

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE N. NAGARESH

MONDAY, THE 31ST DAY OF JANUARY 2022/11TH MAGHA, 1943

WP(C) NO. 2161 OF 2022

PETITIONERS:

- 1 DR. JIBIN C. P
AGED 38 YEARS
S/O. C. P. KUNHEEN, ASSISTANT SURGEON,
PRIMARY HEALTH CENTER, MOOTHEDAM, MALAPPURAM-
679331, RESIDING AT NEST (H), ERANHIKODE PO,
EDAVANNA, MALAPPURAM-676541.
- 2 DR. JHANCY SETHUNATH,
AGED 34 YEARS
D/O. G. SETHUNATHAN PILLAI, ASSISTANT SURGEON,
CHC THYCATTUSERY, CHERTHALA, ALAPPEY-688528,
RESIDING AT VISHAKH, KAIKULANGARA NORTH,
THIRUMULLAVARAM P.O., KOLLAM-691012.

BY ADVS.
KALEESWARAM RAJ
VARUN C. VIJAY
THULASI K. RAJ

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT,
DEPARTMENT OF HEALTH AND FAMILY WELFARE,
SECRETARIAT, THIRUVANANTHAPURAM-695001.
- 2 SECRETARY TO GOVERNMENT,
DEPARTMENT OF HIGHER EDUCATION, SECRETARIAT,
THIRUVANANTHAPURAM-695001.
- 3 CHIEF SECRETARY TO GOVERNMENT,
GOVERNMENT OF KERALA, SECRETARIAT,
THIRUVANANTHAPURAM-695001.
- 4 COMMISSIONER OF ENTRANCE EXAMINATIONS,
5TH FLOOR KSHB BUILDING, SS KOVIL RD., SANTHI
NAGAR, THIRUVANANTHAPURAM-695001.

- 5 DIRECTOR OF MEDICAL EDUCATION,
DIRECTORATE OF MEDICAL EDUCATION,
MEDICAL COLLEGE P.O., MEDICAL COLLEGE-
KUMARAPURAM RD., CHALAKKUZHI,
THIRUVANANTHAPURAM-695011.
- 6 NATIONAL MEDICAL COMMISSION,
REPRESENTED BY SECRETARY, PHASE-1,
DADA DEV MANDIR RD., BLOCK P,
SECTOR 8 DWARKA, NEW DELHI-110077.

BY SRI.P.G.PRAMOD, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 31.01.2022, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

N. NAGARESH, J.

.....
W.P.(C) No.2161 of 2022
.....

Dated this the 31st day of January, 2022

J U D G M E N T

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The petitioners, who are working as Assistant Surgeons in Government Primary/Community Health Centers, are before this Court seeking to quash Clause 6-6-11 and Clause 6-6-12 of Ext.P9 Prospectus for admission to Medical Postgraduate Degree Courses 2021-2022 and to declare that Ext.P9 Prospectus to the extent to which it does not prescribe 50% reservation for candidates who have served in rural/difficult rural areas as bad in law and unsustainable.

2. The petitioners aspire to study the Medical PG Course of Doctor of Medicine (MD). The 1st petitioner is

working in a Difficult Rural Area and the 2nd petitioner in a Rural Area. They appeared in the National Eligibility cum Entrance Test (NEET) PG 2021 and secured All India Rank 40151 and 22849 respectively. The petitioners applied for PG Medical 2021 for the State Quota seats.

3. As per Clause 6-6-11 of Ext.P9 Prospectus, 10% of State Quota seats is earmarked for Government Service Quota candidates. The petitioners state that Ext.P14 G.O. does not give any split up of seats within the service quota. Ext.P9, however, splits up the service quota among three different services. Splitting up of in-service quota seats has an adverse effect on merit, contends the petitioners.

4. Clause 6-6-12 of Ext.P9 Prospectus provides that Service Weightage in the marks will be given as an incentive at the rate of 1% of marks obtained, for each year in service. For Rural Area service, service weightage will be at the rate of 2% and for Difficult Rural Area service, the service weightage will be at the rate of 5%, up to a maximum of 30% of the marks obtained. Clause 6-6-12 also states that the

total service will be reckoned as on the date of notification for inviting application by Commissioner for Entrance Examinations for admission to the Courses.

5. In view of the binding judgments of the Hon'ble Apex Court and of this Court, merit alone should be the criterion for admission to Medical PG Courses even under in-service quota. Both, splitting up of seats among three service categories and awarding weightage for number of years of service, would offend merit and go against the law laid down by the Apex Court. To the above extent, the impugned Clauses in Ext.P9 Prospectus are liable to be set aside, contend the petitioners.

