

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

**D.B. Special Appeal Writ No.512/2019**

1. Dr.Nirmala Royal D/o Shri Ramkaran Royal, W/o Shri Dushyant Basera, aged about 30 years, R/o 143, Near Krishna Mandir, Bhagat Ki Kothi, Jodhpur (Raj.).
2. Dr.Rajeev Dular S/o Shri Jagdish Prasad Dular, aged about 32 years, R/o 166, Paschim Vihar, Vaishali Nagar, Jaipur (Raj.).
3. Dr.Vijay Kumar Jhajhria S/o Shri Ram, aged about 30 years, R/o H-53(B) RIICO Industrial Area, Jhunjhunu (Raj.).
4. Dr.Nikhil Bansal S/o Shri Vinod Kumar Bansal, aged about 28 years, R/o 198/3, Vijay Bari, Sikar Road, Distt. Jaipur (Raj.).

----Appellants

Versus

1. Dr.Kamlendra Singh Chaudhary S/o Shri Om Prakash Chaudahry, aged about 29 years, R/o F-22, R/o Doctor Hostel, S.M.S. Medical College, Jaipur.
2. Dr.Utkarsh Sharma S/o Shri Ashok K.Sharma, aged about 22 years, R/o C-93, Mother Teresa Nagar, Bypass Malviya Nagar, Gatore Road, Jaipur 302017.
3. Dr.Shivani Mathur, D/o Shri Suresh Dutta Mathur, aged about 24 years, R/o C-132, Mangal Marg, Bapu Nagar, Jaipur.
4. The State of Rajasthan, through its Principal Secretary Department of Medical and Health, Secretariat, Jaipur.
5. Neet PG Medical and Dental Admission/Counseling Board -2019 and Principal and Controller, SMS Medical College and Attached Hospitals, Jaipur SMS Medical College, JLN Marg, Jaipur through its Chairman.
6. Dr.Mahesh Swami S/o Shri Surja Ram Swami, aged about 29 years, R/o VPO Taskola, Via Pawata, Kotputli, District Jaipur (Rajasthan).
7. Dr.Sunil Kumar Garhwal S/o Shri Ganpatram Garhwal, aged about 29 years, R/o Garhwal Bhawan, Indra Colony, Ward No.15, Tehsil Chomu, District Jaipur.
8. Dr.Pooja D/o Shri Dr.Balveer Garhwal, aged about 30

years, R/o Near Gurukripa Hospital, Jat Colony, Sikar, Rajasthan.

9. Dr.Sonia Arya W/o Shri Dr.Amit Jhakhar, aged about 30 years, R/o Plot No 70-71, Kailash Nagar, Shiv Singhpora, Sikar (Rajasthan).

----Respondents

**D.B. Special Appeal Writ No.514/2019**

Dr.Ramesh Kumar Yadav S/o Shri Bhagirath Mal Yadav, aged about 36 years, R/o C 17, Metal Colony, Ambabari Jaipur.

----Appellant

Versus

1. Dr.Kamlendra Singh Chaudhary S/o Shri Om Prakash Chaudhary, aged about 29 years, R/o F-22, Resident Doctor Hostel, S.M.S. Medical College, Jaipur (Raj.).
2. Dr.Utkarsh Sharma S/o Shri Ashok K.Sharma, aged about 22 years, R/o C-93, Mother Teresha Nagar, Bypass Malviya Nagar, Gatore Road, Jaipur-302017 (Raj.).
3. Dr.Shivani Mathur D/o Shri Suresh Dutta Mathur, aged about 24 years, R/o C-132, Mangal Marg, Bapu Nagar, Jaipur-302015.
4. The State of Rajasthan, through its Principal Secretary, Department of Medical and Health, Secretariat, Jaipur.
5. Neet, P.G. Medical and Dental Admission/Counseling Board-2019, and Principal and Controller, S.M.S. Medical College and Attached Hospitals, Jaipur S.M.S. Medical College, J.L.N. Marg, through its Chairman.
6. Dr.Mahesh Swami S/o Shri Surjaram Swami, aged about 29 years, R/o VPO Taskola, Via Pawata, Kotputli, District Jaipur (Raj.).
7. Dr.Sunil Kumar Garhwal S/o Shri Ganpat Ram Garhwal, aged about 29 years, R/o Garhwal Bhawan, Indra Colony, Ward No.15, Tehsil Chomu, Distt. Jaipur (Raj.)
8. Dr. Pooja D/o Dr. Balveer Singh Garhwal, aged about 30 years, R/o Near Gurukripa Hospital, Jat Colony, Sikar (Raj.).
9. Dr.Sonia Arya W/o Dr.Amit Jakhar, aged about 30 years, R/o Plot No.70-71, Kailash Nagar, Shiv Singhpora, Sikar (Raj.).

