

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWPs No.2238 & 2321 of 2011

Date of decision: 29.4.2011.

CWP No.2238 of 2011:

Sanjeev ChauhanPetitioner
Versus

State of H.P. and othersRespondents

CWP No.2321 of 2011:

Sukhwinder Singh RanaPetitioner
Versus

State of H.P. and othersRespondents

Coram

The Hon'ble Mr. Justice Kurian Joseph, Chief Justice.

The Hon'ble Mr. Justice V.K. Ahuja, Judge.

Whether approved for reporting? Yes.

For the Petitioners: Mr.B.C. Negi, Advocate, (in CWP No.2238 of 2011).
Mr.Ajay Mohan Goel, Advocate, (in CWP No.2321 of 2011).

For the Respondents : Mr.R.K. Bawa, A.G. with Mr.Ankush Dass Sood, Addl.A.G. & Mr.J.K. Verma, Dy.A.G. for respondents No.1 and 2.
Mr.Vinod Thakur, Advocate, for respondent No.3 in CWP No.2321 of 2011.
Mr.Shrawan Dogra, Advocate, for respondent No.6 in CWP No.2238 of 2011.

Justice Kurian Joseph, C.J. (Oral)

The issue raised in these writ petitions pertains to the allocation of seats for the Post Graduate Degree (MDS) course. Annexure P-2 is the prospectus. The core controversy is whether the counseling should be based on the merit in the common entrance test or whether it should be proportionately applied between in-service and open merit candidates and within the in-service candidates, it should be proportionately rotated between regular and contract appointees. The

prospectus prescribing for eligibility conditions and distribution of seats, has provided that there will be two groups. Group-A is All India Quota and Group-B is State Quota. The allocation is 50 : 50. We are concerned only with distribution of seats in the State Quota.

2. In the State Quota, 80% seats will be filled up by in-service candidates and 20% by direct. The in-service would take in its sweep the doctors who are in regular government service, ad hoc, contractual or appointees through the Rogi Kalyan Samities. There is a sub distribution between regular and others in the ration of 62 : 38.

Paragraph 3.7 of the prospectus deals with the reservation roster. Para 3.7(i) reads as follows:

"The 40 point reservation roster for SC & ST in respect of State Quota seats shall be applied on total seats available not specialty-wise. The successful candidates shall be allotted seats on merit basis out of the available seats. The successful candidates of all categories shall be given opportunity to choose the course of their choice as per their merit. The successful candidates will be called for allotment of seats as per their merit in their category by the 40 point reservation roster."

3. Paragraph 5 deals with the counseling. Relevant extract of para 5.1 reads as follows:

"The counseling will be held on dates mentioned in the prospectus as per the time schedule fixed by DCI/GOI based on the judgment of Hon'ble Supreme Court of India. The allotment of available seats to the eligible candidates will be made in order of merit, drawn category-wise and group-wise by Himachal Pradesh University, on the date of counseling by following the 40 point reservation roster."

4. It is the contention of the State as well the contesting respondents that the counseling should be based on the merit irrespective of the category. In other words, merit as reflected in the common entrance test alone should be the criterion while calling the candidates for counseling and allotment of seats. The writ petitioners,

on the other hand, contend that the issue is no more *res integra* in view of the decision of this Court in **Sanjay Kumar Rathore and others versus State of Himachal Pradesh and others, 2010(2) Shim.L.C.434**, in the matter of admission to MD/MS courses during the academic year 2010. It has been held therein that the State should consider the merit in the respective category in case they really intended to give a logical meaning and logical sense for the categorization. At paragraph 10 of the judgment, it was held as follows:

"The procedure adopted by the State for the selection is that inter-se merit has been considered by classifying them as one group. That certainly is not correct. It will lead to a situation of violation of the quota-rotta-rule. Once a reasonable classification has been made and a quota having been fixed for the respective class, the admission can only be in terms of the quota..... we make it clear that once a quota is fixed for different classes, the classification having been made validly, the quota has to be strictly followed as explained above."

