

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

THURSDAY, THE 26TH DAY OF MAY 2022 / 5TH JYAISHTA, 1944

WA NO. 219 OF 2022

AGAINST THE JUDGMENT IN WP(C) 2838/2022 OF HIGH COURT OF
KERALA

APPELLANT/S:

DR. VIKAS R S,
AGED 33 YEARS
S/O. K. RAMACHANDRAN ACHARI, ASSISTANT SURGEON,
GOVERNMENT TRIBAL SPECIALITY HOSPITAL,
KOTTATHARA, ATTAPPADI, PIN 678 581, RESIDING AT
STAFF QUARTERS, GOVERNMENT TRIBAL SPECIALITY
HOSPITAL, ATTAPPADI, PIN 678 581, PH: 6238867364
BY ADVS.
ELVIN PETER P.J.
K.R.GANESH
GOURI BALAGOPAL
ABHIJITH.K.ANIRUDHAN
SREELEKSHMI A.S.

RESPONDENT/S:

- 1 STATE OF KERALA
REPRESENTED BY ITS SECRETARY, HEALTH AND FAMILY
WELFARE DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695 001
- 2 THE COMMISSIONER FOR ENTRANCE EXAMINATION,
HOUSING BOARD BUILDING, SANTHI NAGAR,
THIRUVANANTHAPURAM 695 001
- 3 DIRECTOR OF HEALTH SERVICES,
DIRECTORATE OF HEALTH SERVICES, VANCHIYOOR P.O,
THIRUVANANTHAPURAM-695 011
BY ADVS.
SRI.P.G.PRAMOD, GOVERNMENT PLEADER (GP-50)

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
26.05.2022, ALONG WITH WA.233/2022, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

THURSDAY, THE 26TH DAY OF MAY 2022 / 5TH JYAISHTA, 1944

WA NO. 233 OF 2022

AGAINST THE JUDGMENT IN WP(C) 2161/2022 OF HIGH COURT OF
KERALA

APPELLANT/S:

- 1 DR.JIBIN C.P.
AGED 38 YEARS
S/O. 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, ALAPPUZHA-688528,
RESIDING AT VISHAKH, KAIKKULANGARA NORTH,
THIRUMULLAVARAM P.O., KOLLAM-691012.
BY ADVS.
K.JAJU BABU (SR.)
M.U.VIJAYALAKSHMI
BRIJESH MOHAN
DEEPAK RAJ
C.P.ROOPA
SACHIN RAMESH

RESPONDENT/S:

- 1 STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT,
DEPARTMENT OF HEALTH AND FAMILY WELFARE,
SECRETARIAT, THIRUVANANTHAPURAM-695001.
- 2 THE SECRETARY TO GOVERNMENT,
DEPARTMENT OF HIGHER EDUCATION, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM-695001.
- 3 THE CHIEF SECRETARY TO GOVERNMENT,
GOVERNMENT OF KERALA, SECRETARIAT,
THIRUVANANTHAPURAM-695001.

- 4 THE 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 ROAD,
CHALAKKUZHY, THIRUVANANTHAPURAM-695011.
- 6 NATIONAL MEDICAL COMMISSION,
REPRESENTED BY SECRETARY, PHASE-1, DADA DEV
MANDIR ROAD, BLOCK P, SECTOR -8, DWARKA, NEW
DELHI-110077.
BY ADVS.
SRI.P.G.PRAMOD, GOVERNMENT PLEADER (GP-50)

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
26.05.2022, ALONG WITH WA.219/2022, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:

J U D G M E N T

Shaji P. Chaly, J.

The captioned writ appeals are filed by petitioners in W. P. (C) Nos. 2838 of 2022 and 2161 of 2022 challenging the judgments of the learned Single Judge dated 03.02.2022 and 31.01.2022 respectively, whereby the writ petitions were dismissed declaring that the proviso under Regulation 9(IV) of the Medical Council of India Post Graduate Medical Education Regulations, 2000 does not confer a right on Medical Officers under the service of Government / public authorities to get weightage in the marks as incentive for service in remote and/or difficult rural areas for the purpose of admission to post graduate medical courses; and further held that Ext. P7 Government Order dated 15.01.2022 of the Health and Family Welfare Department, Government of Kerala and the prospectus attached to the Government Order supersede Ext. P4 Government Order dated 12.04.2018 of the same department.

