

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

WEDNESDAY, THE 07TH DAY OF OCTOBER 2020 / 15TH ASWINA, 1942

WA.No.1302 OF 2020

AGAINST THE ORDER IN WP(C) 20256/2020(F) OF HIGH COURT OF
KERALA

APPELLANT/PETITIONER IN WPC:

DR.BILU B.S.
AGED 51 YEARS, W/O. GIRISH T,
POORNA, HOUSE NO. 108, TB NAGAR,
ANGAMALY, KERALA - 683 572
CURRENTLY WORKING AS CONSULTANT
IN PAEDIATRICS, GENERAL HOSPITAL,
ERNAKULAM, HOSPITAL RD, MARINE DRIVE,
ERNAKULAM, KERALA - 682 011.

BY ADVS.
SRI.GEORGE VARGHESE (PERUMPALLIKUTTIYIL)
SRI.A.R.DILEEP
SRI.P.J.JOE PAUL
SRI.MANU SRINATH
SRI.RAJAN G. GEORGE

RESPONDENTS/RESPONDENTS IN THE WPC:

1 UNION OF INDIA
REPRESENTED BY ITS DIRECTOR GENERAL OF HEALTH
SERVICES, THE DIRECTORATE GENERAL OF HEALTH
SERVICES (DGHS) ROOM NO.446-A, NIRMAN BHAWAN,
RAJPATH AREA, CENTRAL SECRETARIAT, NEW DELHI ,
DELHI 110 001

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- 2 NATIONAL BOARD OF EXAMINATIONS,
REPRESENTED BY ITS PRESIDENT,
MEDICAL ENCALVE, ANSARI NAGAR,
RING ROAD, NEW DELHI 110 029
- 3 STATE OF KERALA,
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
HEALTH AND FAMILY WELFARE DEPARTMENT,
GOVERNMENT SECRETARIAT, TRIVANDRUM 695 001
- 4 THE DIRECTOR OF MEDICAL EDUCATION,
DIRECTORATE OF MEDICAL EDUCATION,
MEDICAL COLLEGE P.O, THIRUVANANTHAPURAM,
PIN 695 011, KERALA
- 5 COMMISSIONER OF ENTRANCE EXAMINATIONS,
HOUSING BOARD BUILDINGS, SANTHI NAGAR,
TRIVANDRUM 695 001
- 6 NATIONAL MEDICAL COMMISSION OF INDIA,
REPRESENTED BY ITS SECRETARY,
POCKET 14, SECTOR-8, DWARAKA PHASE -1
NEW DELHI 110 077 (AS CORRECTED BY THE HON'BLE
COURT SUO MOTO VIDE ORDER DATED 7-10-2020)
- 7 POST GRADUATE MEDICAL EDUCATION BOARD,
REPRESENTED BY ITS PRESIDENT, POCKET-14,
SECTOR-8, DWARAKA PHASE-1, NEW DELHI 110 077

OTHER PRESENT:

SRI ARAVINDAKUMAR BABU, SR GP.
SRI JAISANKAR V. NAIR, CGC.
SRI TITUS MANI VETTOM, SC
SRI S.SANAL KUMAR

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
07.10.2020, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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S.Manikumar, C.J.

&

Shaji P.Chaly, J.

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Dated this the 7th day of October, 2020

JUDGMENT

S.Manikumar, C.J.

Being aggrieved by the directions in the common interim order made in W.P.(C) Nos.20135, 20256 and 20572 of 2020 dated 5.10.2020, declining to restrain Union of India, represented by its Director General of Health Services, New Delhi (respondent No.1 therein), from proceeding with the counselling/admission to 40% seats in in-service quota and against the directions of the writ court, to respondent No.1, to consider Ext.P10 representation; direction to the State of Kerala represented by its Secretary to the Government, Health and Family Welfare Department, Trivandrum (respondent No.3 therein), to consider Ext.P11 representation, and the direction to the National Medical Council of India (respondent No.6 therein) to consider Ext.P12 representation, instant writ appeal is filed.

