in the year 2003-2004 was initiated. In the first week of February 2003, PET Board announced its programme. Sale of 'Application Form and Rule Book' commenced on 4-2-2003 and ended on 20-2-2003. The last date for receipt of completed application forms was 20-2-2003. As to open category candidates, there was no controversy in the High Court and there is none even before us. So for as in-service candidates are concerned, we are told that 108 in-service candidates submitted application forms. Common Entrance Test for both category of candidates was held on 9-3-2003. Out of 108 in-service candidates who had applied, only 101 participated in the examination. Results have been declared. Two rounds of counselling have been held. The third and

the last round of counselling is yet to be held and has been postponed by the State Government in view of the pendency of these appeals in this Court. 36 in-service candidates have been successful in clearing the Pre-PG Test 2003 and they have also been allotted seats in post-graduation in the counselling which has already taken place.

15. Co-incidentally, on 20th February, 2003, the date which was the last date notified for receipt of completed application forms by PET Board, the High Court pronounced its judgment in the batch of writ petitions laying challenge to PG Admission (In-service) Rules, 2002 as stated herein-above. The examination so far as in-service candidates are concerned, came to be nullified. No in-service candidate was allowed admission in post-graduation courses of study commencing in the year 2002. The PG seats meant for in-service candidates in the year 2002-2003 have gone waste. The hands of the clock cannot be set back and regrettably those candidates who have been successful cannot be accommodated now by creating additional seats - 89 in number - which would involve enormous financial and administrative burden on the State. Whatever view we may take of the decision of the High Court, it would be of no practical consequence for the year 2002 admissions. However, the learned Advocate General for the State of Madhya Pradesh with his usual fairness persuasively submitted that the State Government was in a state of fix and was still pressing the appeals referable to the year 2002 examinations so as to have the law settled and be guided thereby for future so as to frame such rules as may withstand the test of constitutional validity hereafter.

16. A set of fresh writ petitions came to be filed in the High Court of Madhya Pradesh by some of the in-service candidates laying challenge to the weightage given to the period of service spent in rural/tribal areas by the candidates, relaxed eligibility test for women candidates serving in rural areas and incidental issues. The main controversy centered around the State Government having chosen to have devised a criterion purportedly fitting in Regulation 9(2)(iv) of the MCI Regulations. The State Government changed the method of evaluating performance of the in-service candidates for the purpose of admission in post-graduation 2003. 30% marks were allotted by the State Government for evaluation of merit as determined by a competitive test conducted by the competent authority (PET Board); 30% marks were allotted for assessing the individual cumulative performance at the first, second and third MBBS examinations conducted by the University in which the candidate was prosecuting his/her studies at under-graduation level, and, 30% marks were allocated to be given by calculating the length of service in rural areas in accordance with P.G. Admission Rules, 2002. In the submission of the writ petitioners, it was not permissible for the State Government to take recourse to Regulation 9(2)(iv) and to combine Regulation 9(2)(i) and 9(2)(iii) for determining the academic merit of in-service candidates because Regulation 9(2)(iii) is meant for and is applicable only in a State where there is only one University and cannot be pressed in service by the State of Madhya Pradesh where there are five Universities and the examinations are not conducted by the "same University."

17. On 15-5-2003, the same Division Bench, which had delivered the judgment dated 20-2-2003, disposed of the subsequent batch of writ petitions by pronouncing its judgment. The conclusions arrived at by the High Court of Madhya Pradesh are :

"(1) In the State of Madhya Pradesh, there being five Universities, Regulation 9(2)(iii) is not applicable.

(2) In view of non-applicability of the aforesaid Regulation there has to be a common entrance examination for judging the merits of the candidates.

(3) The in-service candidates too must obtain the qualifying marks in the common entrance examination.

(4) A comparative merit list shall be drawn of the successful in-service candidates inter se to fill up the quota, which is 20%.

(5) For the present year, the candidates who have appeared without obtaining sponsorship from the State Government but have qualified in the examination their merit list shall be drawn up by respondent No. 4 and the State Government shall consider the merit list and other facets and if found suitable as per the norms confer the benefit of sponsorship on successful candidates so that the seats are filled up.