5. It is not in serious dispute that the expressions class, group, category etc. have been used only in its loose sense to specify an identified group. In other words, the expressions category, group or class have been used sometimes to differentiate between in-service and direct, sometimes to differentiate between the general and reserved communities, to differentiate among the direct and in-service, in-service (regular) and in-service (contract). It will also be profitable to refer to the interim order dated 4.5.2010 in the aforesaid writ petition, wherein the Court has considered in detail the issue posed in this writ petition. The same reads as follows:

"The controversy is whether the counseling should be on the basis of merit in the common entrance test or whether it should be proportionately rotated between in service and

open merit candidates so that the in service candidates will also get an assured opportunity to opt for creamy specialties."

6. After referring to the decisions of the Supreme Court in case K.Duraisamy & another Versus State of T.N. & Others, (2001) 2 SCC 538, AIIMS Students' Union versus AIIMS & others (2002)1 SCC 428 and State of M.P. & others versus Gopal D.Tirthani & Others (2003) 7 SCC 83, it was held at paragraph 11 of the order that:

"The Apex Court has also taken note of the fact that special preference is to be given to the in-service candidates even for the creamy disciplines, taking note of their disadvantageous situation of doing service and then preparing for the entrance examination, viz. a viz. the direct candidates only preparing for the examination and doing no service."

7. Repelling the contention that merit has been given a go-by and mediocracy preferred, it was held in paragraph 15 of the order as under:

".....only those candidates, who obtain 50% of the marks (40% for Scheduled Caste and Scheduled Tribe) alone, are called for counseling. Therefore, there is no question of any mediocracy in the place of meritocracy....."

8. Special reference was also made to the judgment of the Apex Court in Duraisamy's case. Para 19(iii) of the said judgment reads as follows:

"that such exclusive allocation and stipulation of a definite quota or number of seats between in-service and non-service or private candidates provided two separate channels of entry and a candidate belonging to one exclusive quota cannot claim to steal a march into another exclusive quota by advancing a claim based on merit. Inter se merit of the candidates in each quota shall be determined based on the merit performance of the candidates belonging to that quota."

9. Therefore, the question now posed in principle is no more *res integra*. It was settled by this Court in respect of admission to the Post Graduate Courses in Medical Colleges.

10. Surprisingly, that settled position has not been unambiguously stated or reflected while issuing the prospectus for admission to Post Graduate Courses in Dental Colleges. It is more surprising that the State has attempted to make a distinction between the Post Graduate Courses in Medical Colleges and the Post Graduate Courses in Dental Colleges. We find it difficult to discern any basis for such a differentiation.

11. Be that as it may. Even if the prospectus for admission to the Post Graduate Courses in Dental Colleges is also sensibly read, it is clear that the State actually intended to apply the principle of category-wise merit. Paragraph 3.7 of the prospectus, as extracted at the beginning of this judgment, deals with only the reservation roster. The beginning portion of paragraph 3.7(i) deals with the reservation available to the Scheduled Caste and Scheduled Tribe communities and in that context it was held that the allocation of seats should be on the basis of 40 point reservation. It was also made clear that there is no specialty-wise reservation. It is undoubtedly and undisputedly vertical reservation. However, it has also been clearly stated in the same very sub paragraph that "The successful candidates of all categories shall be given opportunity to choose the course of their choice as per their merit. The successful candidates will be called for allotment of seats as per their merit in their category by the 40 point reservation roster." That would only mean that the State really intended to give preference to the merit in the respective category and not merit as reflected in the common entrance test irrespective of the category. It is made clearer at paragraph 5.1, which alone deals with the counseling, wherein it is unambiguously stated that "The allotment of available seats to the

eligible candidates will be made in order of merit, drawn category-wise and group-wise by the Himachal Pradesh University on the date of Counseling by following the 40 point reservation roster.” The provisions, if read together, can lead only to one logical and sensible conclusion that in the matter of admission to the Post Graduate Courses in Dental Colleges also, the State really intended to apply the merit in the respective category. In this context, it will also be pertinent to make a note on the factual position that as far as admission to the Post Graduate Courses in Medical Colleges are concerned, the category-wise merit is the system followed by the State.