2. It is submitted that respondent No.6 herein should be National Medical Commission of India represented by its Secretary, Pocket-14, Sector-8, Dwarka Phase-1, New Delhi – 110 077. But, by inadvertence, it

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has been shown as National Medical Council of India. Registry is directed to carry out necessary amendments wherever required.

3. We have heard Mr. George Varghese Perumpallikuttiiyil, learned counsel for the appellants, Mr. Jaishankar V. Nair, learned Central Government Counsel and Mr. Aravindakumar Babu, learned Senior Government Pleader for the State of Kerala and Mr. Titus Mani Vettom, learned standing counsel for the respondent No.6.

4. Inviting our attention to the decision in **Tamil Nadu Medical Officers Association and Others v. Union of India and Others** reported in 2020 SCC Online SC 699, which answered a reference, in particular, to the conclusions of the Hon'ble Supreme Court in the above said decision, Mr. George Varghese Perumpallikuttiiyil, learned counsel for the appellants submitted that the State Government have legislative competence and authority to make reservations and/or provisions for admissions to Postgraduate/Super Speciality courses.

5. Learned counsel for the appellants further submitted that insofar as State of Kerala is concerned, such reservation in admission for Postgraduate/Super Speciality Courses was already provided under the Kerala Medical Officers Postgraduate and Service Quota Act, 2008, and the

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rules framed thereunder.

6. He also submitted that the Act and the rules framed thereunder, provide for guidelines prescribing eligibility criteria for the candidates opting reservation under the in-service quota.

7. He further submitted that nothing in the prospectus prohibits the State Government from granting admission to candidate falling under the in-service quota towards Postgraduate/Super Speciality Courses.

8. Placing reliance on the decision of the Hon'ble Supreme Court in **Dr. Preeti Srivastava v. State of Madhya Pradesh and Others** reported in [1999] 7 SCC 120, Mr. Jaishankar V. Nair, learned Central Government Counsel, submitted that **Tamil Nadu Medical Officers Association** (cited supra) does not deal with reservation in Super Speciality Courses. It is also his contention that the counselling is scheduled tomorrow. The State Government have not submitted the list of eligible candidates for admission, either in the general category or in-service quota. Admissions as per the time schedule prescribed by the Hon'ble Supreme Court have to commence on 15.10.2020. In the abovesaid circumstances, prayer sought for cannot be granted.

9. Inviting our attention to one of the directions issued in **Tamil**

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Nadu Medical Officers Association (cited supra) by the Hon'ble Supreme Court, learned Senior Government Pleader submitted that the State Government have to make a rule specifying a minimum period of service in rural area as mandatory, so as to make in-service candidate as qualified and till such time, admission cannot not be made by providing 40% reservation in this year.

10. Inviting our attention also to a proceeding of the Director of Medical Education, Chennai dated 6.10.2020, directing the Deans of Medical Colleges, Chennai, to send the particulars stated therein, it is submitted by the learned counsel for the appellants that the said particulars are directed to be provided and, therefore, the judgment of the Hon'ble Supreme Court has to be implemented in letter and spirit by the State Government, National Medical Council of India, and the Central Government.

11. Mr. George Varghese Perumpallikuttiiyil, learned counsel for the appellants further submitted that reservation provided to in-service candidates cannot be equated or treated in par with communal reservation and, therefore, the judgment in **Preethi Srivasthava's** case is not applicable to the facts of this case. According to him, the list of eligible

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candidates for admission in in-service quota for Super Speciality Courts can be forwarded to the Union of India for counselling which is scheduled to commence tomorrow.

12. Mr.Aravindakumar Babu, learned Senior Government Pleader for the State of Kerala submitted that list is yet to be prepared.

13. Heard the learned counsel for the parties and perused the material available on record.

14. Direction issued by the Hon'ble Supreme Court in **Tamil Nadu Medical Officers Association's** case (cited supra), are as hereunder:

"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 higher 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

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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; and

9) it is specifically observed and clarified that the present decision shall operate prospectively and any admissions given earlier taking a contrary view shall not be affected by this judgment."