(6) The candidates who have not appeared in the examination and taken the risk cannot be considered for the admission for the present year. However, they may appear in the subsequent year after obtaining prior sponsorship from the State Government."

This judgment has also been put in issue before this Court. All the appeals referable to the year 2002 admissions and the year 2003 admissions have been heard analogously and are being disposed of by this common judgment.

18. It would be useful to crystallise as issues the questions of law which arise for decision in these appeals and around which the learned counsel for the parties have made their submissions. They are :-

(1) Whether it is permissible to hold and conduct separate entrance examinations for in-service and open category candidates, or should there be only one common entrance test?

(2) whether it is permissible to compartmentalize the evaluation of performance of in-service candidates by assigning 40 marks for entrance test, 30 marks for integrated performance at the first, second and third MBBS examination and 30 marks based on length of service in the rural/tribal areas?

(3) whether weightage can be given for the length of service in the rural/tribal areas, and if so, in what manner?

and

(4) whether women candidates who have served for three consecutive years in rural areas constitute a class by themselves so as to deserve special treatment?

Nature of 20% seats allocated for in-service candidates - reservation or channel of entry?

19. The controversy in the present litigation does not concern the open category candidates; it is confined to in-service candidates. We, therefore, propose to preface our discussion by determining the nature of 20% seats allocated to in-service candidates - whether it is by way of reservation or quota or is a channel of entry. Our task stands simplified by the law laid down by a three-Judge Bench decision of this Court recently in *K. Duraiswamy and another v. State of Tamil Nadu and others* (2001) 2 SCC 538. The question arose for decision in almost a similar factual background. The seats were at the State level and not all-India quota seats. The State Government had allocated 50% of the seats exclusively for in-service candidates and left the remaining 50% seats as open quota, i.e., to be filled in from out of such candidates as were not in State Government service. The classification was made as 'service quota' and 'open quota,' for in-service candidates and other candidates respectively, confining the respective class/cadre candidates to the respective percentages earmarked for the two of them exclusively. The Court held :- AIR 2001 SC 717 : 2001 AIR SCW 448

(i) the Government possesses the right and authority to decide from what sources the admissions in educational institutions or to particular disciplines and courses therein have to be made and that too in what proportion;

(ii) that such allocation of seats in the form of fixation of quota is not to be equated with the usual form of communal reservation and, therefore, the constitutional and legal considerations relevant to communal reservations are out of place while deciding the case based on such allocation of seats;

(iii) that such exclusive allocation and stipulation of a definite quota or number of seats between in-service and non-service or private candidates provided two separate channels of entry and a candidate belonging to one exclusive quota cannot claim to steal a march into another exclusive quota by advancing a claim based on merit. Inter se merit of the candidates in each quota shall be determined based on the merit performance of the candidates belonging to that quota;

(iv) that the mere use of the word 'reservation' per se is not decisive of the nature of allocation. Whether it is a reservation or an allocation of seats for the purpose of providing two separate and exclusive sources of entry would depend on the purpose and object with which the expression has been used and that would be determinative of the meaning, content and purport of the expression. Where the scheme envisages not a mere reservation but is one of the classification of the sources from which admissions are to be accorded, fixation of respective quota for such classified groups does not attract applicability of considerations relevant to reservation simplicitor.

20. K. Doraiswamy's case (supra) was considered and explained by another three-Judge Bench of this Court in *AIIMS Students' Union v. AIIMS and others* (2002) 1 SCC 428. The following observation is appropriate and apposite for the purpose of the case at hand and is, therefore, extracted and reproduced hereunder. The Court was considering the question of allocation of seats between in-service and open category candidates, the candidates in both the categories being medical graduates, and not a reservation in favour of weaker section of the society or those who deserve or need to be affirmatively discriminated. The AIR 2001 SC 717 : 2001 AIR SCW 448, AIR 2001 SC 3262, para 26 : 2001 AIR SCW 3143 Court then said-

"Some of them had done graduation sometime in the past and were either picked up in the Government service or had sought for joining Government service because, may be, they could not get a seat in post-graduation and thereby continue their studies because of shortage of seats in higher level of studies. On account of their having remained occupied with their service obligations, they became detached or distanced from theoretical studies and, therefore, could not have done so well as to effectively compete with fresh medical graduates at the PG entrance examination. Permitting in-service candidates to do post-graduation by opening a separate channel for admittance would enable their continuance in Government service after post-graduation which would enrich health services of the nation. Candidates in open category having qualified in post-graduation may not necessarily feel attracted to public services. Providing two sources of entry at the post-graduation level in a certain proportion between in-service candidates and other candidates thus achieves the laudable object of making available better doctors both in public sector and as private practitioners. The object sought to be achieved is to benefit two segments of the same society by enriching both at the end and not so much as to provide protection and encouragement to one at the entry level."

