

2. State of Madhya Pradesh Through its Director, Department of Medical Education, 5th Floor, Satpura Bhawan, Bhopal (M.P.).

3. Commissioner Directorate of Medical Education, 5th Floor, Satpura Bhawan, Bhopal (M.P.) 462004.

4. Commissioner Department of Health, 6th Floor, Satpura Bhawan, Bhopal (M.P.) 462004.

5. Dr. Prachi Singhal, (S.No.179) Through Director, Department of Medical Education, 5th Floor, Satpura Bhawan, Bhopal, (M.P.) 462004

.....Respondents

(By Shri Ashish Anand Bernard, learned Additional Advocate General with Ms. Janhvi Pandit, learned Deputy Advocate General for the respondents/State.)

Whether approved for reporting	YES
Law Laid down :-	1. Madhya Pradesh Chikitsa Shiksha Pravesh Niyam, 2018 (Admission Rules) made under Madhya Pradesh Niji Vyavsayik (Prevesh Ka Viniyaman Evam Shulk Ka Nirdharan) Adhiniyam, 2007 (Adhiniyam):- The definition of ‘vacancies’ (रिक्तियों) shows that it is wide

	enough to include all the vacancies of the colleges of all the subjects. 2. Unamended Rule 14(1)(2) :- The argument based on this Rule which stood amended w.e.f. 5th October, 2021 cannot be accepted. A new Rule 14 (1) and (2) has substituted the previous one and new Rule will hold the field. 3. Rule 14(1) and (2) of Admission Rules:- A careful and combined reading of these Rules show that ‘vacancies’ means the entire set of vacancies in Government, Private Medical and Dental Hospitals. The ‘vacancies’ are not confined to ‘in-service candidate’. 4. Article 14 and 16 of the Constitution- Quota:- The word ‘reservation’ used in Rule 14 (1) does not mean any community based reservation founded upon said Constitutional Provisions. It only shows a separate source of entry for ‘in-service candidate’. 5. In-service candidate and open category candidates :- The argument of petitioners repelled that both are two separate watertight compartments and therefore, unfilled reserved category vacancies should be filled up vertically as within the compartment only.
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O R D E R (Oral)

SUJOY PAUL, J.:-

In these batch of writ petitions, the petitioners are ‘*in-service candidates*’. It is also not in dispute that being ‘in-service candidates’

petitioners have a separate source of entry on 30% seats in Post Graduate Medical Courses.

2. The process of admission in the Post Graduate Courses are governed by statutory Rules namely **Madhya Pradesh Chikitsa Shiksha Pravesh Niyam, 2018 (Admission Rules)** made under **Madhya Pradesh Niji Vyavsayik (Prevesh Ka Viniyaman Evam Shulk Ka Nirdharan) Adhiniyam, 2007 (Adhiniyam)**. The petitioners/in-service candidates in these petitions filed under Article 226 of the Constitution have prayed that seats falling under 30% reserved compartment earmarked for 'in-service candidates' the unfilled seats of SC/ST/OBC/EWS category cannot be converted/shifted to the pool of open/direct category till they are first offered to general/unreserved category candidates within the same pool/compartment of 'in-service candidates' by exhausting the list in view of combined reading of Rule 4 and Rule 14 of the Admission Rules.

Petitioners' contentions :-

3. Shri Siddharth Radhelal Gupta, learned counsel for the petitioners submits that W.P. No.5668/2022, 5940/2022 and 6229/2022 are exactly similar matters. In these petitions, petitioners are general category candidates and their claim is that if reserved category posts in their pool/compartment are not filled up, same should go down to the petitioners in the same compartment. W.P. Nos.6740/2022 and 6742/2022 are little different matters submits Shri Siddharth Gupta, Advocate because petitioners of these petitions became eligible only in mop-up round. If unfilled seats of same pool are not transferred to open/direct category, the petitioners of these petitions may also get seats of their entitlement.