15. Reading of the above makes it clear 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

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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.

16. Clause 7 of paragraph 20 makes it clear that 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.

The Kerala Medical Officers' Admission to Postgraduate Courses Under Service Quota Act, 2008 is an Act to provide for quota of seats among Medical Officers of the State of and to a selection procedure for admission to various Post graduate Courses in the Medical Colleges under the service quota considering their service under the Government and for matters connected therewith or incidental thereto.

17. Preamble of the Act states that WHEREAS, it is expedient to

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provide for quota of seats among Medical Officers of the State of Kerala and to have a selection procedure for admission to various Postgraduate Courses in the Medical Colleges under the service quota considering their service under the Government;

18. Section 2(e) defines 'Postgraduate Course' to mean the course of study after M.B.B.S. which may be a degree or diploma course declared as such in the prospectus.

19. Section 2(f) defines 'Postgraduate Course Selection Committee' to mean the committee constituted under Section 4.

20. Section 2(g) defines 'prescribed' to mean prescribed by rules made under this Act.

21. Section (h) defines 'prospectus' to mean the prospectus issued by the Director of Medical Education under the direction of the Government every year for admission to Postgraduate Course.

22. Section 2(i) defines 'rural area service' to mean the service rendered by a Medical Officer in an area declared by the Government as 'rural area'. Section 2(j) defines 'service' to mean the service rendered by the Medical Officer under the Government for such period as may be prescribed.

23. Section 2(k) defines 'service quota' to mean the

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number of seats allotted for Medical Officers in the service of the State, from time to time, for admission to a Post Graduate Course of study, on such terms and conditions as may be prescribed. Section 2 (l) defines 'State' to mean the State of Kerala.

24. Selection of Medical Officers for admission to Postgraduate Course Under the Service Quota.- Notwithstanding anything contained in the Indian Medical Council Act, 1956 (Central Act 102 of 1956) or any rule or regulation issued thereunder or in any judgment, decree or order of any court or authority, the selection of Medical Officers for admission to Postgraduate Course of study in the State under the service quota shall be made only under the provisions of this Act.

25. Section 5 of the Act speaks about procedure for selection and the same reads thus:

"5. Procedure for selection.- (1) The Government may set apart seats not exceeding forty percent of the total seats available to state quota in an academic year, for selection of Medical Officers under service quota considering their service under the Government for admission to Post Graduate Medical Courses in the Medical Colleges of the State in such manner as may be prescribed.

(2) The academic qualification for admission to the Post Graduate Course shall be M.B.B.S. degree with minimum fifty percent marks and the other qualifications shall be such as may be prescribed.

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(3) The details of eligibility for admission, the duration of courses, allotment, fee to be paid, reservations of seats and such other details shall be published every year in the prospectus before the commencement of admission.

(4) The Postgraduate Course Selection Committee shall finalise the selection list strictly based on the seniority in service of the Medical Officers and following such other criteria as may be prescribed.

(5) The selection list finalised under sub-section (4) shall be published by the Post Graduate Course Selection Committee for the information of the applicants."

26. Section 6 of the Act speaks about weightage for rural service and the same reads thus:

"6. Weightage for rural service.- Every Medical Officer who has 'rural area service' or 'difficult rural area service', as the case may be, in the State shall be given weightage in selection in such manner as may be prescribed."

27. Government of Kerala have issued order dated 30.3.2009 framing procedure for Post Graduate Admission under Service Quota. The said Government Order reads thus:

"GOVERNMENT OF KERALA

Abstract

Health & Family Welfare Department - MES - Academic - Procedure for Post Graduate Admission under Service Quota Rules framed - Orders issued.

HEALTH & FAMILY WELFARE (S) DEPARTMENT

GO(MS)No. 93 /09/H&FWD Dated, Thiruvananthapuram, 30.03.2009

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Read:- The Kerala Medical Officers Admission to Post Graduate courses under Service Quota Act, 2008 (Act 29 of 2008)

ORDER

As per the Act read above the Kerala State Legislative Assembly has passed the Service Quota Act, 2008 for enabling the service candidates to get admission for Post Graduate Medical Courses without having Entrance Examination. The President of India gave assent to the Act and hence it became a Law now. As per the proviso 9 (i) of the Act, Government have power for make rules on the basis of this Act. Considering this Government here by make following rules to the Act.