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.

Whether common entrance test - one only - is a must?

22. Now, arises the crucial question - whether it is permissible to hold and conduct separate entrance examinations for the two categories of candidates or should there be only one common entrance test? It is submitted on behalf of the in-service candidates that having done graduation and having then entered into Government service, they are detached from theoretical studies and, therefore, it would be too much to expect from them such theoretical knowledge of medical science as would enable them to compete with fresh medical graduates taking up pre-PG test and to qualify for entry into post-graduate courses. It was forcefully submitted that two separate examinations should be held for the two groups and that would not prejudice the open category candidates inasmuch as the two channels being separate and exclusive, the assessment of merit of any one group would not affect the assessment of merit of the candidates in the other group. We cannot accept such a submission.

23. In the case of *Dr. Preeti Srivastava and another v. State of M.P. and others* (1999) 7 SCC 120, the Constitution Bench has expressly discarded the submission that there need not be any qualifying marks prescribed for the common entrance examination. The Medical Council of India, as an expert body, is the repository of the nation's faith for laying down the extent of reservations, if any, and the lowering of qualifying marks consistent with the broader public interest in having the most competent people for specialized training and the competing public interest in securing social justice

and equality. Even when it is permissible to prescribe lesser qualifying marks for a reserved category (not a mere separate channel of entry of candidates) and the general category of candidates at the post-graduate level, there cannot be a big disparity between the two. The level of disparity in qualifying marks subject to its being permitted by the expert body, must be minimal so that the candidates seeking admission into post-graduation can put up to a certain level of excellence. Referring to *Ajay Kumar Singh and others v. State of Bihar and others* (1994) 4 SCC 401 ; *Nivedita Jain* (1981) 4 SCC 296 and *Post-Graduate Institute of Medical Education and Research, Chandigarh and others v. K. L. Narasimhan* (1997) 6 SCC 283, the Constitution Bench observed that it is true that in spite of having been admitted through any channel or may be by reservation, merely because everybody has to take the same post-graduation examination to qualify for a post-graduate degree, it is not a guarantee of quality. A pass mark is not a guarantee of excellence. There is a great deal of difference between a person who qualifies with the minimum marks and a person who qualifies with high marks. If excellence is to be promoted at the post-graduate level, the candidates qualifying should be able to secure good marks while qualifying. Attaining minimum qualifying marks has a direct relation with the standards of education. Prescription of qualifying marks is for assessment of the calibre of students chosen for admission. If the students are of a high calibre, training programmes can be suitably moulded so that they can receive the maximum benefit out of a high level of teaching. If the calibre of the students is poor or they are unable to follow the instructions being imparted, the standard of teaching necessarily has to be lowered to make them understand the course which they have undertaken; and it may not be possible to reach the levels of education and training which can be attained with a bright group. The assemblage of students in a particular class should be within a reasonable range of variable calibre and intelligence, else the students will not be able to move along with each other as a common class. Hence, the need for a common entrance test and minimum qualifying marks as determined by experts in the field of medical education. AIR 1999 SC 2894 : 1999 AIR SCW 2795 : 1999 All LJ 1947, 1994 AIR SCW 2515, AIR 1981 SC 2045, AIR 1997 SC 3687 : 1997 AIR SCW 2274 : 1997 Lab IC 2317