----Respondents

**D.B. Special Appeal Writ No.513/2019**

1. Dr.Mahesh Swami S/o Shri Surjaram Swami, aged about 29 years, R/o VPO Taskola, Via Pawata, Kotputli, District Jaipur (Raj.).
2. Dr.Sunil Kumar Garhwal S/o Shri Ganpat Ram Garhwal, aged about 29 years, R/o Garhwal Bhawan, Indra Colony, Ward No.15, Tehsil Chomu, Distt. Jaipur (Raj.).
3. Dr.Pooja D/o Dr.Balveer Singh Garhwal, aged about 30 years, R/o Near Gurukripa Hospital, Jat Colony, Sikar (Raj.).
4. Dr.Sonia Arya W/o Dr.Amit Jakhar, aged about 30 years, R/o Plot No.70-71, Kailash Nagar, Shiv Singhpora, Sikar (Raj.).

----Appellants

Versus

1. Dr.Kamlendra Singh Chaudhary S/o Shri Om Prakash Chaudhary, aged about 29 years, R/o F-22, R/o Hostel, S.M.S. Medical College, Jaipur (Raj.).
2. Dr.Utkarsh Sharma S/o Shri Ashok K.Sharma, aged about 22 years, R/o C-93, Mother Teresha Nagar, Bypass Malviya Nagar, Gatore Road, Jaipur-302017 (Raj.).
3. Dr.Shivani Mathur D/o Shri Suresh Dutta Mathur, aged about 24 years, R/o C-132, Mangal Marg, Bapu Nagar, Jaipur-302015.
4. The State of Rajasthan, through its Principal Secretary, Department of Medical and Health, Secretariat, Jaipur.
5. Neet, P.G. Medical and Dental Admission/Counseling Board-2019 and Principal and Controller, S.M.S. Medical College and Attached Hospitals, Jaipur S.M.S. Medical College, J.L.N. Marg, through its Chairman.

----Respondents

**D.B. Special Appeal Writ No.531/2019**

1. State of Rajasthan, through its Principal Secretary, Department of Medical and Health, Secretariat, Jaipur.
2. Neet PG Medical and Dental Admission/Counseling Board -2019, and Principal and Controller, SMS Medical College and Attached Hospitals, Jaipur, SMS Medical College, JLN

Marg, Jaipur through its Chairman.

----Appellants

Versus

1. Dr.Kamlendra Singh Chaudhary S/o Shri Om Prakash Chaudhary, aged about 29 years, R/o F-22, Resident Doctor Hostel, S.M.S. Medical College, Jaipur.
2. Dr.Utkarsh Sharma S/o Shri Ashok K.Sharma, aged about 22 years, R/o C-93, Mother Teresa Nagar, Bypass Malviya Nagar, Gatore Road, Jaipur-302017.
3. Dr.Shivani Mathur, D/o Shri Suresh Dutta Mathur, aged about 24 years, R/o C-132 Mangal Marg, Bapu Nagar, Jaipur-302015.
4. Dr.Mahesh Swami S/o Shri Surjaram Swami, aged about 29 years, R/o VPO Taskola, Via Pawata, Kotputli, District Jaipur (Raj.).
5. Dr.Sunil Kumar Garhwal S/o Shri Ganpat Ram Garhwal, aged about 29 years, R/o Garhwal Bhawan, Indra Colony, Ward No.15, Tehsil Chomu, Distt. Jaipur (Raj.).
6. Dr.Pooja D/o Dr.Balbir Singh Garhwal, aged about 30 years, R/o Near Gurukripa Hospital, Jat Colony, Sikar (Raj.).
7. Dr.Sonia Arya W/o Dr. Amit Jakhar, aged about 30 years, R/o Plot No.70-71, Kailash Nagar, Shiv Singhpora, Sikar (Raj.).

