



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. CIVIL WRIT PETITION NO. 687/2022

1. Dr. Naveen Jakhar

2. Dr. Surendra Purohit

3. Dr. Arvind Bishnoi

4. Dr. Nafeesh Ahmed

5. Dr. Praveen Kumar

6. Dr. Manjeet Singh Ola

7. Dr. Vikas Purushottam

8. Dr. Suresh Kumar

9. Dr. Makhan Lal Yadav

10. Dr. Hemant Kumar

11. Dr. Bala

12. Dr. Bhanwar Lal Bishnoi

13. Dr. Dinesh Kumar Vishnoi

14. Dr. Kailash Mahla

15. Dr. Mahesh Kumar

16. Dr. Vipin Yadav



-----PETITIONERS

VERSUS

1. State of Rajasthan, Through its Principal Secretary, Department of Medical and Health Department, Government Secretariat, Jaipur, Rajasthan.
2. Principal Secretary, Department of Medical Education Department, Government Secretariat, Jaipur, Rajasthan.
3. Director (Public Health), Department of Medical and Health Services, Swasthya Bhawan, Tilak Marg, C - Scheme, Jaipur, Rajasthan.
4. Chairman, NEET PG Medical and Dental Admission/ Counselling Board -2021 and Principal, Govt. Dental College, Subhash Nagar, behind T.B. Hospital, Jaipur, Rajasthan.
5. Medical Counselling Committee, Directorate General of Health Services, Department of Health and Family Welfare, New Delhi through Secretary.

-----RESPONDENTS

CONNECTED WITH

S.B. CIVIL WRIT PETITION NO. 1486/2022

Sumit Kumar Saini !

-----PETITIONER

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.

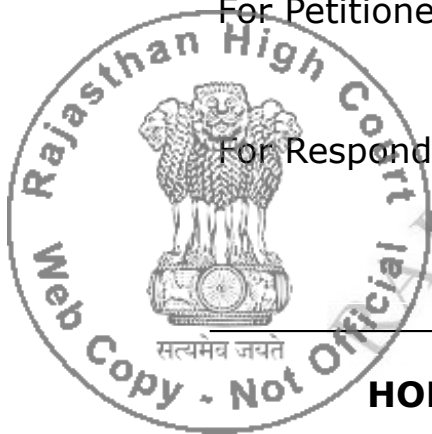


6. National Medical Commission through its Secretary, Pocket-14, Sector-8, Dwarka, Phase-I, New Delhi.
7. National Board of Examination in Medical Sciences, through its Executive Director having Registered Office at Medical Enclave, NAMS Building, Mahatma Gandhi Marg, Ansar Nagar, New Delhi.

----RESPONDENTS

For Petitioner(s) : Mr.N.K.Maloo, Senior Counsel assisted by Mr.Abhimanyu Singh Yaduvanshi and Mr.Ram Pratap Saini, Advocate.

For Respondent(s) : Dr.Vibhuti Bhushan Sharma, Addl. Advocate General with Mr.Harshal Tholia, for respondent-State.
Mr.Angad Mirdha, for respondent-NMC



HON'BLE MR. JUSTICE ASHOK KUMAR GAUR

ORDER

Order Reserved on : 28th January, 2022

REPORTABLE

Date of Order : 1st February, 2022

By the Court:

These writ petitions, since involve common question, as such with the consent of the counsel for the parties, are decided by this common order.

2. The petitioners, in the present writ petitions, are in-service Doctors who have challenged letter/order dated 08.01.2022 whereby the State Government has decided to consider the experience of in-service Doctors to be counted upto 30.09.2021 for the purpose of award of bonus marks while making admission in Post Graduate Medical Courses.

3. The facts, in nutshell, as pleaded in the writ petitions are that the petitioners participated in the National Eligibility-cum-



Entrance Test – Postgraduate, 2021 (for short 'NEET PG 2021') held on 11.09.2021 and all of them were declared successful in the said examination. The petitioners, being government Doctors working in the remote, difficult & rural areas, applied as in-service candidates in NEET PG 2021 examination and they all were entitled for incentive marks for the services rendered by them in remote, difficult & rural areas.

4. The petitioners have pleaded that initially a notification dated 14.04.2020 was issued declaring remote, difficult and rural areas and the relevant date for calculating bonus marks was prescribed as 30.04.2020.