2. The facts required for the disposal of the writ appeals discernible from W. A. No. 233 of 2022 are relied upon:-

3. The 1st appellant is working as Assistant Surgeon in the Primary Health Centre, Moothedam, Malappuram District, a difficult rural area. The appellant entered service on 27.04.2017. The 2nd appellant is working as Assistant Surgeon in the Community Health Centre, Thycattusery, Cherthala, which is a rural area; who entered service on 10.01.2017. It is submitted by the appellants that the 1st appellant has difficult rural area service and the second appellant has rural area service to their credit.

4. The appellants have participated in the National Eligibility-cum-Entrance Test (NEET) PG – 2021 and they have secured rank No. 40151 and 22849 respectively. According to the appellants, since they are Government employees, they are entitled to get the benefit of service quota for Medical PG (MD) admission in the colleges in Kerala as per clause 6 of Ext. P9 prospectus issued by the State Government for admission to Medical Post Graduate Degree Courses 2021-2022 issued as per a Government Order dated 15.01.2022.

5. It is further submitted that as per clause 9 (1) of the Post Graduate Medical Education Regulations, 2000, the students for PG Medical Courses shall be selected strictly on the basis of their

academic merit. The appellants have also challenged clause 6.6.12 of the prospectus to the extent it states that 'the total service will be reckoned as on the date of notification for inviting application by CEE for admission to the courses'.

6. The grievance in respect of Ext. P9 prospectus raised by the appellants are (i) total service will be reckoned for admission to Post Graduate Courses which is violative of the parent Regulations and the ratio of the judgment of the Hon'ble Apex Court in **Sudheer N. v. State of Kerala and Others [(2015) 6 SCC 685]**; (ii) Doctors working in rural area is given an incentive of only 2 percent of marks obtained for each year in service in rural areas and Doctors working in difficult rural area is given an incentive of only 5 percent marks obtained for each year of service in difficult rural areas, which is unjust, illegal and arbitrary, since a higher weightage of at least 10 percent is to be given for both rural and difficult rural area service; (iii) No special reservation is given to Doctors working in rural area and/or difficult remote area, in spite of the prescription in the parent Regulations as regarding Diploma seats and since there are no Diploma seats in the State of Kerala, the reservation must be given for PG Degree seats and (iv) splitting up of in-service quota in medical

education service quota, health service quota and insurance medical service quota in the ratio of 45:45:10 compromises merit and violates the principle that merit and merit alone shall be the criteria for admissions.

7. The appellants have also relied upon the judgments of the Hon'ble Apex Court in **Dr. Preeti Srivastava and Another v. State of Madhya Pradesh and Others [(1999) 7 SCC 120]** and **K. S. Puttuswamy and Another v. Union of India and Others [(2017) 10 SCC 1]**.

8. So far as writ appeal No. 219 of 2022 is concerned, the appellant is an Assistant Surgeon working in the Health Services Department on and with effect from 10.06.2016. His basic contention is that the Medical Council of India in exercise of the powers conferred under Section 33 read with Section 20 of the Indian Medical Council Act, 1956, has issued the Medical Council of India Post Graduate Medical Education Regulations, 2000, laying down the general conditions to be observed inter alia for making selection of post graduate students for Post Graduate Medical Courses; that as per regulation 9 (IV), the reservation of seats in medical colleges /

institutions for respective categories shall be as per applicable laws prevailing in States or Union Territories and 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 post graduate courses from the said merit list only; and that the proviso thereto specifies 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 an incentive up to 10 percent of the marks obtained for each year of service in remote and/or difficult areas or rural areas up to maximum of 30 percent of the marks obtained in National Eligibility-cum-Entrance Test and that the remote and/or difficult rural areas shall be as notified by State Government / competent authority from time to time.

9. Therefore according to the appellant therein, from the proviso extracted above, it is clear that in making selection of students for Post Graduate Medical Courses, Medical Officers, who are in the service of the Government or other public authority, are entitled to be given weightage as an incentive up to 10 percent of the marks obtained for each year of service in remote and/or difficult areas or rural areas up

to maximum of 30 percent of the marks obtained in the National Eligibility-cum-Entrance Test.