4. Learned counsel for the petitioners has advanced three fold submissions. *Firstly*, it is argued that ‘in-service candidates’ have a separate source of entry. As per Rule 4 and 14 of the Admission Rules, the unfilled seats of reserved category in-service compartment cannot be shifted to open/direct category unless the requirement of Rule 4 and 14 (2) of the Admission Rules is satisfied. Intermingling of seats between two compartments is impermissible. *Secondly*, in absence of any express enabling provision, the action of respondents in shifting the seats of one compartment (in-service category to another namely open/direct category) is bad-in-law. *Thirdly*, the Admission Rules must be given purposive interpretation. It is a beneficent provision for in-service candidates and therefore, intention of law makers cannot be ignored. It cannot be forgotten that the Constitution Bench of Supreme Court in **Tamil Nadu Medical Officers Association and others Vs. State of Tamil Nadu and Another (2021) 6 SCC 568** recognized in-service category as a separate source of entry. In view of **K. Duraisamy and Another Vs. State of T.N. and others (2001) 2 SCC 538**, **State of M.P. and Ors Vs. Gopal D. Tirthani and Ors (2003) 7 SCC 83**, **Satyabrata Sahoo And others Vs. State of Orissa and other 2012 (8) SCC 203** and Division Bench judgment of this Court reported in **Sunita Sharma Vs. State of M.P. and Ors 2001 (2) MPLJ 524**, the exclusivity of ‘in-service candidates’ must be recognized and respected. The ‘in-service candidates’ are obliged to serve in rural and difficult areas for 5 years whereas open/direct candidates are required to serve in such area only for a period of one year. By placing reliance on a chart supplied to the Court Shri Siddharth Gupta learned counsel for the petitioners submits that 28 doctors of direct/open category have been benefited because of shifting of

unfilled seats of reserve categories of in-service category to direct/open category. This will deprive the State from the services of 28 in-service category doctors in rural and difficult areas for a period of 4 years.

5. On 4.3.2022 at around 7-8 pm, the seats were allotted in the second round and 5th and 6th of March 2022 were non working days. On 7th March 2022, the W.P. No.5668/2022 is filed by the petitioner with quite promptitude. During the course of hearing, petitioner placed reliance on the definition of 'प्रवर्ग' and 'श्रेणी'. Rule 4 of Admission Rules provides the methodology for filling the posts category wise. Heavy reliance is placed on Rule 4 and 14 to submit that under the Rules, the respondents are under an obligation to fill up the seats in the manner prescribed in Rule 4 (1) (ग). The Rules were amended twice. Firstly, on 19th June 2019 and thereafter on 5th October 2021. The amended Rule 14(1) employed the word 'प्रोत्साहन' (encouragement) for in-service candidate. As per Rule 14 (1), 30 posts are *reserved* for in-service candidates in Degree/PG Courses. The seats of Rule 14 (1) earmarked for in-service are to be filled up as per Rule 4 (1) of the Admission Rules. Rule 14 (2) employed the words, 'में से' which as per Shri Gupta means 'within'. To elaborate, it is argued that within the vacant seats of in-service candidates, the category-wise reservation must be made applicable as per Rule 4(1) of the Admission Rules. As per the said procedure, the unfilled seats of ST category should go to SC category, similarly, unfilled seats of SC category will go to ST category. Unfilled posts of SC and ST category shall go to OBC category. If candidates of SC, ST and OBC are not available, the seats will be filled up by unreserved category candidates. This entire exercise should be vertical and within the category of in-service candidates. Rule 2(घ) makes it clear submits Shri Gupta that 'प्रवर्गवार' reservation is a different facet

and, therefore, the law makers have compartmentalized ‘**श्रेणीवार**’ and ‘**प्रवर्गवार**’ reservation.

6. The judgments of the Supreme Court mentioned hereinabove were relied upon to contend that in-service category is an exclusive category and unfilled seats of this category cannot be transferred to another category unless the exercise mentioned in Rule 4(1)(g) is undertaken as within the same category. After completing the said exercise only the remaining seats can go to another category of direct/open candidates.

Government stand :-

7. Shri Bernard, learned Additional Advocate General on the other hand contended that the contention of petitioners is misconceived. Total 436 seats are available under the State quota before the first round of counselling. Out of these, 30% seats were provided to in-service candidates which comes to 131 and remaining 305 seats were kept in open/direct quota seats (non in- service candidates).

8. Applying the prevailing percentage applicable in M.P. for reservation i.e. UR-40%, ST-20%, SC-16%, OBC-14% and EWS-10%, the distribution of seats under various categories as published in seat distribution chart of first round of counselling is as under:-

Total Seats 436

Total	UR	ST	SC	OBC	EWS
436	175	87	70	61	43

Opens Seats 305

Total	UR	ST	SC	OBC	EWS
305	122	61	49	43	30

30% Reservation Seats 131

Total	UR	ST	SC	OBC	EWS
131	53	26	21	18	13

9. On the basis of said data, it is urged that reservation has been applied on total seats and then divided into open and in-service pool. The Admission Rules permit reservation for different category of candidates and no candidate is put to disadvantage and it was ensured that a seat of specific category is converted to other category only when that particular category candidate is not available in the merit list as provided in Rule 4(1)(π).