6. The learned counsel for the petitioners argued that Clause 6-6-11 splits up in-service quota seats among three service categories. This is illegal as it waters down merit criteria. The most meritorious candidates in Government Service should be admitted to Medical PG irrespective of their service category. As far as Clause 6-6-12 is concerned, the counsel for the petitioners contended that the said

Clause is unsustainable in law, to the extent to which it provides for reckoning total service for admission and to the extent it does not provide 10% service weightage for candidates working in Rural areas and Difficult Rural Areas.

7. The learned counsel for the petitioners urged that in ***Sudhir N. v. State of Kerala and others*** [(2015) 6 SCC 685], the Apex Court has held that a meritorious candidate cannot be denied admission only because he has an eligible senior above him though lower in merit. In ***Dr. Preeti Srivastava and another v. State of M.P. and others*** [(1999) 7 SCC 120], the Apex Court has held that State cannot, while controlling education in State, impinge on standards in institutions for higher education. The State cannot adversely affect the standards laid down by the Union of India under Entry 66 of List-I.

8. The counsel for the petitioners pointed out that as per Regulation 9(1) of the Postgraduate Medical Education Regulations, 2000, students for Post Graduate Medical Courses shall be selected strictly on the basis of their

academic merit. Granting weightage for service would therefore violate the Regulations, 2000. The NEET for admission to Post Graduate Medical Courses is conducted under the overall supervision of the Ministry of Health and Family Welfare, Government of India as per Ext.P16 Postgraduate Medical Education (Amendment) Regulations, 2018. Ext.P18 provides for incentive to in-service candidates serving in Difficult Areas and Rural Areas. The Government of Kerala has not made provision for such incentives, which is arbitrary and unsustainable.

9. The learned Government Pleader filed a Statement dated 27.01.2022 on behalf of the 5th respondent and contested the writ petition. The Government Pleader submitted that the admission to the PG Medical Degree Courses in the Government Medical Colleges in the State and Regional Cancer Centre, Thiruvananthapuram for the academic session 2021-'22 is being conducted as per the Prospectus issued by the Government vide G.O.(MS) No.18/2022/H&FWD dated 15.01.2022.

10. As per the Prospectus published, the candidates aspiring for in-service quota seats which are set apart for the three categories namely Medical Education Service Quota (MESQ), Health Service Quota (HSQ) and Insurance Medical Service Quota (IMSQ) should be regular employees who have declared their probation and otherwise eligible as per Clause 4 of the Prospectus. The rank lists in respect of all the three categories mentioned above are prepared on the basis of inter-se merit of the candidates as per the NEET score. The service weightage at the rate of 1% of marks obtained in the NEET examination, for each year in service will be given to the candidates. For rural service, weightage marks will be granted at the rate of 2% of the NEET score for each year in service, in rural areas up to a maximum of 30% of the marks obtained. Weightage marks will be granted for those who worked in difficult rural areas at the rate of 5% of marks obtained for each year up to a maximum of 30%. The service weightage added up from all areas of service is capped at 30% of the marks obtained by the candidate in the

qualifying examination. The lists are prepared on the basis of the marks in the qualifying examination along with the incentives as pointed out above.

11. The Government Pleader argued that the service quota was reintroduced in the light of the Constitution Bench judgment of the Hon'ble Apex Court in ***Tamil Nadu Medical Officers Association and others v. Union of India and others [(2021) 6 SCC 568]***, wherein it is held that it is within the legislative competence of the State Government to introduce a service quota in respect of PG Medical Degree Courses.

12. I have heard the learned counsel for the petitioners and the learned Government Pleader representing respondents 1 to 5.

13. The arguments in brief of the petitioners are that in view of the judgment of the Apex Court in ***Sudhir N.*** (supra), merit and merit alone should be the criteria for admission to Post Graduate Medical Courses and any provision in Ext.P9 Prospectus diluting the criteria of academic merit for

admission, even though it is for in-service candidates, would be violative of Regulation 9(1) of the Post Graduate Medical Education Regulations, 2000 and of the law laid down by the Apex Court in **Sudhir N.** (supra). The provisions contained in Ext.P9 Prospectus trespass upon the powers of the Union Government falling under Entry 66 of List-I. The petitioners further claim that omission to give incentive in the matter of admission to candidates from Difficult Rural Areas and Rural Areas in spite of the provisions contained in the Post Graduate Medical Education (Amendment) Regulations, 2018 is illegal and arbitrary.