24. That minimum qualifying marks cannot be done away with is also the view taken by this Court in *Dr. Sadhna Devi and others v. State of U.P. and others* (1997 (3) SCC 90). In *Pre-PG Medical Sangharsh Committee and another v. Dr. Bajrang Soni and others* (2001 (8) SCC 694), classification of in-service candidates as a distinct class by themselves was upheld. Relaxation of minimum qualifying marks for them to 33% as against 50% for others was upheld because at that period of time there was no stipulation to the contrary made by Medical Council of India. *Dr. Bajrang Soni's* case was decided on August 14, 2001 (though reported later); the same Bench of two learned Judges delivered the judgment in *State of Punjab v. Dayanand Medical College and Hospital and others* (2001) 8 SCC 664, on October 11, 2001. By this time the Medical Council of AIR 1997 SC 1120 : 1997 AIR SCW 1146 : 1997 All LJ 677

AIR 2001 SC 2743 : 2001 AIR SCW 3020

AIR 2001 SC 3006 : 2001 AIR SCW 4165, para 17

AIR 1999 SC 2894 : 1999 AIR SCW 2795 : 1999 All LJ 1947 India had framed the Regulations and Regulation 9 reproduced in the earlier part of this judgment was noticed by the Court. *Preeti Srivastava's* case (supra) too was considered. Then the Court held :-

".....it is not open to the University or the Government to dilute that standard by fixing marks lower than what is set out by the Medical Council of India. If they had any difficulty they ought to have approached the Medical Council of India for fixing of appropriate standards in that regard. The State Government could not unilaterally frame a scheme reducing the standard in violation of the terms of the Regulations framed by the Medical Council of India, which is repeatedly stated by this Court to be the repository of the power to prescribe standards in post-graduate studies subject, of course, to the control of the Central Government as envisaged in the Act constituting the council."

The Court struck down the selection of students who had secured marks less than the minimum prescribed by the MCI Regulations. The prescription made by the State reducing the minimum marks in the entrance examination for considering the eligibility of the candidates for admission to post-graduate medical courses below the minimum prescribed by the Regulations framed by the Medical Council of India was directed to be ignored.

25. The eligibility test, called the entrance test or the pre-PG test, is conducted with dual purposes. Firstly, it is held with the object of assessing the knowledge and intelligence quotient of a candidate whether he would be able to prosecute post-graduate studies if allowed an opportunity of doing so; secondly, it is for the purpose of assessing the merit inter se of the candidates which is of vital significance at the counselling when it comes to allotting the successful candidates to different disciplines wherein the seats are limited and some disciplines are considered to be more creamy and are more coveted than the others. The concept of a minimum qualifying percentage cannot, therefore, be given a complete go-by. If at all there can be departure, that has to be minimal and that too only by approval of experts in the field of medical education, which for the present are available as a body in the Medical Council of India.

26. The Medical Council of India, for the present, insists, through its Regulations, on a common entrance test being conducted whereat the minimum qualifying marks would be 50%. The State of Madhya Pradesh must comply with the requirements of the Regulations framed by the Medical Council of India and hold a common entrance test even if there are two separate channels of entry and allow clearance only to such candidates who secure the minimum qualifying marks as prescribed by the MCI Regulations. If the State has a case for making a departure from such rule or for carving out an exception in favour of any classification then it is for the State to represent to the Central Government and/or Medical Council of India and make out a case of justification consistently with the fore-quoted observation of this Court in *Dayanand Medical College and Hospital's case* (supra) . AIR 2001 SC 3006 : 2001 AIR SCW 4165

27. The in-service candidates may have been away from academics and theories because of being in-service. Still they need to be assessed as eligible for entrance in P.G. For taking up such examination, they must either keep updating themselves regularly or concentrate on studies preparatory to entrance examinations but without sacrificing or compromising with their obligations

to the people whom they are meant to serve on account of being in State services.

28. Clearly the State of Madhya Pradesh was not justified in holding and conducting a separate entrance test for in-service candidates. Nor could it have devised a formula by combining Cls. (i) and (iii) of Regulation 9(1) by resorting to Cl. (iv). Recourse can be had to Cl. (iii) when there is only one University. When there is only one University in one State, the standard of assessment can reasonably be assumed to have been the same for assessing the academic merit of the students passing from that University. When there are more Universities than one in a State, the standards of different Universities and their assessment methods cannot obviously be uniform and may differ. Then it would be futile to assess the comparative merit of individual performances by reference to Cl. (iii). The High Court is, therefore, right in forming an opinion that in the State of Madhya Pradesh, where five Universities exist, the method of evaluation contemplated by Cl. (iii) is not available either in substitution of or in addition to Cl. (i). The candidates qualified at the Pre-PG or entrance test held in common for in-service and open category candidates, would then be divided into two separate merit lists to be prepared for the two categories and merit inter se of the successful candidates shall be available to be assessed separately in the two respective categories.