10. In view of aforesaid, it is the case of the State that it is imperative that unfilled reserved in-service quota seats which have been carved out of total seats must be brought into open quota of the same category (ST/SC/OBC/EWS) so that the seats could first be offered to candidate of that particular category. Shri Bernard has given examples as under:-

- An in-service candidate of ST category is not available, the seat would go to the S.T., Open Quota.
 - If both, in-service and open quota candidates in the S.T. category are not available, the seat would be converted to the S.C. open as per Rule 4(1)(g)(1).
 - The said converted S.C. category seat would be then allotted either to an in-service candidate or an open quota candidate of S.C. category (whoever is more meritorious).
- And therefore, the in-service candidate is not left out of the reckoning and is provided full opportunity as per his merit to obtain seat.

11. The attention of this court is drawn on the additional return. The list Annexure-AR/1 is referred to submit that in-service candidates either have been upgraded from his first round or have been freshly allotted college in the second round of counselling in the open compartment after exhausting the category. Few examples to support this are given in Para-3 of the additional return. It is strenuously contended that no prejudice is caused to any candidate because of implementation working of the said rule. If petitioners' contention is accepted, the entire process would have to be redone including the exercise of redrawing the list of candidates who have already been allotted the colleges and most of them have joined their respective courses. These candidates would suffer prejudice and their impleadment is necessary.

12. In rejoinder submissions, Shri Sidhharth Gupta, learned counsel for the petitioners contended that in the return, the respondents projected as if 17 in-service candidates got the benefit of impugned action of respondents. By placing reliance on Annexure RJ-1 filed with rejoinder, it is argued that 13 candidates whose names find mentioned in the return did not get any benefit of action of the respondents.

13. The '**Bond**' (Annexure RJ/5) is referred to show that in-service candidates are required to work in rural/remote and difficult areas for five years in comparison to one year by open category candidates. The amount needs to be deposited by in-service candidate is also much higher in comparison to open category candidate.

14. At the cost of repetition, Shri Gupta, learned counsel for the petitioners reiterated that page 62 of the writ petition is a chart prepared by respondents relating to second round of counselling. The candidates are divided into 'in-service' and 'open category'. This act of respondents

itself shows that there are two different compartments as rightly projected by the petitioners namely in-service candidates and open category candidates.

15. An example is given by learned counsel for the petitioners that if there is a big circle and within it another small circle exists, it can be equated with the present situation where bigger circle is containing 70% open category candidates whereas smaller inner circle contains 30% in-service candidates. Rule 14 of Admission Rules is confined to in-service candidates only. This is trite that general provision should give way to the special provision whether or not it is in the same statute. **(2020) 6 SCC 411 (Managing Director, Chhattisgarh State Co-operative Bank Maryadit vs. Zila Sahkari Kendriya Bank Maryadit and others)** is pressed into service for this purpose.

16. Shri Bernard, learned Additional Advocate General contended that rejoinder runs contrary to the prayer made in the writ petitions. New pleadings beyond the scope of relief made for the first time in the rejoinder cannot be gone into. He also relied on the various definitions mentioned in the Rules and urged that petitioners have no case.

17. Shri Bernard learned Additional Advocate General submits that in-service candidates do not belong any 'quota' as per Article 15 of the Constitution. At best they have 'a separate source of entry'. The definition of vacancies (रिक्तियों) mentioned in Rule is heavily relied upon to contend that out of total vacancies, 30% are earmarked for 'in-service candidates'. Rule 14(1) and (2), if read together makes it clear that reservation is to be applied and determined on the entire vacancies and not compartment-wise and hence not confined to in-service candidate. Example given in additional return is relied upon **Chandavarkar Sita Ratna Rao Vs.**

Ashalata S. Guram (1986) 4 SCC 447 is referred to contend that Admission Rules are to be interpreted by taking into account the principle of interpretation laid down by the Supreme Court in the said case.

18. Shri Aditya Sanghi, learned counsel for the respondent No. 5 in W.P. No. 5668/2022 adopted the argument of Shri Bernard, learned Additional Advocate General. In addition, Shri Sanghi submits that principle of ‘Promissory Estoppel’ is applicable against the State for respondent No.5 because respondent No. 5 has taken admission and a right is already created in her favour. If interpretation advanced by the petitioners is accepted, a sizable number of candidates will be adversely affected. The Apex Court in **SLP (Civil) No. D13016/2018 (Kashmi Bhagtani Vs. State of Madhya Pradesh)** opined that when such right is created, it should not be lightly brushed aside.