14. The Government of Kerala issued Ext.P9 Prospectus for admission to Medical Postgraduate Degree Courses 2021-2022. As per Clause 6-6-11 of Ext.P9 Prospectus, 10% of State Quota seats in Post Graduate Medical Courses is reserved for Government Service Quota Candidates. The said Seats are to be filled up by candidates from Medical Education Service, Health Service and Insurance Medical Service in a ratio of 45:45:10.

15. In view of Entry 25 of List-III of the Constitution of India, the State Legislature is competent to introduce a service quota in respect of PG Medical Courses. Service Quota is provided taking into consideration the requirement of Post Graduate Medical Officers in each Service under the Government. Such Quota is provided more in public interest than in the individual interest of candidates getting admitted under the quota. The State will therefore be amply justified in splitting up in-service quota seats as per the requirements in various eligible services.

16. This year 45% seats out of the in-service quota seats are earmarked by the State for Medical Education Service and Health Service and the remaining 10%, for Insurance Medical Service. As the splitting up of seats is made considering the requirement of Post Graduate Medical Officers in each service and since it is in public interest, this Court finds no illegality in dividing the available seats among the three services. The division is in public interest. Academically most meritorious among each service only will

be selected for admission. Therefore, it cannot be said that by splitting up of seats, academic merit has been given a go bye.

17. The Apex Court in ***Tamil Nadu Medical Officers Association and others*** (supra) tested the primacy of Regulation 9 of the Medical Council of India Post Graduate Medical Education Regulations, 2000 with the legislative competence of the State Government under Entry 25 of List-III and held as follows:

(1) That Entry 66 List I is a specific entry having a very limited scope;

(2) It deals with “coordination and determination of standards” in high education;

(3) The words “coordination and determination of standards would mean laying down the said standards;

(4) The Medical Council of India which has been constituted under the provisions of the Indian Medical Council Act, 1956 is the creature of the statute in exercise of powers under Entry 66 List I and has no power to make any provision for reservation, more particularly, for in-service candidates by the concerned States, in exercise of powers under Entry 25 List III;

(5) That Regulation 9 of MCI Regulations, 2000 does not deal with and/or make provisions for reservation and/or affect the legislative competence and authority of the concerned States to make

reservation and/or make special provision like the provision providing for a separate source of entry for in-service candidates seeking admission to postgraduate degree courses and therefore the concerned States to be within their authority and/or legislative competence to provide for a separate source of entry for in-service candidates seeking admission to postgraduate degree courses in exercise of powers under Entry 25 of List III;

(6) If it is held that Regulation 9, more particularly Regulation 9(IV) deals with reservation for in-service candidates, in that case, it will be ultra vires of the Indian Medical Council Act, 1956 and it will be beyond the legislative competence under Entry 66 List I;

(7) Regulation 9 of MCI Regulations, 2000 to the extent tinkering with reservation provided by the State for in-service candidates is ultra vires on the ground that it is arbitrary, discriminatory and violative of Articles 14 and 21 of the Constitution of India;

(8) That the State has the legislative competence and/or authority to provide for a separate source of entry for in-service candidates seeking admission to postgraduate degree/diploma courses, in exercise of powers under Entry 25, List III. However, it is observed that policy must provide that subsequent to obtaining the postgraduate degree by the concerned in-service doctors obtaining entry in degree courses through such separate channel serve the State in the rural, tribal and hilly areas at least for five years after obtaining the degree/diploma and for that they will execute bonds for such sum the respective States may consider fit and proper.

18. The Apex Court has noted that if it is held that Regulation 9 deals with reservation for in-service candidates,

in that case, it will be ultra vires of the Indian Medical Council Act, 1956 and it will be beyond the legislative competence under Entry 66 List-I. Reservation for and allocation of in-service quota seats are therefore absolutely within the powers of the State. The argument of the petitioners that Clauses 6-6-11 and 6-6-12 of Ext.P9 Prospectus are violative of Regulation 9 of the Postgraduate Medical Education Regulations, 2000 is therefore only to be rejected.

19. The learned counsel for the petitioners relied on Ext.P11 order of this Court in W.P.(C) No.21489 of 2021, which was not interfered with by the Division Bench in spite of W.A. No.1466 of 2021 filed against the same. The counsel argued that this Court has categorically held in Ext.P11 order that when Regulation 9(1) provides that students for Post Graduate Medical Courses shall be selected strictly on the basis of their academic merit, the sustainability of adoption of any other criteria like seniority in service is doubtful. This Court passed Ext.P11 order after considering the law laid down by the Apex Court in ***Sudhir***

N. (supra) and **Tamil Nadu Medical Officers' Association and others** (supra).

20. What was under challenge in W.P.(C) No.21489 of 2021 was Clause 11.7 of Prospectus for Admission to the Postgraduate Courses in Dental Surgery (MDS-Master of Dental Surgery) in Dental Colleges in Kerala, 2021. The said Clause 11.7 provided that *inter se* seniority will be a criteria for selection to MDS Course. The conditions in Ext.P9 Prospectus for admission to Medical Postgraduate Courses 2021-2022 are different. Under Ext.P9, the selection is based on the rank obtained in the NEET PG Examination, but certain incentive/weightage will be granted for each year's service. Therefore, Ext.P11 order of this Court cannot be of any avail to the petitioners.