1. Short title and commencement — (i) These rules may be called the Kerala Medical Officers' Admission to Post Graduate Medical courses under Service Quota Rules, 2009.

(ii) It shall come into force at once and will be applicable for admission to PG Medical/Speciality/Super Speciality Courses from the academic year 2009-10 onwards.

2. Definitions- (i) In these rules, unless the context otherwise requires,-

(a) 'Act' means the Kerala Medical Officers' admission to Post Graduate Medical courses under Service Quota Act, 2008 (29 of 2008).

(b) 'Government' means the Government of Kerala.

(c) 'Committee' means the Post graduate Medical Course Selection Committee constituted under section-4.

(d) 'Meeting' means any ordinary or extra ordinary meeting of the committee.

(e) 'Convener' means the convener of the committee selected under the

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Act.

(ii) Words and expressions used in these rules, but not defined shall have the respective meanings assigned to them in the Act.

3. The procedure for the functioning of the Committee — (i) The Director of Medical Education shall be the convener of the committee. It shall be the function of the convener to place the provisional Rank List along with such individual applications and objections if any received before the post graduate selection committee constituted under the Act for the selection of the candidates.

(ii) The Committee will prepare and publish the final Rank list for admission to the post graduate Medical /Specilaity/Super Speciality Courses under Service Quota.

4. The procedure for selection of candidates under Service Quota

—

(i) The Selection of service candidates will be based on seniority in service. The total service will be reckoned as on the date of notification for inviting application.

(ii) The applicants should be regular staff under Health Services Department (HSD)/Medical Education Service (MES)/Insurance Medical Service (IMS)/Municipal Services.

(iii) The Minimum period of service under Government of Kerala to become eligible to apply shall be —

(a) 2 years for Lecturers in Medical Education Service in the concerned discipline; and

(b) 5 years for other State services:

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Provided that unauthorized absence or absence due to Leave without allowances (including leave on Medical ground) will not be counted for the purpose of calculating the minimum service and for the seniority.

(iv) Interse seniority of actual physical service in the concerned department (concerned specialty in the case of Medical Education Service), excluding leave without allowance will be the criterion for selection. If more than one candidate applies for the course and if the difference in their length of service is below 90 days, the Public Service Commission seniority will be the criterion.

(v) In case sufficient number of service candidates having 2 years and 5 years of minimum service as stated in sub-rule (3) are not available in any category, the Period of minimum service can be relaxed by the Government before the date of allotment.

5. The qualification, other than academic qualification for selection —

(i)The candidates belonging to MES/HSD/IMS/Municipal Service having minimum service as above are qualified to be selected for admission to the 40% of the total seats for PG degree/Super Speciality and Diploma set apart for them under service quota.

(ii)The upper age limit will be 47 years for Post Graduate Degree courses and 48 years for Post Graduate Diploma course as on the 30th day of April. Suitable changes in the upper age limit may be made by the Government as per the terms included in the Prospectus for the courses, notified from time to time.

6. The other criteria to be followed for selection.- (i) Lecturers

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who have post graduate Degree/DNB in the specialty concerned in which they are working will not be eligible for admission. to Postgraduate Diploma/Degree other than Superspeciality degrees under service quota

(ii) The candidates who have already undergone PG Degree/Diploma course under the service quota, will not be eligible for selection to another PG Degree/Diploma under such quota for a second time. However such candidates will be eligible for selection to superspeciality degree courses in the concerned discipline.

(iii) The candidates shall join the course to which they are selected and if they do not join the course or discontinue the course after joining they will not be considered for selection to such course under this quota in future.