19. No other point is pressed by the parties.

20. We have heard learned counsel for the parties at length and perused the record.

21. The parties during the course of arguments placed reliance on following statutory provisions, the **Admission Rules:-**

2(ठ) ‘प्रवर्ग’ से अभिप्रेत है, महिला, स्वतंत्रता संग्राम सैनानी, सैनिक दिव्यांग एवं अनिवासी भारतीय प्रवर्ग;

(प) ‘श्रेणी’ से अभिप्रेत है, अनुसूचित जाति, अनुसूचित जनजाति, अन्य पिछड़ा वर्ग एवं अनारक्षित श्रेणी।

4. आरक्षण —

(1) श्रेणीवार आरक्षण—

(क)

(ख)

(ग) काउंसिलिंग के द्वितीय चक्र में आरक्षित श्रेणी विशेष का अर्हताधारी पंजीकृत अभ्यर्थी उपलब्ध नहीं होने की दशा में प्रवेश हेतु आबंटन निम्न क्रम से किया जाएगा:—

(1) अनुसूचित जनजाति की रिक्तियों के पद के विरुद्ध अनुसूचित जाति के अभ्यर्थियों को

(2) अनुसूचित जाति की रिक्तियों के विरुद्ध अनुसूचित जनजाति के अभ्यर्थियों को

(3) अनुसूचित जनजाति एवं अनुसूचित जाति के रिक्तियों के विरुद्ध अन्य पिछड़ा वर्ग के अभ्यर्थियों को एवं

(4) उपरोक्त तीनों श्रेणियों के आरक्षित अभ्यर्थी उपलब्ध नहीं होने की दशा में, रिक्तियों के विरुद्ध अनारक्षित श्रेणी के अभ्यर्थियों को।

(घ) काउंसिलिंग के अंतिम चक्र में आरक्षित श्रेणी विशेष का अर्हताधारी पंजीकृत अभ्यर्थी उपलब्ध नहीं होने की दशा में, ऐसी श्रेणी की रिक्तियों के विरुद्ध अनारक्षित श्रेणी के अभ्यर्थियों को प्रवेश दिया जाएगा।

(2) प्रवर्गवार आरक्षण—

(क) प्रवर्गवार आरक्षण अनुसूची-2 के खण्ड 'ब' अनुसार होगा।

(ख) काउंसिलिंग के द्वितीय चक्र में प्रवर्ग विशेष के अर्हताधारी पंजीकृत अभ्यर्थी उपलब्ध नहीं होने की दशा में प्रवर्ग विशेष की रिक्तियां आबंटन हेतु संबंधित प्रवर्ग के उपलब्ध अर्हताधारी पंजीकृत अभ्यर्थी की संख्या तक स्वतः सीमित हो जाएगी।

(ग) प्रवर्गवार आरक्षण श्रेणीवार नहीं होकर कुल रिक्तियों के संबंध में समग्र रूप से लागू होगा।

“14. सेवारत अभ्यर्थियों के लिये प्रोत्साहन,—

सेवारत अभ्यर्थी/चिकित्सा शिक्षा विभाग के अन्तर्गत शासकीय चिकित्सा/दंत चिकित्सा महाविद्यालयों में कार्यरत डिमोन्स्ट्रेटर/ट्यूटर/मेडिकल ऑफिसर अभ्यर्थियों के लिये प्रोत्साहन,

Unamended Rule	As amended/Substituted on 5.10.2021
14. सेवारत अभ्यर्थी के लिये प्रोत्साहन,— (1) डिप्लोमा पाठ्यक्रम की कुल रिक्तियों का 50 प्रतिशत अथवा उपलब्ध अर्हताधारी पंजीकृत सेवारत अभ्यर्थी, जो भी कम हो, के विरुद्ध सेवारत अभ्यर्थी को प्रवेश दिया जाएगा। (2) सेवारत अभ्यर्थी की रिक्तियों में से श्रेणीवार आरक्षण के संबंध में नियम 4(1) में वर्णित प्रावधान लागू होंगे।	14(1) शासकीय एवं निजी चिकित्सा/दंत चिकित्सा महाविद्यालयों में उपलब्ध समस्त विधाओं की डिग्री सीटों की रिक्तियों पर अर्हताधारी पंजीकृत सेवारत अभ्यर्थी/चिकित्सा शिक्षा विभाग के अन्तर्गत कार्यरत डिमोन्सट्रेटर/ट्यूटर/मेडिकल ऑफिसर हेतु 30 प्रतिशत आरक्षण रहेगा। (2) उप-नियम (1) की रिक्तियों पर श्रेणीवार आरक्षण के संबंध में नियम 4(1) में वर्णित प्रावधान लागू होंगे।