12. That the State has been following it on principle is also clear from the roster maintained by them in the matter of allocation of seats for Post Graduate Courses in Dental Colleges. So far they have reached upto roster point No.12, both in the vertical reservation for reserved communities and horizontal reservation namely the quota/source of entry. The principle followed is of both communal reservation and intra category merit. In the process, the State has reached so far at Point No.12 and the next point to be filled is 13. Point No.12 has been consumed by a direct candidate last year and necessarily, therefore, the point this year has to start from the GDO category. We may also make note of the factual position that Point No.12 has been consumed and filled by the direct candidate in the absence of GDO direct. Since the allocation is year-wise, what has been allocated has been consumed and necessarily point No.13 has to go only to a GDO. Last year also the allocation was on the basis of 3 : 1 (70 : 30) between in-service and direct, and this year it is 4 : 1 (80 : 20). Thus, both in principle and on facts, it is clear that the State

actually intended to allocate seats on the basis of merit in the respective category.

13. When confronted with the position as above, the State has now made a proposal that the allocation, taking note of category-wise merit, can be as follows:

"Determination of seats as per 40 point reservation roster (in continuation to the last year's roster point)		5 point roster for determination of seats for GDO and Direct (in the ratio of 80 : 20)	3 point roster for determination of seats for GDO (Regular) and GDO (Contract) in the ratio of 62 : 38
Roster point	Category		
13	General	GDO	GDO (Regular)
14	SC	GDO	GDO (Regular)
15	General	Direct	-
16	General	GDO	GDO (Contract)
17	ST	GDO	GDO (Regular)
18	General	GDO	GDO (Regular)
19	General	GDO	GDO (Contract)
20	General	Direct	-
21	General	GDO	GDO (Regular)
22	SC	GDO	GDO (Regular)
23	General	GDO	GDO (Contract)
24	General	GDO	GDO (Regular)
25	General	Direct	-
26	General	GDO	GDO (Regular)
27	General	GDO	GDO (Contract)"

There is, and there can be, no serious dispute on the above proposal. 4 : 1 being a newly introduced quota, the rotation points this year alone for GDOs have been justifiably limited to two.

14. There is yet a small dispute which remains to be resolved. As to coming to in-service category, the allocation should be based on the merit within that category irrespective of the fact that one is regular or contract. The suggestion made by the State is that 5 point reservation roster based on ratio 80 : 20 and 3 point reservation roster based on ratio of 62 : 38 for determination of seats between GDO (regular) and GDO (contract) should be made. The learned counsel for the petitioner in CWP No.2238 of 2011 and learned counsel for the sixth respondent in the said writ petition would vehemently contend that there shall not be any different yardstick for merit within the in-service category. In other words, merit should be based on the merit as reflected irrespective of the fact whether one is regular GDO or contract GDO. We are afraid that the contention cannot be appreciated. Going by the very same principle settled above, once a quota of 62 : 38 is provided, the candidates representing the respective quota should have the purposeful allocation of the quota. 62 is to go to regular in-service candidates and 38 is to go to contract in-service. In this context, it is also to be noted that the people who served on contract basis, the moment they get admission to the Post Graduate course, their contract is terminated. The in-service people continue to be in Government service, ensuring that they will have to continue to serve the State, whereas there is no such obligation for the contract people by virtue of their contract. That also is one reason for making separate merit in the respective category. The in-service regular doctors have been in the

service of the State for long, whereas the contract doctors are only serving the State during the term of their contract and there is no guarantee that they should and they would continue to serve the State. That also is a discernible factor for making the differentiation in the matter of rotation between the respective categories, GDO in-service regular and in-service contract.

15. In the above circumstances, these writ petitions are disposed of directing the State to make the allocation of seats as per the chart, as extracted above. Needless to say that the counseling will be done afresh on the basis of the above principle. The Director of Medical Education, who is present before this Court, submits that the counseling can be held on 11th May, 2011. Appropriate intimation in that regard should be given to the candidates who are not parties before this Court.

16. The writ petitions stand disposed of, so also the pending application(s), if any.

**(Justice Kurian Joseph),
Chief Justice**

**April 29, 2011.
(mlg/tilak)**

**(Justice V.K. Ahuja),
Judge**