5. The petitioners have pleaded that for Pre-PG 2021, the State Government had initially issued a letter dated 18.03.2021 whereby cut-off date for calculating the experience was prescribed as 30.04.2020.

6. The petitioners have pleaded that surprisingly another letter/order has been issued on 08.01.2020 by which cut-off date, for calculation of experience for the purpose of giving bonus/incentive marks, is extended from 30.04.2021 to 30.09.2021.

7. The petitioners have pleaded that the State Government surprisingly has made a reference of letter dated 26.10.2021 issued by the Medical Counseling Committee for extending the date to 30.09.2021 and the said date was only in relation to completion of internship by MBBS graduates and it had nothing to do with the in-service Doctors.



8. The petitioners have also pleaded that the impugned letter dated 08.01.2022 permits the candidates to get the benefit of bonus marks, for which otherwise they are entitled for in the next year of counseling i.e. 2022 and the National Board of Examination has also announced the schedule for NEET PG 2022 by holding the said examination on 12.03.2022.

9. Mr.N.K.Maloo, Senior Counsel appearing for the petitioners has made following submissions:-

9.1 Cut-off date of 30th April of each year was prevailing practice for the State Government since 2018 for counting experience of in-service Doctors and long prevailing practice has been changed by the respondents this year in an arbitrary manner.

9.2 Granting of bonus marks by counting experience upto 30.09.2021 has completely changed the zone of consideration/the merit of in-service Doctors, who will complete their service of 1/2/3 years as on 30.09.2021. The said change is to the prejudice of the petitioners and other candidates having cascading effect, which is explained by citing an example that one person having 513 merit position shifted to 190 by granting him benefit of one year.

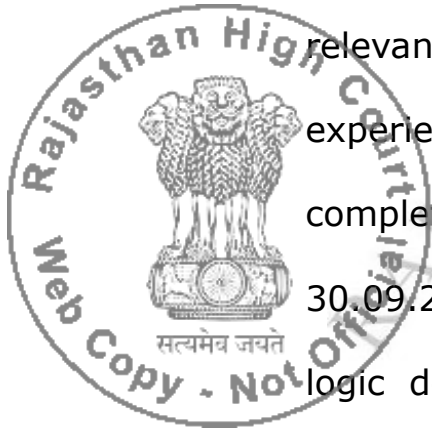
9.3 The State Government, while filing reply in S.B.Civil Writ Petition No.11583/2021 (Jitendra Singh Nitharwal Vs. State), had specifically taken a stand that candidates are provided experience on the basis of an ascertained cut-off date and the same is sacrosanct. Learned Senior Counsel



submitted that once the State Government has taken a stand by filing affidavit on 04.01.2021, the extension of date by issuing notification dated 08.01.2022 is like taking a U-Turn and the State Government cannot be permitted to shift its stand.

9.4 The State Government has not kept in mind the relevant consideration while changing the date of counting experience as the category of freshers/MBBS students to complete their internship during COVID-19 period upto 30.09.2021 is altogether on a different footing and the same logic does not apply while dealing with the cases of in-service Doctors as they were already serving in remote, difficult and rural areas upto a particular time.

9.5 The issue with regard of fixing the cut-off date of 30.09.2021 is required to be adjudicated independently by this Court as the letter/order dated 08.01.2022 is independently challenged and this Court in the case of **Dr.Delip Singh & Ors. Vs. State of Rajasthan & Ors. [S.B.Civil Writ Petition No.11568/2021]** and other connected cases has not considered the validity of such letter/order while deciding the writ petitions vide order dated 10.01.2022. Learned Senior Counsel submitted that even the Division Bench while dismissing the appeal filed by **Dr.Neha Choudhary Vs. State of Rajastna & Ors. [D.B.Special Appeal Writ No.201/2022]** and another connected appeal vide order dated 25.01.2022, though has upheld the order passed by this Court in the case of Dr.Delip Singh (supra),





however, the Division Bench has not touched on any other aspect of the matter more particularly pertaining to extension of cut-off date from 30.04.2021 to 30.09.2021 under the notification dated 08.01.2022.