21. The respondents have a further case that Clause 6-6-12 of Ext.P9 Prospectus, to the extent it does not provide 10% service weightage for candidates working in Rural Areas and Difficult Rural Areas, is unsustainable. It may be noted that this argument of the petitioners goes against the

core submissions made by the petitioners that academic merit alone should be the criteria for admission to Medical Postgraduate Courses. Be that as it may, the argument is based on Clause 9(4) of the Postgraduate Medical Education (Amendment) Regulations, 2018 which provides that for in-service candidates, an incentive up to 10% of the marks for service in remote and/or difficult areas or rural areas may be given by the Government/Competent Authority.

22. A reading of Clause 9(4) of the Amendment Regulations, 2018 would indicate that it is only an enabling provision conferring discretionary powers on the Government/Competent Authority for granting incentive to remote/difficult/rural area services for admission to the Courses. The petitioners cannot claim a right to incentive, based on Clause (4). Furthermore, Ext.P9 Prospectus also provides weightage for Rural Service and Difficult Rural Service from 2% to 5%. The petitioners cannot as of right claim that a sub quota should be provided exclusively for candidates with Rural/Difficult Rural area service.

W.P.(C) No.2161/2022

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For all the afore reasons, this Court finds no merit in the writ petition. The writ petition is therefore dismissed.

aks/31.01.2022

Sd/-
N. NAGARESH, JUDGE

APPENDIX OF WP(C) 2161/2022

PETITIONER'S EXHIBITS

- Exhibit P1 COPY OF THE SERVICE DETAILS OF THE 1ST PETITIONER.
- Exhibit P2 COPY OF THE SERVICE DETAILS OF THE 2ND PETITIONER.
- Exhibit P3 COPY OF THE ADMIT CARD OF THE 1ST PETITIONER.
- Exhibit P4 COPY OF THE ADMIT CARD OF THE 2ND PETITIONER.
- Exhibit P5 COPY OF THE SCORECARD OF THE 1ST PETITIONER.
- Exhibit P6 COPY OF THE SCORECARD OF THE 2ND PETITIONER.
- Exhibit P7 COPY OF THE ACKNOWLEDGMENT PAGE DATED 16.1.2022 OF THE 1ST PETITIONER.
- Exhibit P8 COPY OF THE ACKNOWLEDGMENT PAGE DATED 16.1.2022 OF THE 2ND PETITIONER.
- Exhibit P9 COPY OF RELEVANT PAGES OF THE PROSPECTUS ALONG WITH G.O. (MS)NO.18/2022/H&FWD DATED 15.1.2022, APPROVING THE PROSPECTUS.
- Exhibit P10 COPY OF THE RELEVANT PAGES OF POST GRADUATE MEDICAL EDUCATION REGULATIONS 2000.
- Exhibit P11 COPY OF THE INTERIM ORDER DATED 27.10.2021 IN WP(C) NO.21489/2021.
- Exhibit P12 COPY OF THE JUDGMENT DATED 9.11.2021 IN W.A.NO.1466/2021.
- Exhibit P13 COPY OF THE JUDGMENT OF THE APEX COURT IN SUDHIR AND ORS. V. STATE OF KERALA AND ORS. (2015)6 SCC 685.
- Exhibit P14 COPY OF THE G.O. (MS) NO.195/2021/H&FWD DATED 30.10.2021.
- Exhibit P15 COPY OF THE GO(RT) 1662/2021/H&FWD DATED 4.8.2021.
- Exhibit P16 COPY OF THE POSTGRADUATE MEDICAL EDUCATION (AMENDMENT) REGULATIONS, 2018.

Exhibit P17 COPY OF THE RELEVANT PAGES OF THE
PROSPECTUS FOR ADMISSION TO PG
DEGREE/DIPLOMA COURSES IN TAMIL NADU
MEDICAL COLLEGES 2021-22.

Exhibit P18 COPY OF THE NOTIFICATION DATED
15.1.2022 ISSUED BY THE 4TH
RESPONDENT.

RESPONDENT'S EXTS:

R5(a) COPY OF THE LISTS OF SERVICE CANDIDATES UNDER
DHS FOR THIS YEAR.