7. The procedure for weightage in selection for rural service —

(i) The candidates will be eligible for weightage for rural area service or difficult rural area service as per sec. 6 of the Act. This will be applicable for admission to Postgraduate Courses under the Health Service Quota only. A minimum of one year continuous service in Rural Area/ Difficult Rural Area service is necessary to get weightage. Those who have more than one-year service in such areas will get more weightage. The weightage will be decided by the Committee on the basis of the number of years of service in rural/difficult rural areas. The list of stations/hospitals eligible for weightage under Rural areas/Difficult Rural Areas will be notified by the Government from time to time. The list will be reviewed by the Government once in 5 years. The length of service done in the stations only after the date of Government Order notifying

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the stations will be considered for giving weightage. The candidates shall attach certificate in this regard in such format as decided by the Government, from time to time.

(ii) Notwithstanding the provisions as in 7 (i) above, there shall be separate sub quotas for admission to the candidates under Health Service Quota for the year 2009 as per the details given the sub clause (iii) below.

(iii) The Director of Health Services shall prepare separate rank list for the sub quotas mentioned below.

(a) Seniority in Service Quota (SSQ) — Rank will be reckoned according to the seniority assigned to them in the service seniority list prepared by Director of Health Services;

(b) Rural Service Quota (RSQ) — Applicants under this category should have a minimum of 5 years services, out of which 3 years service should be in rural areas, designated by the Government for this purpose as in (7) above.

(c). Difficult Rural Area Quota (DRAQ) — Minimum period of 5 years service out of which two years of effective service in Difficult Rural Areas to be designated by the Government for such purpose is fixed as eligibility to be considered for Difficult Rural Area Quota only the service rendered a Difficult Rural Area stations will be reckoned for calculating the seniority under this quota, with candidates having more years of DRA service getting higher rank irrespective of the total service including stations;

(d) Leprosy Service Quota (LEPQ)-One seat for M.D. Dermatology is reserved for Doctors of Health Services Department having longest

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period of service in Leprosy Hospital/Leprosy unit. One year of service in a Leprosy hospital will be equivalent to two years of service in a leprosy unit under the Directorate of Health Services. The minimum service required for claiming this seat will be 5 years service in the department out of which either one year service in a leprosy Hospital or two years of service in a Leprosy unit. The selection will be made on the basis of seniority in service in Leprosy Service as decided by the Director of Health Services. If there are no candidates under the above category the seat will be added to Difficult Rural Area Quota (DRAQ);

(e) Tuberculosis Service Quota (TBQ) — One seat each in M.D. TB & RD and Diploma in TB & RD is reserved under this quota. The minimum service required for claiming this seat will be 5 years service in the department out of which either one year service in a Tuberculosis Hospital or two years of service in a Tuberculosis unit. The selection will be made on the basis of seniority in service in TB Service as decided by the Director of Health Services. If there are no candidates under the above category the seat will be added to Difficult Rural Area Quota (DRAQ);

(f) First Referral Unit Quota (FRUQ) — One seat in Diploma in Anaesthesia is earmarked as FRU quota to be allotted to a doctor who had undergone training in Anaesthesiology under the scheme of First Referral Unit (FRU). The eligibility for this will be decided by the Director of Health Services on the basis of interse seniority. If no eligible candidate is available the seat will be added to the DRAQ;

(g) Family Welfare Quota (FWQ) — One seat in DGO is reserved for

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Family Welfare Award Holders. If no eligible candidate is available the seat will be added to the DRAQ;

(h) Prison service quota (PRQ) — One seat in D.Ortho is reserved for Prison service quota. If no eligible candidate is available the seat will be added to the DRAQ.

(iv) The Government will have power to continue the sub-quotas for P.G. admission under Health Service Quota as in 7 (iii) above for future years also if found necessary or to resort to admissions based on service seniority with suitable weightage given for service in Rural Areas /Difficult Rural Areas as the case may be as provided in 7(i) above.