10. Learned Senior Counsel in support of his submissions, placed reliance on the following judgments rendered by the Apex Court:-

- (i) P.Mohanan Pillai Vs. State of Kerala reported in 2007 (9) SCC 497
- (ii) Kumari Shrilekha Vidyarthi Vs. State of U.P. reported in AIR 1991 SC 537
- (iii) Opto Circuit India Ltd. Vs. Axis Bank & Ors. reported in 2021 (6) SCC 707

11. Per contra, Mr.Harshal Tholia appearing on behalf of Dr.Vibhuti Bhushan Sharma, Addl.Advocate General has made following submissions:-

11.1 The issue of extension of cut-off date from 30.04.2021 to 30.09.2021 is no more *res integra* as the Division Bench has not only upheld the order passed by this Court in the case of Dr.Delip Singh (supra) but also held that fixing of date and granting incentive is a matter of policy and depends on the discretionary exercise of powers of the State Government.

11.2 The State Government has taken the decision of extension of cut-off date, as a matter of policy by keeping in mind several factors and the letter dated 26.10.2021 issued by the Medical Counseling Committee extending the date to 30.09.2021 for completion of internship by MBBS graduates



may not be the only criteria for extending the cut-off date but the same has to be looked into by considering the situation prevailing due to COVID-19.

11.3 The State Government, as a matter of policy, can take a new decision and separate order can be passed as the same is State's prerogative.

11.4 The cut-off date if fixed by the competent authority is having nexus with the object to be achieved, the valid classification is permissible and the same cannot be termed as arbitrary.

11.5 Policy of grant of incentive marks, to in-service Doctors by fixing different cut-off dates, has been made by various States in the entire country and specifically the State of Andhra Pradesh and Telangana have also fixed different dates.

12. Learned Counsel Mr.Tholia, in support of his submissions, placed reliance on the following case law:-

- (i) State of Bihar Vs. Ramjee Prasad reported in 1990 (3) SCC 368
- (ii) Union of India & Anr. Vs. Sudhir Kumar Jaiswal reported in 1994 (4) SCC 212
- (iii) UGC Vs. Sadhana Chaudhary & Ors. reported in 1996 (10) SCC 536
- (iv) Ramrao & Ors. Vs. All India Backward Class Bank Employees Welfare Association & Ors. reported in 2004 (2) SCC 76

13. Learned Counsel Mr.Angad Mirdha appearing for National Medical Commission submitted that Regulation 9(IV) of the Post Graduate Medical Education Regulations, 2000 (in short "the Regulations, 2000") provides that merit of in-service government



Doctors will be determined by the government/competent authority as an incentive upto maximum of 30% of the marks obtained in National Eligibility-cum-Entrance Test and remote/difficult/rural areas are required to be notified by the State Government/competent authority from time to time.

14. Mr.Mirdha further submitted that the entire calendar, right from commencement of admission process till completion of counselling, has always been fixed by the Hon'ble Supreme Court from time to time and in the present Sessions of 2021-22 since the matter was subjudice before the Hon'ble Supreme Court relating to EWS/OBC, now decks have been cleared by the Hon'ble Supreme Court and the entire process of counselling is now being done, as per the directions of the Hon'ble Supreme Court.

15. Counsel further submitted that plea of consistent practice followed by the State Government of fixing 30th April of every year as cut-off date might have been relevant in those past years but in the present year when the admissions are being finalized now, if the State Government has taken 30.09.2021 as the cut-off date for in-service Doctors, no fault can be found with such decision.

16. Counsel further submitted that there are always some candidates who have disadvantage or advantage whenever such decisions are taken by the competent authorities by fixing the cut-off date, however, the same should not result into disturbing the entire admission process and this kind of dispute is required to be settled by giving quietus at this stage itself.



17. I have heard learned counsel for the parties and with their assistance perused the material available on record.

18. This Court finds that in the first series of litigation [**Dr.Jitendra Singh Nitharwal & Ors. Vs. State of Rajasthan (S.B.Civil Writ Petition No.11583/2021)** & connected writ petitions], the petitions were filed by the candidates who were claiming parity with the Doctors who have completed their internship upto 30.09.2021 and as such relief was sought in the court, in the nature of direction, that parity was required to be maintained between in-service Doctors and those candidates who have completed their internship by a common date. This Court vide order dated 10.01.2022 declared those writ petitions as infructuous, since during pendency of the writ petitions, the State Government issued the notification dated 08.01.2022 whereby cut-off date was changed from 30.04.2021 to 30.09.2021.