10. The appellant has also produced Ext. P4 Government Order dated 12.04.2018 whereby admission to Post Graduate Medical Courses for the academic year 2018-19 – PD quota reservation and award of incentive to Medical Officers who have service in remote and difficult areas / rural areas is streamlined by the State Government.

11. According to the appellant, in consonance with paragraphs 4 and 8 of Ext. P4 Government Order dated 12.04.2018, the Medical Officers who work in difficult and remote areas will receive an incentive of 10 percent marks obtained for each year of service in remote and difficult areas and 5 percent of marks obtained for each year of service in rural areas, subject to a maximum of 30 percent.

12. Therefore it is the basic contention of the said appellant that Ext. P4 Government Order was issued taking into consideration the provisions contained under Regulation 9(IV) of Regulations 2000 and accordingly, the incentive contained thereunder shall be given to in-service candidates.

13. It is further submitted that the said provision was incorporated in Ext. P5 prospectus issued for the academic year 2019-2020; however while issuing the prospectus for the academic year 2021-2022, the Government has not incorporated the said provision providing for incentives, which was directed to be given in Ext. P4 Government Order dated 12.04.2018, which according to the appellant was under the wrong impression that the incentives directed to be given to in-service candidate under the MCI regulation is in the form of a reservation, and therefore the incentives has to be granted only in the 10 percent seats already reserved for in-service candidates and an additional incentive need not be given.

14. Therefore it is basically contended that the principle adopted by the respondents in not providing incentives for in-service candidates in the prospectus for the year 2021-2022 is totally misconceived and illegal. This it is contended that the prospectus for the academic year 2021-2022, to the extent it does not provide for incentives to in-service Medical Officers serving the Government for seeking admission to Post Graduate Medical Courses, is absolutely illegal, arbitrary, unfair, unreasonable and therefore violative of Article 14 of the Constitution of India.

15. Accordingly the said appellant seeks a writ of mandamus directing the State and its officials to consider the appellant and other in-service candidates employed as Medical Officers in the Government service for admission for Post Graduate Medical Courses for the academic year 2021-2022 in the general merit seats granting them the incentives as provided in the proviso to regulation 9(IV) of MCI Regulations, 2000 read with Ext. P4 Government Order dated 12.04.2018; and a further declaration is sought against the prospectus for the year 2021-2022 that it is bad to the extent it does not provide for incentives as is contemplated in regulation 9(IV) of Regulations 2000 being violative of Articles 14, 21, and 254 of the Constitution of India. Other consequential reliefs are also sought.

16. In so far as W. P. (C) No. 2161 of 2022 leading to W. A. No. 233 of 2022 is concerned, learned Single Judge after analyzing the proposition of law laid down in the judgments referred to above, and also the judgment of the Hon'ble Apex Court in **Tamil Nadu Medical Officers Association v. Union of India and Others [(2021) 6 SCC 568]** relied upon by the learned Government Pleader, has held that 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; that service quota is provided taking into consideration the requirement of Post Graduate Medical Officers in each service under the Government; that such quota is provided more in public interest than in the individual interest of candidates getting admitted under the quota; and therefore the State will be amply justified in splitting of in-service quota seats as per the requirements in various eligible services.

17. It was also found that for the academic year 2021-2022, 45 percent seats each out of the in-service quota are earmarked by the State for medical education service and health service, and the remaining 10 percent for insurance medical service and since the splitting up of seats is made considering the requirement of Post Graduate Medical Officers in each service, which is in public interest, there is no illegality in dividing the available seats among the three services.

18. It was further found that the division is in public interest and academically, most meritorious among each service alone will be selected for admission; and therefore it cannot be said that by splitting up of seats, academic merit has been given a go by.

19. After referring to the judgment of the Hon'ble Apex Court in **Tamil Nadu Medical Officers Association (supra)**, the learned Single Judge held that the argument of the appellants that clauses 6.6.11 and 6.6.12 of the prospectus for the year 2021-2022 are violative of Regulation 9 of the Regulations 2000, is only to be rejected; the learned Single Judge accordingly did not find any merit in the writ petition and dismissed the same.