(v) The list of Difficult Rural Area stations eligible for weightage/admission under DRAQ as in iii (c) above will be as per the rules/Government orders to be issued by the Government from time to time and mentioned in the prospectus for the courses. For the calculation of seniority for admissions under RSQ as in iii (b) above, only the service rendered in (a) hospitals/stations designated as Rural stations in the list of Government allopathic medical institutions published by the Director of Health Services, and/or, (b) as casualty Medical Officer (CMO) in the approved casualty units in Government hospitals will be considered.

(vi) The selection for Superspecialty degree courses under the service quota, will be based on interse seniority in service, subject to the conditions to be mentioned in the prospectus to be issued for course from time to time, apart from the provisions clause (4) above.

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8. Allotment - (i) For the Post Graduate Diploma/Degree courses, candidates will be allowed to exercise their option for individual specialties/college as per their ranks in the order of priority given below

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First — Medical Education Service Quota (MESQ)

Second — General candidates

Third — Service Quota other than MESQ

(ii) The allotment list of Medical Education Service Quota candidates will be first published and these candidates will be intimated through allotment memo. The details of unavailed seats under this quota will be published in the web site of DME/Government. Other service quota candidates can opt for these unavailed seats also during counseling.

9. Delegation of Powers- The Government may, by general or special order, direct that any power exercisable by it or any head of department under these rules, shall subject to such conditions, if any, as may be specified in the order, be exercisable also by such officer or authority as may be specified in the order.

10. Interpretation- If any question arises relating to the interpretation of these rules it shall be referred to the Government whose decisions thereon shall be final.

11. State Government's power to modify the rules — Notwithstanding anything contained in these rules, the State Government may, on their own motion or otherwise, review/modify any of the provisions /clauses of the existing rules to incorporate new

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provisos/clauses in the rules.”

By Order of the
Governor
Dr. VISHWAS MEHTA
Secretary to
Government”

28. Reading of the above statutory provisions, as well as the rules framed by the Government, make it clear that there is a provision for reservation for in-service candidates for admission to Postgraduate/Super Speciality courses.

29. The fact that 40% reservation is provided for both admission in Postgraduate/Super Speciality courses, in Government of Kerala, has not been disputed by the learned Senior Government Pleader. However, it could be deduced that, after the decision in **State of UP v. Dinesh Singh Johal** reported in (2016) 9 SCC 749, Government of India have issued a notification dated 31.7.2017 substituting the regulations.

30. Forty percent reservation was being continuously followed from 2009-2010 till the Central Government issued the notification No.MCI-18(1)/2017-Med./128371 dated 31.7.2017. Correctness of the judgment in **Dinesh Singh Johal's** case (cited supra) was doubted and, therefore, that is under reference.

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31. Now that the Hon'ble Supreme Court in **Tamil Nadu Medical Officers Association's** case (cited supra), held that the State has got authority and competence to provide reservation. Hence, we are of the considered view that directions issued by the Hon'ble Supreme Court in **Tamil Nadu Medical Officers Association** (cited supra) is binding on the National Medical Commission of India/State Government/Union of India.

32. The contention of the learned standing counsel for National Medical Commission and the learned Central Government Counsel that the Hon'ble Supreme Court in **Tamil Nadu Medical Officers Association's** case (cited supra), has not considered the dictum laid down in **Preethi Srivasthava** (cited supra), cannot be countenanced for the reason that in **Preethi Srivasthava** (cited supra), the standards required for admission was sought to be reduced on the basis of communal reservation and in such circumstances, the Hon'ble Supreme Court interfered with.

33. In **K.Duraisamy and Another v. State of Tamil Nadu and Others** reported in (2001) 2 SCC 538, the Hon'ble Supreme Court has made it clear that reservation provided to in-service candidates cannot be equated or treated as par with communal reservation. For brevity,

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paragraph 8 of the judgment is extracted hereunder:

“That the Government possess the right and authority to decide from what sources the admissions in Educational Institutions or to particular disciplines and courses therein have to be made and that too in what proportion, is well established and by now a proposition well settled, too. It has been the consistent and authoritatively settled view of this Court that at the super speciality level in particular and even at the Post-Graduate level reservations of the kind known as protective discrimination in favour of those considered to be backward should be avoided as being not permissible. Reservation, even if it be claimed to be so in this case, for and in favour of in- service candidates, cannot be equated or treated on par with communal reservations envisaged under Articles 15(4) or 16(4) and extended the special mechanics of their implementation to ensure such reservations to be the minimum by not counting those selected in open competition on the basis of their own merit as against the quota reserved on communal considerations.”