Weightage for service in rural/tribal areas

29. The next question is - whether weightage can be given to doctors for their having rendered the specified number of years of service in rural/tribal areas. Four decisions were brought to our notice at the Bar which we would deal with.

30. In *Dr. Dinesh Kumar and others (II) v. Motilal Nehru Medical College, Allahabad and others* (1986) 3 SCC 727 the two-Judge Bench examined a scheme of examination for admission to post-graduate courses suggested by the Government of India stipulating a weightage equivalent to 15 per cent. of the total marks obtained by a student at the All India Entrance Examination being given if he has put in a minimum of 3 years of rural service. The Court observed that it was eminently desirable that some incentive should be given to the doctors to go to the rural areas because there is concentration of doctors in the urban areas and the rural areas appear to be neglected. In spite of recording such justification the learned Judges proceeded to opine that they did not think that such incentive should go to the length of giving a weightage of 15 per cent. of the total marks obtained by a candidate. The learned Judges then examined several reasons why the doctors are not persuaded to go to the rural areas and then concluded - "we are extremely doubtful if a candidate who has rendered three years' rural service for the purpose of getting a weightage of 15 per cent. would go back to the rural area after he has got MD or MS degree. We are, therefore, of the view that no weightage should be given to a candidate for rural service rendered by him so far as admissions to post-graduate courses are concerned." It is clear that the Court was dealing with weightage to be assigned at the All-India Entrance Examination and that too from the point of view whether the post-graduate would revert back to rural services after post-graduating and because of this being extremely doubtful there was no point in giving such a weightage. AIR 1986 SC

31. The abovesaid observations came up for the consideration of a three-Judge Bench of this Court in *Dr. Snehelata Patnaik and others v. State of Orissa and others* (1992) 2 SCC 26. It was held (i) that the said observation does not constitute the ratio of the decision as the decision is not in any way dependent on those observations; (ii) that those observations are in connection with the All India selection and do not have equal force when applied to selection for a single State, and (iii) that the observations have the effect of only making a suggestion that the weightage to be given must be the bare minimum required to meet the situation. Their Lordships then placed on record their overview by way of suggestion to the authorities who "might well consider giving weightage up to a maximum of 5 per cent. of marks in favour of in-service candidates who have done rural service for five years or more. The actual percentage would certainly have to be left to the authorities."

32. Recently a three-Judge Bench in *Dr. Narayan Sharma and another v. Dr. Pankaj Kr. Lehtar and others* (2000) 1 SCC 44, considered a rule which provided for reservation of 20 seats for doctors appointed in the State Health Services on a regular basis and who have worked at least five years on a regular basis in any health centre/institution which is not situated in the Municipal area. This rule couched in negative terms and not in positive terms replaced the preceding rule which provided for "10 seats being reserved for those doctors who have completed five years or more in rural/hills/char areas." The Court found no justification for making a departure from the earlier rule and converting the reservation into negative in place of positive and increasing reservation from 10 to 20. The Court held, "any place just outside a Municipal town is one which is not situated in a Municipal area and which will fall within the scope of the sub-rule. The doctor working in an institution situated in a place immediately adjacent to but outside a Municipal town will get the benefit of the rule, while in practice, AIR 2000 SC 72 : 1999 AIR SCW 4196

AIR 1986 SC 1877

(1992) 2 SCC 26

AIR 1975 SC 563 he will also get all the benefits available in the urban areas situated within the Municipal limits. The rule does not require the doctor to serve in a remote rural area for getting the benefit of the rule." The Court then went on to add- "Even if the rule had provided for service in a rural area, it has been held that the classification is not a valid one." This latter part is not a ratio of the decision. Moreover, the Court cited in support the observations in *Dinesh Kumar's* case which were adversely commented upon in *Dr. Snehelata Patnaik's* case as already noticed. The Court also referred to the judgment of this Court in *State of Uttar Pradesh and others v. Pradip Tandon and others* (1975) 1 SCC 267.