----Respondents

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For Appellant(s)	: <p>Mr. R.N. Mathur, Sr. Adv. assisted by Mr. Shovit Jhajharia, Adv.</p> <p>Mr. A.K. Sharma, Sr. Adv. assisted by Mr. V.K. Sharma, Adv.</p> <p>Mr. Vigyan Shah Adv. with Mr. Akshit Gupta, Adv.</p> <p>Mr. Ashwini Jaiman, Adv.</p> <p>Mr. Raunak Singhvi, Adv. with Mr. Darsh Pareek, Adv. and Mr. Sheetanshu Sharma, Adv. on behalf of Mr. M.S. Singhvi, Advocate General for State.</p>
For Respondent(s)	: <p>Mr. Rajendra Prasad, Sr. Adv. assisted by Ms. Purvi Mathur, Adv.</p> <p>Mr. Kushagra Sharma, Adv. and Mr. Sahir Husain, Adv.</p>

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**HON'BLE THE CHIEF JUSTICE  
HON'BLE MR. JUSTICE G R MOOLCHANDANI**

**Judgment**

<b>Judgment Reserved on</b>	::	<b>26/03/2019</b>
<b>Judgment Pronounced on</b>	::	<b>29/03/2019</b>

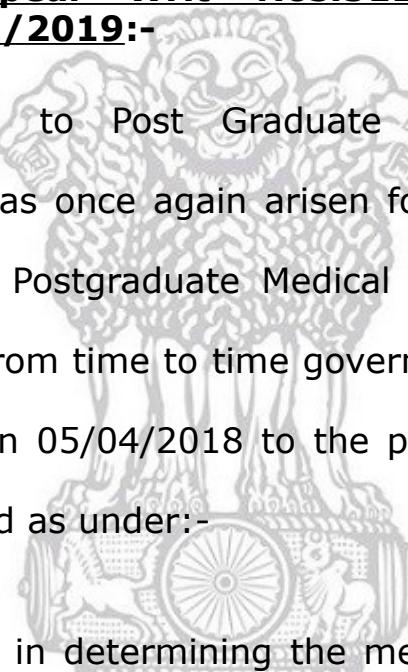
**BY THE COURT : (Per : Hon'ble the Chief Justice):-**

**D.B. Civil Misc.Application No.21989/2019 in DBSAW  
No.512/2019:-**

For the reasons mentioned in the application, the same is allowed.

**D.B. Special Appeal Writ Nos.512/2019, 514/2019,  
513/2019 and 531/2019:-**

1. Admission to Post Graduate (Medical) Course in different discipline has once again arisen for consideration in the State of Rajasthan. Postgraduate Medical Education Regulations 2000, as amended from time to time govern the field. Prior to the amendment made on 05/04/2018 to the proviso to Regulation 9 (IV), the proviso read as under:-



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

2. Amendment made on 05/04/2018 to the Regulation reads as under:-

"Provided that in determining the merit of candidates who are in-service of government/public authority, weightage in the marks may be given by the

Government/Competent Authority as an incentive upto 10% of the marks obtained for each year of service in remote and/or difficult areas or Rural areas upto maximum of 30% of the marks obtained in National Eligibility-cum-Entrance Test. The remote and/or difficult areas or Rural areas shall be as notified by State Government/Competent authority from time to time."

**3.** Before noting the specific legal issue which arises for consideration in the appeal a backdrop of judgments delivered in the past concerning the proviso prior to its amendment in the year 2018 needs to be highlighted. In the decision reported as AIR 2017 SC 2884 : *Narendra Soni & Ors. Vs. State of Haryana & Ors.* the Supreme Court held that neither word remote nor difficult area, used in the proviso, has been defined anywhere. In common parlance, identification of the same would require a consideration of host of factors, such as social and economic conditions, geographical location, accessibility and other similar relevant considerations which may be a hindrance in providing adequate medical care requiring incentivisation. Prior thereto, on 02/07/2009, the Ministry of Health & Family Welfare, Union of India wrote to all the State Governments to provide the inputs and in February 2009 evolved the criteria to determine remote and difficult areas on the following principles:-

"a. That the facilities are identified on the basis of how difficult it is for service providers to go and work in these areas-not on how well the health programme are faring or how difficult it is to provide services in these areas.

b. That the basis of identification would be an objective and verifiable data base which measures difficulty in four dimensions: the difficulty posed by the remoteness of a rural area, the difficulty posed by natural and social environmental factors, the difficulty a family would have in terms of housing, water, electricity and schooling and the record of success of the system in filling up the post in the past. The data-

base to be prepared would be stored in such a manner that it could be regularly updated.

