HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Special Appeal Writ No. 201/2022

Dr. Neha Choudhary

----Appellant

Versus

1. State Of Rajasthan, Through Principal Secretary, Medical Education Department, Government Of Rajasthan, Government Secretariat, Jaipur-302005.
2. The Principal Secretary, Medical And Health Department, Government Secretariat, Jaipur.
3. The Director, Medical And Health Services, Swasthya Bhawan, Tilak Marg, C-Scheme, Jaipur (Raj.)
4. The Chairman, Neet Pg Medical/ Dental 2021 Counseling Board And Principal And Controller, Sms Medical College And Group Of Affiliated Hospital, Jaipur.
5. Union Of India, Through The Secretary, Ministry Of Health And Family Welfare, Nirman Bhawan, New Delhi.
6. National Medical Commission, Through Its Secretary, Pocket-14, Sector-8, Dwarka, Phase-1St, New Delhi.

----Respondents

D.B. Special Appeal Writ No. 202/2022

Dr. Aditya Bhardawaj Son Of Shri Shiv Datt Bhardwaj, Aged About 30 Years, Resident Of Jaipur Road, Ajeetgarh, Sikar (Raj.)

----Appellant

Versus

1. State Of Rajasthan, Through Principal Secretary, Medical Education Department, Government Of Rajasthan, Government Secretariat, Jaipur-302005.
2. The Principal Secretary, Medical And Health Department, Government Secretariat, Jaipur.
3. The Director, Medical And Health Services, Swasthya Bhawan, Tilak Marg, C-Scheme, Jaipur (Raj.)

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6. National Medical Commission, Through Its Secretary, Pocket-14, Sector-8, Dwarka, Phase-1St, New Delhi.

----Respondents

For Appellant(s)	:	Mr. Yash Pal Khileree with Mr. D.S. Beniwal through V.C.
For Respondent(s)	:	Mr. Angad Mirdha Mr. Harshal Tholia on behalf of Dr. Vibhuti Bhushan Sharma(AAG) through V.C.

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI
HON'BLE MR. JUSTICE SAMEER JAIN

Judgment

25/01/2022

1. These appeals arise of the common judgment of the learned Single Judge dated 10.01.2022 in respective petitions. Issues being similar we may notice facts from D.B. Civil Special Appeal No.201/2022. This appeal is filed by the original petitioner No.9. She along with other petitioners are the doctors serving in the Rajasthan State services. They have been posted in remote or difficult areas or rural areas. The State policy recognises graded incentive marks for such doctors for the purpose of giving admissions in postgraduate medical courses. Such experience has to be reckoned as gained by them upto 30.09.2021 for the current process of admissions in PG medical courses. They have dispute with this cut off date. They contend that such cut off date should be shifted to 31.10.2021. They therefore filed the writ petition in

which the prayer made is to direct the respondent authorities to consider their experience of service in Government hospitals till 31.10.2021. The learned Single Judge dismissed the writ petitions upon which these appeals have been filed.

2. Learned counsel for the appellant submitted that in the present year due to variety of reasons the process of admission in PG medical courses has been delayed. Taking cognizance of such delays the State Government itself has shifted the date for considering experience from originally declared which was 30.04.2021 to 30.09.2021. The Government did not take into consideration the fact that admission process has been further delayed. Ideally the first date of counselling should be the date upto which the experience should be seen. This was the past practice. Ignoring such facts the State Government has refused to extend the last date of 30.09.2021 for considering the experience of in-service doctors. The learned Single Judge has committed an error in dismissing the writ petitions.

3. Learned Government Advocate opposed the appeals contending that it is the question of policy decision of the State Government. The Government after due consideration decided to extend the last date for considering the experience upto 30.09.2021. Thereafter there was no further reason to extend the time. The petitioners have no vested right to insist that such incentive must be granted upto the date of counselling. The learned Single Judge has therefore rightly dismissed the petitions.

4. Learned counsel for National Medical Commission (NMC) submitted that NMC has no direct role to play. He however submitted that the additional marks being granted to in-service doctors posted in remote areas is by way of incentives. The

petitioners have no vested right to claim such incentive *dehors* the Government policy.

5. The State Government has framed a policy for granting incentive marks to in-service doctors posted in difficult, remote and rural areas under which for every completed year of service 10% marks would be added in the tally of candidate scored in the NEET examination with the ceiling of 30% marks weightage which may be made available. In the past such policy was subject matter of challenge before this Court and thereafter before the Supreme Court. The Supreme Court in **Special Leave to Appeal (C) No.11692/2017-Dr. Amit Bagra and Ors. Vs. State of Rajasthan and Ors., decided on 15.12.2017** while not disapproving the policy for granting such incentive, was of the opinion that the parameters applied by the State Government for identifying such remote and difficult areas were not valid in law. Consequently while disposing the appeal the Supreme Court held that admissions made for the academic year in question would not be disturbed. However by the end of February, 2018 the State Government should consider the remote as well as difficult areas considering the judgments mentioned in the order and the extent of percentage of marks in terms of the regulations may also be specified as may be considered appropriate.

6. We are informed that subsequently the State Government has revived its policy and issued fresh regulations which currently prevail. The Medical Council of India also has framed regulations called Medical Council of India Postgraduate Medical Education Regulations, 2000 (hereinafter to be referred as 'Regulations of 2000'). Regulation 9 of the said regulations prescribes the procedure for selection of candidates for postgraduate courses.