33. In *Pradip Tandon's* case reservation in favour of people in 'hill areas' and Uttrakhand was held to be constitutionally valid as they were socially and educationally backward classes of citizens. Reservation in favour of 'rural areas' was found difficult to accept as it was sought to be justified on the test of poverty as the determining factor of social backwardness. The Court observed that rural element does not make a class by itself because it could not be accepted that the rural people are

necessarily poor or socially and educationally backward just as the urban people are not necessarily rich. We may hasten to observe that what was being dealt with in Pradip Tandon's case was a reservation and not a weightage. 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 area 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 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 for the 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. AIR 1975 SC 563

Relaxed eligibility criterion for female doctors in rural service

34. So is the case with the rule carving out an exception in favour of female candidates. Though the length of service considered relevant in case of male doctors is five years to be eligible for seeking admission to PG courses the rules provide that so far as female candidates are concerned, rendering 3 years' services in rural area would make them eligible and that too for specified disciplines, i.e., Obstetrics and Gynaecology and Anaesthesia. Women are a well defined class. Out of women those who have rendered service in rural areas for a period of three consecutive years also constitute a class based on intelligible differentia and are well defined. The rule has logic behind it. Female patients, specially those in a family way, need more medical attention. While delivering a child surgical process may need to be performed on their person. Women folk in rural areas have reluctance for being dealt with by male doctors and they feel more comfortable with female doctors. The purpose of providing relaxation in eligibility criterion in favour of female doctors is not unreasonable and has nexus with the object sought to be achieved. With this rule too we cannot find any fault and it certainly does not suffer from any constitutional anathema.

35. Both the rules, i.e. assigning weightage for rural service rendered as Assistant Surgeons and carving out a classification in favour of women candidates conferring them with eligibility for seeking admission in post-graduate courses by rendering 3 years' consecutive service in rural areas satisfy the twin tests of Art. 14 of the Constitution.

Conclusions

36. We sum up our conclusions as under :-

1. In the State of Madhya Pradesh allocation of 20% seats in post-graduation in the Universities of Madhya Pradesh for in-service candidates is not a reservation; it is a separate and exclusive channel of entry or source of admission, the validity whereof cannot be determined on the constitutional principles applicable to communal reservations. Such two channels of entry or two sources of admission is a valid provision.

2. There can be only one common entrance test for determining eligibility for post-graduation for in-service candidates and those not in service. The requirement of minimum qualifying marks cannot be lowered or relaxed contrary to Medical Council of India Regulations framed in this behalf.

3. In the State of Madhya Pradesh there are five Universities, i.e. there are Universities more than one. Regulation 9(2)(iii) cannot be made use of in the State of Madhya Pradesh either singly or in combination with Cl. (i) for determining the eligibility for entrance into PG courses.

4. It is permissible to assign a reasonable weightage for service rendered in rural/tribal areas by in-service candidates for the purpose of determining inter se merit within the class of in-service candidates who have qualified in the Pre-PG test by securing the minimum qualifying marks as prescribed by the Medical Council of India.

5. Women candidates constitute a class by themselves and the provision of relaxed or reduced eligibility criteria by reference to continuous service rendered in rural areas for the purpose of sponsorship by the State Government in specified disciplines which have utility for serving women folk in villages does not suffer from the vice of invidious discrimination.

Incidental questions

37. In the year 2002 the in-service candidates sponsored by the department, and who took the examinations also, have lost for no fault of theirs the opportunity of prosecuting post-graduation studies even if they were successful in the entrance test. The pronouncement of results was stayed and then the examination itself stood nullified consequent upon the rules on which it was based having been annulled by the High Court. During the course of hearing it was pointed out that some of the candidates who were eligible to take the examination in the year 2002 as having not crossed the upper age limit of 45 years may have now been rendered ineligible on account of age bar. They deserve to be allowed one opportunity of taking examination else they would be made to suffer for no fault of theirs. We find merit in the submission so made.