c. That one the data base is defined the scoring could be done by giving weightage to the various factors in any way the State or the Center wants it, and if need be different elements of the incentive package could be defined by different weightages and selections.

d. Of the four dimensions of difficulty, the most important would be assumed to be the remoteness and physical inaccessibility of the area, while other factors would be considered only if the distance from an urban area of district headquarters criterion was satisfied. Thus an extremist affected district could be as much a problem as distance, but if the facility is an urban or peri-urban area then it would not be the central issue in getting a doctor to that facility. This is based on an understanding that lack of willingness to work in remote areas is due to a combination of economic loss, social and (from community and family and professional isolation and not so much of a problem as distance from an urban area.

e. The criteria for difficulty should be measurable enough to withstand legal and political contestation, but there would be exceptions that need to be made and these could be made by addition of further qualifying rules and flexibilities that would be defined in writing wherever needed.”

**4.** Annexure-1 to the Note on the subject of measurement of inaccessibility and difficulty of health facilities stipulated as under:-

“1. Accessible: Any health facility less than 60 km from any district hospital/district headquarters OR less than 60 km. From any urban area-(not counting very small townships) is accessible. It would not be considered difficult even if there are other adverse environments or housing situations. (exceptions only in extreme situations like Upper Himalaya districts or in some NE districts). In terms of scoring, these facilities within the 60 km. Is chosen as in most circumstance 60 km. Is less than two hours motorable distance.

2. Inaccessible: Any health facility which is not on a motorable road or where the road gets cutoff for more than 6 months and one has to walk to reach the facilities-is Inaccessible irrespective of other factors. Not to count as inaccessible, if the walking part is only within the village/town. (Motorable road to the village,

not necessarily to the facility). A walking time of over half hour or 2 km. distance is taken as cut-off. Usually above a one-hour walking time and 5 km. Distance, it is safe to declare it as "Inaccessible." At the lower limit, one needs to verify the data more carefully. In terms of scoring these are scored A4 or A5. A5 is if the distance is over 15 km-or three hours walking time.

3. Difficult and Most difficult: If the facility is more than 60 km. From urban areas/district headquarters it would be considered difficult if in addition if

a. The facility is more than 30 km. From block headquarter and over 10 km. Away from national highway or other main busy highway-irrespective of other adverse environment or housing criteria:

OR

b. The facility is less in one of the above two distances (from block and from highway) but there are adverse environment factors or housing factors to compensate for it.

OR

c. If the road gets cut off for more than a month every year.

In terms of scoring an A2 is difficult and A3 is most difficult A1 is accessible.

A facility which is over 60 km from any urban area or any district headquarters gives it a score of 12 A1. To this we add another score of 0.5 for being more than 30km from block HQ and another 0.5 for being more than 10 km off the national highway. This makes any facility conforming to paragraph "3a" above get a score of A2.

If the facility had a score of A1 or A1.5 score from its distance or for road cut-off reasons but as an environment score of more than 2 or an environment score of 1 plus a housing score or a vacancy score then this A1 or A1.5 would become a net A2 and get categorised as difficult.

If the facility had a score of A2 or A2.5 from its distance scores and cut-off reasons and then also has an environment score of more than 2 or an environment score of 1 plus a housing score or a vacancy score then this A1 or A1.5 it would become a net A3 and get categorised as Most difficulty.

4. Scoring for Environment: Any hilly forest, tribal or desert or island area would attract an environment score of 1. These are not additive. If it is a facility located in a tribal

hilly forest area, the environment score is still only 1-not 3. If the hills are above 5000 ft then one could put it as two. We can also add one to three points for Left Wing violence depending on the stage of police operations. Generally other forms of conflict which are occasional and widely dispersed would not attract a disturbed area score. Factors like dacoit infested, caste conflicts etc are not given any score. The important point to note is that an environment 13 score would make an A1 to an A2 or an A2 into an A3. It would seldom make an A1 to A3 and it would never make an A0 into any level of difficulty.

5. Scoring for Housing: Poor quality of housing, lack of water supply and electricity, and lack of access to a higher secondary school within one hour of bus journey (30 km) also are scored. In combination with an environment score they could make an A1 to an A2 (difficult) or an A2 to an A3 (most difficult), but would not make an A0 into a difficult category.

6. Scoring for Vacancy: If medical posts are vacant for one to three years we indicate it by V1 to V3 scores. This is just used to check whether we are on the right track. The pattern of vacancies is inconsistent and changing and the data on it is of too poor a quality to use it for decision making.”