20. In so far as the judgment leading to W. A. No. 219 of 2022 is concerned, apart from rendering similar findings as that of the judgment in W. P. (C) No. 2161 of 2022 dated 31.01.2022, it was held that the explicit language used in the proviso to regulation 9(IV) of Regulations 2000 would show that it is only an enabling provision and cannot be treated as a substantive provision giving a statutory right to Medical Officers working in the service of Government / public authorities.

21. It was further found that the Government of Kerala in exercise of its powers under the Kerala Medical Officers Admission to Post Graduate Courses under Service Quota Act, 2008, decided that there should be a separate quota for in-service Medical Officers

working under the Government and it was accordingly that the prospectus for the year 2021-2022 is introduced.

22. Therefore it was held that it is beyond doubt that State can reserve Medical PG seats within the State quota for in-service candidates and also prescribed conditions for admission to those seats without compromising merit, and accordingly declared that the proviso under Regulation 9(IV) of the Regulations 2000 does not confer a right on Medical Officers under the services of Government / public authorities to get weightage in the marks as incentive for service in remote and/or difficult areas for the purpose of admission to Post Graduate Medical Courses.

23. It is thus challenging the legality and correctness of the judgments of the learned Single Judge, the appeals are preferred.

24. We have heard learned Senior Counsel for the petitioner Sri. Jaju Babu assisted by Adv. M. U. Vijayalakshmi and Sri. Elvin Peter P. J. for the appellants in the respective appeals and the learned Government Pleader Sri. P. G. Pramod for the State and its officials and perused the pleadings and material on record.

25. The basic question raised by the appellants revolves around

the prospectus issued by the State Government for the academic year 2021-2022. The reservation of seats for service candidates and eligibility for service quota are governed by clauses 6.6.11 and 6.6.12 and they read thus:-

“6-6-11.Reservation of Seats for service candidates

(10% of State Quota seats are earmarked for Government Service Quota candidate as per G.O. (Ms)No.195/2021/H&FWD dated 30/10/2021. All State Quota seats other than those mentioned in Clause 6 (1 to 10) are earmarked for Service Quota candidates. Seats as shown in Annexure III are set apart for Service quota candidates sponsored by each Department under the following three categories with the ratio 45:45:10:: [MESQ: HSQ: IMSQ].

Medical Education Service Quota - (MESQ).

Health Service Quota – (HSQ)

Insurance Medical Service Quota - (IMSQ).

6-6-12 Eligibility for Service Quota

a. The eligibility criteria for the service quota are the same as laid down in Clause 4. The applicants under Service Quota should have successfully completed their probation in the respective cadre. Other cases will not be entertained on any account. Provisional service (under MES/DHS/MS) if any, before the regular appointment will not be considered.

b. The total service will be reckoned as on the date of notification for inviting application by CEE for admission to the courses. Unauthorised absence or absence due to Leave without Allowance (including leave on medical ground) and the deputation periods of the candidates will not be counted for the purpose of calculating the minimum service and for the seniority. However the period of deputation of candidates of service quota candidates to autonomous institutions/ projects/ societies/ other agencies under the administrative control of their parent department will be counted as eligible service under State Service Quota. If there is a tie in their actual physical service, the PSC seniority will be the deciding criterion.

c. Preparation of Seniority list under Health Service Quota (HSQ):- A single seniority list for candidates under Health Service Quota will be prepared by the DHS. Weightage for Service, Rural and Difficult Rural Service will be given as follows, subject to a maximum of 30% of the marks obtained:

Service weightage: Service weightage in the marks will be given as an incentive at the rate of 1% of marks obtained, for each year in service.

Rural Service: Service weightage in the marks will be given as an incentive at the rate of 2% of marks obtained, for each year in service in Rural areas upto a maximum of 30% of the marks obtained. Doctors working in approved Casualty Units

in the Government Hospitals are also eligible for claiming Rural Service Quota.

Difficult Rural Service: In determining the merit in the Entrance test for PG admission, weightage in the marks will be given as an incentive at the rate of 5% of marks obtained for each year in service in Difficult Rural area unto a maximum of 30% of the marks obtained.