Rule 2(त) of unamended Rules reads as under:

(त) 'रिक्तियां' से अभिप्रेत है, भारतीय आयुर्विज्ञान परिषद (MCI) अथवा भारतीय दंत चिकित्सा परिषद (DCI) द्वारा पाठ्यक्रम के लिए महाविद्यालय वार स्वीकृत सीट के विरुद्ध रिक्तियां जिसमें प्रवेश प्रक्रिया पूर्ण होने तक उत्पन्न होने वाली समस्त रिक्तियां शामिल है;

22. The pivotal question needs consideration in this case is *whether the unfilled reserved vacancies are required to be filled up vertically/ category wise or the same can be filled up by taking into account the entire vacancies ?*.

23. As noticed, Shri Siddharth Gupta, Advocate urged that there are two watertight compartments of 'in-service candidates' and 'open candidates'. Unfilled reserved category vacancies of in-service compartment needs to be vertically filled up from within the candidates of this category. Shri Gupta's arguments is based on unamended Rule 14 (2) of the Admission Rules. However, w.e.f. 5.10.2021, the said Rule stood 'substituted' by newly inserted Rule 14(1) and (2). Thus, the argument based on

unammended Rules is of no assistance to the petitioners. So far substituted Rule 14(1) and (2) are concerned, if these Rules are read in the manner suggested by learned counsel for the petitioners, on first blush argument appears to be attracted but upon microscopic reading of the provision, the argument lost much of its shine. To elaborate, the 'substituted' Rule 14(1) shows that it talks about 'vacancies' (रिक्तियों). In our view, Rule 14 (1) and (2) is required to be read with definition of '(रिक्तियों)'. A combined reading of the provisions makes it clear that the intention of law makers while using the word 'रिक्तियों' relates to all the vacancies and not confined to the vacancies earmarked for 'in-service candidates'. A careful reading of sub Rule (1) of Rule 14 shows that out of all the vacancies in all the available subjects in Government and Private Medical/ Dental Hospital, 30% shall be reserved for 'in-service candidates'. The word 'reserved' is not used in the sense it is normally used when community based reservation flowing from Article 15/16 of the Constitution is being given. The intention of legislature was to give a *separate source of entry* to in-service candidates to the extent of 30% out of the total vacancies.

24. A minute reading of sub Rule (1) and (2) of Rule 14 leaves no room for any doubt that 'vacancies' means all the vacancies and not vacancies confined to 'in-service candidates'. Putting it differently, in sub Rule (2) of Rule 14 it is mentioned about vacancies of sub Rule (1) of Rule 14(1). At the cost of repetition, in our considered opinion, the vacancy of sub Rule (1) relates to the entire set of vacancies of all subjects available in Government and Private Medical Colleges as well as in Dental Hospitals. Thus, we are unable to persuade ourselves with the line of argument advanced by learned counsel for the petitioners.

25. Once it is held that the vacancies mentioned in sub Rule 14 (1) and (2) means entire set of vacancies, the argument of petitioners that ‘in-service candidate’ and ‘open category’ candidates belonged to two separate compartments, pales into insignificance. The chart (page No.64) on which heavy reliance was placed by Shri Gupta does not establish that there are two separate compartments and there exists a line of control between them which cannot be crossed unless unfilled seats of reserved category are filled up vertically as within the compartment.

26. So far judgments of Supreme Court on which reliance is placed by Shri Gupta are concerned, the said judgments are based on different factual backdrop and interpretation of instant Admission Rules was not subject matter of adjudication. Thus, said judgments are of no assistance to the petitioners.

27. The petitioners also placed reliance on the judgment of Supreme Court in the case of **Zila Sahkari Kendriya Bank** (supra). In the said judgment it was held that special provision will prevail over a general provision. There cannot be any doubt about said proposition. However, said principle cannot be pressed into service in the factual matrix of this case.

28. A combined reading of Rule 2(न), Rule 4 (1) and Rule 14(1) and (2) makes it clear like noon day that intention behind bringing these provisions into statute book was to apply the category-wise reservation in the second round of counselling on the entire vacancies and not separately for ‘in-service category’ and ‘open category’.

29. As discussed above, the interpretation suggested by the petitioners cannot be accepted. Thus, no fault can be found in the action of

respondents in applying Rules to the entire set of vacancies. No case is made for interference. Petitions fail and are hereby **dismissed**. No costs.

(SUJOY PAUL)
JUDGE

(DWARKA DHISH BANSAL)
JUDGE