Sub Regulation (4) of Regulation 9 provides that an all India merit list as well as State-wise merit list of the eligible candidates shall be prepared on the basis of the marks obtained in National Eligibility-cum-Entrance Test and candidates shall be admitted to PG courses from the said merit lists only. Proviso to sub regulation (4) reads as under:-

> "Provided that in determining the merit of candidates who are in service of government/public authority, weightage in the marks may be given by the Government/Competent Authority as in incentive upto 10% of the marks obtained for each year of service in remote and/or difficult areas or Rural areas upto maximum of 30% of the marks obtained in National Eligibility-cum-Entrance Test. The remote and/or difficult areas or Rural areas shall be as notified by State Government/Competent authority from time to time."

7. As per this proviso while determining the merit of a candidates who are in service of the Government or public authority weightage of marks may be given by the Government or the authority by way of incentive upto 10% of marks for each year of service in remote and/or difficult areas or rural areas upto maximum of 30% of the marks obtained in NEET. The remote, difficult or rural areas shall be notified bythe State Government or the competent authority.

8. As per sub-regulation 9 of Regulation 9 the admission process would be organised in such a manner that teaching in broad speciality PG courses would start from 1st May and for super speciality courses from 1st August of every year.

9. We may record that the State Government issued a notification dated 14.04.2020 under which in terms of the decision of Supreme Court in the case of Dr. Amit Bagra (supra) the State

specified the remote, difficult and rural areas as contained in the said notification. This notification provided that such incentive marks would be granted only to those serving doctors who have completed minimum of one year of service as on 30.04.2020. This notification also provides that the doctors serving in these areas would be granted 10% incentive marks for every completed year of service upto a maximum of 30% for the purpose of admission in PG courses.

10. For the present year also the State Government has issued similar notification dated 18.03.2021 in which also the cut off date for the experience was prescribed as 30.04.2021.

11. The NEET PG examination for the year 2021 was to be held on 18.04.2021 and the result thereof was to be declared on 31.05.2021. However the same was delayed on account of spread of corona virus. Eventually the same was conducted on 11.09.2021. Even after the results were declared, the admission process ran into legal controversies particularly with respect to the reservations provided for various categories including economically weaker sections. Due to pendency of proceedings before the Supreme Court, the counselling processes were delayed. Eventually recently the Supreme Court has cleared the decks by a judgment dated 20.01.2022 in **Writ Petition (C) No.967/2021- Neil Aurelio Nunes and Ors. Vs. Union of India and Ors.** On account of the delays in admission process the State Government on its own has issued a notification dated 08.01.2022 and revised the date of 30.04.2021 to 30.09.2021 for the purpose of reckoning the experience of in-house candidates. As a result the State Government has started the counselling process for PG

medical admissions. We are informed that the first phase of counselling took place between 20.01.2022 to 24.01.2022. Further phases are in the pipeline.

12. Before giving our own expression to the challenge made by the petitioners we may notice that the learned Single Judge at the Principal Seat at Jodhpur had passed an interim order dated 12.01.2022 in **Writ Petition No.548/2022-Sahil Khan Vs. State of Rajasthan** by which the cut off date for considering the experience was pushed to 20.01.2022. Against this interim order of the learned Single Judge the State had preferred an appeal. The Division Bench by an order dated 21.01.2022 had reversed the said order and allowed the original petitioner to pursue the pending writ petition.

13. We may also record as pointed out by the State counsel that there are three groups of litigants. First set of candidates are aggrieved by extension of date to 30.09.2021 under the notification dated 08.01.2022. Such petitions are pending and we clarify that we do not intend to touch on any aspects of the challenge of these candidates. Second set of candidates had approached the Court seeking extension of the cut off date and are satisfied with the Government extending 30.09.2021. They would have or would be withdrawing their petitions. The last set of candidates like the present appellants-original petitioners are those who seek the benefit of incentive marks but are not satisfied with the extension of cut off date to 30.09.2021.

14. Having heard learned counsel for the parties and having perused the documents on record we find that the policy to grant incentive marks to in-house doctors serving in difficult, remote or

rural areas has been framed by the State Government by virtue of which for every completed year of service in such year 10% weightage would be granted for the purpose of PG medical course. This would be over and above the marks scored by the candidate in NEET examination. Ordinarily such experience would be considered upto 30th April of the relevant year. Initially in the present admission process also the cut off date prescribed by the State Government was 30.04.2021. However initially on account of spread of corona virus the conducting of NEET examination itself had to be postponed. The examination could be completed only on 11.09.2021. Even thereafter the counselling could not start on account of legal controversies regarding reservations provided in PG medical courses. The State Government taking cognizance of such developments has on its own extended the time limit from 30.04.2021 to 30.09.2021. In our view the same is principally a matter of policy and depends on the discretionary exercise of powers of the State Government. To begin with grant of incentive itself is a policy matter and based on the discretion of State authorities. Any extension for considering the experience is also part of such discretionary exercise of the powers. Unless it is shown that such discretion is exercised arbitrarily or malafidely this Court would not interfere in such policy matters.

15. Moreover, as correctly pointed out by the counsel for NMC, the policy of the State is to grant incentive. No candidate has a vested right to claim such incentives, that too *dehors* the State policy. Such cut off date cannot be kept fluctuating. The date of counselling would depend on several factors. The suggestion that experience gained by the candidate right till the first date of

counseling is therefore not acceptable. There is yet another angle to this issue. The perusal of the State policy would show that the incentive is granted to ensure that sufficient numbers of doctors are available to serve in remote, difficult and rural areas. On account of difficult living conditions in such areas these doctors would also suffer a degree of handicap in their preparations of PG medical entrance examinations. To offset such handicap incentive is being offered. Once examination is over, the candidate cannot complain of being disadvantaged in making the preparations as compared to the other candidates. The cut off date of 30.09.2021 prescribed by the State Government therefore requires no interference.

16. In the result, appeals are dismissed.

(SAMEER JAIN),J (AKIL KURESHI),CJ

KAMLESH KUMAR /s-1 & 2