19. This Court came across second series of litigation whereby candidates sought a direction from this Court that the cut-off date of 30.09.2021 of counting experience was not correct and the experience upto 31.10.2021 may be counted for the purpose of awarding bonus marks and this Court, considering the issuance of notification dated 08.01.2022, found that the State Government had taken a conscious decision to consider candidature of in-service Doctors who have gained their experience upto 30.09.2021 and the eligibility & criteria for counting service was primarily required to be fixed by the State Government by keeping in mind several factors and if the cut-off date has been changed by the State Government, no fault was found in such decision



making process. The relevant portion of the order dated 10.01.2022, passed by this Court in the case of Dr.Delip Singh (supra) is reproduced hereunder:-

"This Court finds that the State Government has already taken a conscious decision to consider the candidature of the in-service Doctors who have gained their experience upto 30.09.2021 and they have not decided to count the experience upto 30.04.2021, as notified initially.

The eligibility or criteria for counting services is primarily required to be fixed by the State Government by keeping in mind several factors and if State Government is now changed the cut off date for counting experience till 30.09.2021, no fault can be found, in such decision making process.

This Court further finds that if the petitioners have put in the required number of service, as per notification dated 08.01.2022, the State Government is bound to consider their cases."

20. The order passed by this Court dated 10.01.2022 was put to challenge by way of special appeal before the Division Bench and the Division Bench in the case of Dr.Neha Choudhary (supra) while dismissing the special appeal vide order dated 25.01.2022, has held as follows:-

"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 Govern-



ment. 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.”

21. This Court finds that the Division Bench has observed that issue with regard to extension of date under the notification dated 08.01.2022 was pending before this Court, as such the Division Bench did not touch on any aspect of the challenge made by the candidates, accordingly, this Court is required to adjudicate on the said issue.

22. The submission of learned Senior Counsel for the petitioners that past practice since 2018 has always been to fix 30th April of each year, suffice it to say by this Court that if due to COVID-19 situation prevalent in the entire country, the entire schedule of examination and admission has been affected, the competent authority if fixes the cut-off date by keeping in mind the



experience of in-service Doctors in remote, difficult and rural areas having an object to be achieved, the past practice cannot prevail in changed circumstances and as such no fault can be found in the same.

23. The submission of learned Senior Counsel for the petitioners that since the State Government, while filing reply in S.B.Civil Writ Petition No.11583/2021 (Jitendra Singh Nitharwal Vs. State) has taken a specific stand that sacrosanct date is 30.04.2021, the same cannot be changed, this Court is of the view that if the State Government has kept in its mind the object of giving the permissible benefit i.e. maximum of 30% of the marks obtained in National Eligibility-cum-Entrance Test, as per the Regulation 9(IV) of the Regulations, 2000, the decision of the State Government cannot be termed as arbitrary or dehors any statutory provision.

24. The submission of learned Senior Counsel for the petitioners that reference in the notification dated 08.01.2021 of a letter dated 26.10.2021, issued by the Medical Counseling Committee, referring to cut-off date for completion of internship for MBBS graduates by extending it to 30.09.2021 and the same has no nexus with the present extension of date, suffice it to say by this Court that even if the cut-off date for completion of internship has been extended in the letter dated 26.10.2021, the State Government has full authority to extend such date on its own by keeping the relevant factors in mind.

25. The submission of learned Senior Counsel for the petitioners that change of merit affecting the entire merit of the candidates by granting them benefit upto 30.09.2021 resulting into great



disparity, this Court finds that on account of grant of certain bonus marks if the candidate becomes entitled for placement in merit, the same cannot be termed as illegal or affecting right of any other candidate.

26. The submission of learned Senior Counsel for the petitioners that zone of consideration has been extended or rule of game has been changed after the game has started, suffice it to say by this Court that in the matter of admission, if the eligibility is prescribed by the competent authority and certain benefits are to be given to the candidates, as per the policy of the State Government, the same cannot result into violating any zone of consideration or rule of game being changed after the game has started.