38. In the examination held in the year 2003, in the category of in-service candidates, 36 have qualified. They have taken the common entrance test along with open category candidates and they have also secured the minimum qualifying marks as prescribed by MCI Regulations. In the quota of in-service candidates, 53 seats still remain vacant. It was stated at the Bar that there are many who could not apply because of the confusion that was prevailing on account of pendency of writ petitions in the High Court and declaration of results of the entrance examination having been stayed by the interim order of the High Court passed in the previous batch of writ petitions. Even the State Government was in a state of fix and did not process the sponsorship applications of in-service candidates. Those 108 in-service candidates, who had applied for participation in Pre-PG Test 2003, did so without sponsorship and the High Court has directed admission being allowed to 36 successful in-service candidates by processing their sponsorship ex post facto. Suitable directions need to be given to take care of interest of in-service candidates qua Pre-PG Test 2003.

39. In our opinion, the in-service candidates who were eligible to take PG entrance test for the year 2002 and actually took the same as also the in-service candidates who are eligible to take PG Entrance Test for the year 2003, should both be allowed an opportunity of participating in the PG Entrance Examination which may now be arranged subject to their satisfying the sponsorship criteria. This is one time arrangement designed to do justice in the peculiar facts of this case and is not intended to lay down a precedent.

40. Though we have held the 20% quota for in-service candidates to be a separate channel of entry, we feel that in the absence of requisite number of in-service doctors qualifying at the Pre-PG Test, the seats to the extent to which they remain vacant because of the requisite number of in-service candidates not qualifying, should be diverted to open category candidates so that the seats are not wasted.

41. The learned Advocate General for the State of Madhya Pradesh stated during the course of hearing that the third counselling is yet to be held and if an opportunity is allowed the State Government and the authority holding examinations would be in a position to hold the Pre-PG Test and declare its results and complete the counselling in a period of about one month so that the seats

in this year do not go a waste as they have gone for the previous year. He assured the Court that in the event of an opportunity being allowed the officials of the State and the authority entrusted with the duty of holding examinations shall take up the task giving it top priority and accomplish the same within a period of one month or such other time as the Court may permit.

Result

42. The appeals are partly allowed and disposed of in terms of the following directions :-

(1) The judgment of the High Court, to the extent to which conferral of benefit by grant of weightage to in-service candidates (i.e. doctors in the employment of State Government) on the basis of their service rendered in rural/tribal areas and also to the extent to which the reduced eligibility qualification for women candidates from out of in-service candidates have been annulled, is set aside.

(2) The State Government shall frame fresh rules governing P.G. Entrance Examination and P.G. (in-service) admissions consistent with the law laid down hereinabove. The rules shall as far as possible be one set of rules framed by Medical Education Department and Public Health and Family Welfare Department in consultation with each other. If it is not possible to frame one set of rules then the two departments may frame separate rules but care has to be taken to avoid any scope for confusion or inconsistency.

(3) The eligibility for sponsorship of the 36 successful in-service candidates in the Pre-PG Entrance Examination, 2003 shall be scrutinized and decided ex post facto. A fresh entrance examination for the remaining seats meant for in-service candidates shall be held at the earliest and, in any case, within a period of one month from today. Such of the candidates who participated in the Pre-PG Entrance Examination of the year 2002 and whose results have not been declared consequent upon the judgment of the High Court, would be allowed an opportunity of taking this examination relaxing the upper age limit, if required. The candidates who are otherwise eligible for taking the PG Entrance Test, 2003 shall also be allowed to participate. Such number of candidates shall be declared passed as is equivalent to number of seats meant and available for in-service candidates adjusting the number of candidates already declared successful, i.e., 36, subject to satisfying sponsorship criteria.

(4) A consolidated merit list of successful in-service candidates shall be prepared. Such list shall include (i) the 36 candidates who have already been declared successful and have also satisfied the sponsorship criteria, and (ii) the candidates declared successful at the PG Entrance Test which will now be held for the remaining seats pursuant to this judgment. The consolidated list having been prepared, the order of merit shall be fixed by assigning weightage for rural service consistently with the prevalent rules and allowed participation in counselling to the extent of available seats.

(5) Counselling for in-service candidates shall be held as per the consolidated merit list of successful in-service candidates prepared in terms of the abovesaid directions. Counselling, if any already held for 36 in-service candidates shall be ignored and not given effect to.

(6) If the required number of in-service eligible candidates do not qualify at the Pre-PG Examination now held, the seats so left vacant shall be diverted and made available for the open category candidates.

43. No order as to the costs.

Appeals partly allowed.