It is clarified that 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 list of Government Allopathic Medical institutions designated as Rural stations in Kerala is as mentioned in the Standardised list of vide. Government Allopathic Medical Institutions-2013 prepared by Health Information Cell (DHS) and approved vide GO(ms)No.443/2013/H&FWD dated 16.11.2013.

The list of Government Allopathic Medical Institutions in Difficult Rural Areas in Kerala is as mentioned in G.O(MS)No. 55/2014/H&FWD dated 15.02.2014 (Annexure XI).

d. Lecturers who have Post Graduate Degree/D.N.B in the Specialty corresponding to the branch in which they are working will not be eligible for admission under Service quota.”

26. The said provisions of the prospectus make it clear that the

State Government, in accordance with the requirement of various departments, has fixed up a ratio of 45:45:10 between medical education service quota, health service quota and insurance medical service quota. It also fixed the eligibility for service quota in order to ensure that meritorious candidates are given admission in the service quota, also taking into account their merit in the rank list prepared in the NEET examination.

27. It is also clear that for the year 2021-2022, the Government has decided to give weightage for service, rural and difficult rural service, subject to a maximum of 30 percent at the rate of 1 percent, 2 percent and 5 percent marks obtained for each year in service in the respective categories.

28. So far as there is sufficient power vested with the State Government to decide the manner in which the incentives are given to the service candidates, the candidates are not at liberty to contend that they are entitled to the benefit of the proviso to Regulation 9(IV) of the Regulations 2000. As rightly held by the learned Single Judge, Regulation 9(IV) of Regulations 2000 cannot be said to be binding absolutely on the State Government in view of the law laid down by

the Hon'ble Apex Court in **Tamil Nadu Medical Officers Association**

(supra), wherein after considering Entry 25 of List III of the

Constitution, it was 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.”

29. Therefore in our considered opinion, the contentions advanced by the appellants against the provisions of the prospectus for the academic year 2021-2022 is not having any force.

30. In our view, it is for the State Government to decide the

manner in which the service candidates are given the incentive, taking into account the larger public interest and the requirement of the respective departments of the Government in order to have the advantage of the services of Post Graduate Doctors.

31. In that view of the matter, we do not think that the clauses 6.6.11 and 6.6.12 of the prospectus for the academic year 2021-2022 is in any manner bad, illegal, arbitrary or discriminatory.

32. So far as the contention advanced by the learned counsel for the appellant in W. A. No. 219 of 2022 that Ext. P4 order issued by the State Government dated 12.04.2018 making reservation and award of incentive to Medical Officers who have service in remote and/or difficult areas / rural areas, is concerned we are of the considered and clear opinion that the said prospectus issued by the State Government was only for the academic year 2018-2019. When a new prospectus is issued by the State Government for the year 2021-2022, the appellant is not at liberty to insist that he should get the benefits conferred under an erstwhile Government Order provided for the period 2018-2019 alone.

33. Going by the proposition of law laid down by the Hon'ble

Apex Court in the judgment in **Tamil Nadu Medical Officers Association (supra)**, it is clear that the State Government is granted with the liberty to issue appropriate Government Orders providing incentives to the in-service candidates, and definitely it is not for the appellants to dictate terms as to the manner in which the benefits and incentives are to be granted by the Government for in-service candidates. To put it otherwise, it is a policy decision of the Government to regulate and meet up with the requirements in the respective departments so as to cater the needs of the public at large. Therefore we do not think that the appellants have made out any case of arbitrariness, unfairness, malafides or any other legal infirmities susceptible to have been interfered with by the writ court.

34. In that view of the matter, we are of the clear and undoubted opinion that the learned Single Judge was right in dismissing the writ petitions upholding clauses 6.6.11 and 6.6.12 of the prospectus issued by the State Government for the academic year 2021-2022 providing reservation for admission to the in-service candidates for P.G. Medical course, and the eligibility for service quota respectively.

Upshot of the above discussion is that the appellants have not

made out any case of jurisdictional error or other legal infirmities justifying us to interfere with the judgment of the learned Single Judge in an intra court appeal filed under Section 5 of the High Court Act.

Needless to say, appeals fail and accordingly, they are dismissed.

**Sd/-
S. MANIKUMAR
CHIEF JUSTICE**

**Sd/-
SHAJI P. CHALY
JUDGE**

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P. A. TO JUDGE