27. This Court finds that the State Government has initially taken a decision by fixing the cut-off date of 30.04.2021 and later on, as a policy decision, the State Government has changed the cut-off date to 30.09.2021. The State Government, in its wisdom and as a matter of policy, thought that benefit to in-service Doctors is required to be extended upto 30.09.2021, as incentive of bonus marks. If the State Government has found that rendering of service in remote, difficult and rural areas entitles a person to certain incentive/bonus marks, then the decision of State Government to confer such benefit upto a particular date cannot be termed as whimsical or malafide. The grant of incentive may not come to an end only by issuing initial notification but if continuation in service in remote, difficult and rural areas gives benefit to in-service Doctors then same is in consonance with the object of granting benefit to the in-service Doctors.



28. This Court finds that fixation of a cut-off date, may be in a given case, cause hardship to a candidate or group of candidates but that *per se* does not lead to the conclusion that such fixation of date itself is arbitrary. Any cut-off date, which is fixed by the State Government, will always be affecting some of the candidates but at the same time, fixation of cut-off date, if has a degree of inherent randomness, causing hardship to certain group of candidates, the same cannot be a ground to declare such date as arbitrary.

29. This Court finds that the writ Courts, under Article 226 of the Constitution, may not interfere in every decision that is taken on the administrative side and fixing of a cut-off date, will be out of purview of a writ Court until the same is either fixed by keeping in mind the whimsical considerations or fixed in a malafide manner.

30. As regards reliance placed by learned Senior Counsel for the petitioners to the judgment rendered by the Apex Court in the case of **P.Mohanan Pillai Vs. State of Kerala** reported in **2007 (9) SCC 497**, a perusal of the said judgment shows that facts before the Apex Court were in respect of extending the zone of consideration by increasing the ratio while holding interview and the same was not known to the candidates who participated and as such the said judgment is of little assistance to the learned Senior Counsel for the petitioners.

31. So far as reliance placed on the judgment passed by the Apex Court in the case of **Kumari Shrilekha Vidyarthi Vs. State of U.P.** reported in **AIR 1991 SC 537**, the said decision is an



authority about powers of public authorities and there has been no concept of unfettered discretion to a public authority and the power which is possessed by the public authority is only to be used for public good. The said decision is to judge fairness and reasonableness in the State actions and the same is of little assistance to the learned Senior Counsel for the petitioners.

32. The reliance placed by learned Senior Counsel for the petitioners on the case of **Opto Circuit India Ltd. Vs. Axis Bank & Ors.** reported in **2021 (6) SCC 707**, the Apex Court has held that any action taken by the authority is required to be sustained with reference to the contents of the impugned order/communication and the same cannot be justified by improving the same through the contention raised in the objection statement or affidavit filed before the Court.

33. The said principle is well settled principle by the Apex Court way back in the year 1978 in the case of **Mohinder Singh Gill Vs. Chief Election Commissioner** reported in **1978 (1) SCC 405**.

34. This Court, while passing the order in the case of Dr.Delip Singh (supra), though has not judged the validity of notification dated 08.01.2021, as has been challenged in the present writ petition, however, the power of the State Government to take a conscious decision of fixing a cut-off date, keeping in mind the relevant considerations and factors, has been approved and the said order has also been upheld by the Division Bench of this Court in the case of Dr.Neha Choudhary (supra).



35. This Court finds that the Madras High Court in the case of **GA Vishwajeet Vs. UOI & Ors. [WP NO.16526/2021]** & connected writ petitions decided on 09.08.2021 has dealt with the issue of seeking mandamus to participate in the NEET PG 2021 by extending the cut-off date for completing one year mandatory Compulsory Rotatory Residential Internship to 31st October, 2021 instead of 30th June, 2021. The Madras High Court has declined to interfere by holding that cut-off dates are not fixed based on individual claims made and the authorities are to take into consideration a wide range of options and then take a decision.

36. This Court similarly finds that the Delhi High Court in the case of **Sh.Arman Sindhu Vs. UOI & Ors. [WP(C) NO.8429/2021]** decided on 18.08.2021 has also considered the grievance of extending the date of completion of one year Compulsory Rotatory Residential Internship beyond 30th September, 2021 upto 31st October, 2021. The said challenged has also been declined by the Delhi High Court while giving separate reasons and further following the view taken by the Madras High Court in the case of GA Vishwajeet (supra).

37. Accordingly, this Court does not find any force in both the writ petitions and the same are hereby dismissed.

(ASHOK KUMAR GAUR),J

Solanki DS, PS