34. In the light of the decision in ***K. Duraisamy's*** case (cited supra), ***Preethi Srivasthava's*** case (cited supra) cannot be made applicable to the case on hand. Fact remains that the Government of Kerala have been providing reservation during the period 2017-2019, and the same has been suspended giving effect to the notification of the

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Central Government, as stated supra. Now that the Hon'ble Supreme Court has made it clear that the State has the right to provide reservation, the position as on 2009-2010 has to be restored, as per the provisions in Kerala Medical Officers Postgraduate and Service Quota Act, 2008 and the rules framed thereunder. State Government is bound to implement the judgment of the Hon'ble Supreme Court in **Tamil Nadu Medical Officers Association's** case (supra), giving effect to the same as per the statutory provisions and the rules. State is yet to prepare the list. Appellants and others have participated in the examination conducted for admission to the Super Speciality courses, which is the subject matter in this appeal. State Government is directed to prepare a list of eligible candidates, for admission against general and candidates against 40% reservation earmarked for in-service candidates, and accordingly, forward the list of candidates, both general as well as in-service candidates, to Director General of Health Services (respondent No.1), the authority for counselling the candidates for admission to the Super Speciality courses.

35. At this juncture, it is relevant to note that the Government of Tamil Nadu vide letter dated 6.10.2020 have directed the Deans of various Medical Colleges in Chennai to forward the list of revised seat matrix for

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the Super Speciality DM/M.Ch. Courses for the academic session 2020-2021 to the Director General of Medical Education before 4 pm.

36. In the light of the above discussion and decisions, State of Kerala represented by Secretary to the Government, Health and Family Welfare Department (respondent No.3), Director of Medical Education, Directorate of Medical Education, Trivandrum (respondent No.4) and Commissioner of Entrance Examinations, Housing Board Buildings, Trivandrum (respondent No.5) are directed to prepare the list of candidates eligible for admission in general category, as well as in-service candidates, as stated supra, and send the list to the Directorate of Medical Education, New Delhi, by tomorrow before 5 pm for counselling. Respondent No.1 is directed to fix the date of counselling accordingly, insofar as in-service candidates in Kerala for admission to Super Speciality courses is concerned.

37. Learned Senior Government Pleader and learned Central Government Counsel are directed to communicate this judgment to the respective authorities for implementation of the same. In case, if there is a requisition submitted claiming reservation, exclusively for admission, as against 40% provided for in-service candidates by the appellants and

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others through online, such applications be received and acted upon by Directorate of Medical Education, Kerala and others.

For the foregoing reasons, the impugned interim order is set aside.

Writ appeal is allowed as above.

Sd/-

**S.Manikumar,
Chief Justice**

Sd/-

**Shaji P.Chaly,
Judge**

vpv

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APPENDIX

PETITIONER'S/S EXHIBITS:

- ANNEXURE I** TRUE COPY OF THE KERALA MEDICAL OFFICERS ' ADMISSION TO POST GRADUATE MEDICAL COURSES UNDER SERVICE QUATA RULES, 2009 ISSUED BY 3RD RESPONDENT-STATE OF KERALA
- ANNEXURE II** TRUE COPY OF THE RELEVANT PAGES OF THE PROSPECTUS FOR ADMISSION TO MEDICAL SUPER SPECIALITY COURSES FOR THE YEAR 2016 ISSUED BY THE STATE OF KERALA-3RD RESPONDENT
- ANNEXURE III** THE TRUE COPY OF THE ORDER DATED 31-08-2020 PASSED BY THE CONSTITUTION BENCH OF THE SUPREME COURT OF INDIA IN WPC 196/2018 AND OTHER CONNECTED MATTERS.

/true copy/

P.A. to Judge