5. Arising out of a Division Bench judgment of this Court in D.B. Civil Writ Petition No.4518/2017, disposing of a batch of petitions seeking special leave to petition, lead matter being SLP (C) No.11692/2017 : Dr. Ajeet Bagra & Ors. Vs. State of Rajasthan & Ors. the decision pronounced on 15/12/2017, the Supreme Court noted the proviso as it existed to the Regulations prior to the amendment in the year 2018 and the decision by the State of Rajasthan to give the incentive limited to 10% and identification of remote and distant areas not conforming to the aforesaid principles. It was held that the incentive had to be as per the proviso. It was directed that exercise be conducted by February 2018 to identify remote and difficult areas keeping in view the above principles. However, admissions made were not disturbed.

**6.** In compliance with the decision pronounced by the Supreme Court, a committee was constituted which submitted its report and based thereon, on 28/02/2018 a notification was issued notifying 1003 primary health centres and community health centres as falling in remote and difficult areas. The notification also included that areas, which were notified as rural areas for conferring benefit of incentives. The notification stated that for each year service rendered in the difficult, remote and rural areas notified, incentive of 10% subject to a maximum of 3 years incentive would be given.

**7.** The said notification dated 28/02/2018 was challenged in SBCWP No.5255/2018 : *Dr. Ajeet Bagra & Ors. Vs. UOI & Ors.*

**8.** The argument advanced was that rural areas could not be included for benefit of any incentive on account of the fact that the existing proviso to Regulation 9(IV) restricted the benefit only to remote and/or difficult areas.

**9.** Noting the decision of the Supreme Court in *Narendra Soni's* case and the criteria evolved by the Ministry of Health & Family Welfare to identify remote or difficult areas as also the decision dated 15/12/2017 pronounced by the Supreme Court in SLP (C) No.11692/2017, a learned Single Judge of this Court vide decision dated 20/03/2018 quashed the notification dated 28/02/2018 limited to inclusion of rural areas.

**10.** The said decision was challenged before a Division Bench vide D.B. Civil Special Appeal (W) No.501/2018 : *State of Rajasthan Vs. Dr. Ajeet Bagra.*

**11.** Relevant would it be to highlight that after the decision of the learned Single Judge, which was challenged before the

Division Bench, the proviso to Regulation 9(IV) was amended on 05/04/2018 to include even rural areas. A perusal of the amended proviso shows that two material changes were effected vis-a-vis the previous proviso. The first was the inclusion of rural areas and the second was that, hitherto the proviso stipulated the incentive @10 marks obtained for each year service subject to the maximum of 30 marks, but as amended, it left it to the government to notify the incentive, which could be given but limited to 10% of the marks for each year of service in the remote, difficult or rural areas subject to a maximum of 30% of the marks.

**12.** Before the Division Bench it was argued by the State of Rajasthan that the State of Rajasthan had issued a notification on 28/04/2017 defining rural areas to mean a place other than a Tehsil Headquarter and which is not a Municipal Town. Another notification dated 26/12/2017, for grant of Special Pay (Rural Allowance), issued in exercise of the power conferred by the proviso to Article 309 of the Constitution of India by the Governor of Rajasthan was also relied upon. The said notification dated 26/12/2017 reads as under:-

**"Government of Rajasthan  
Finance Department  
(Rules Division)  
Notification**

**Jaipur, dated 26 Dec 2017**

No. F. 14(92)FD/Rules/2008

In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Rajasthan is pleased to make the following rules to amend further the Rajasthan Civil Services (Revised Pay) Rules, 2008, namely:-

1. These rules may be called the Rajasthan Civil Services (Revised Pay)(Fifth Amendment) Rules, 2011.
2. These rules shall be deemed to have come into force with effect from 20.12.2011.
3. In the Rajasthan Civil Services (Revised Pay) Rules, 2008, in Schedule II Special Pay - the existing entry appearing at S. No. 10 under heading "Medical Department - ( i ) General Branch" shall be substituted by the following, namely:

S.No 1	Name of the Post 2	Rate of Special Pay in rupees per month 3	Remarks 4
10	Medical Officer/Senior Medical Officer posted in Rural Dispensaries and Primary Health Centers situated at places other than Municipal Towns	500	<p>The grant of Special Pay (Rural Allowances) shall be subjected to the fulfillment of following conditions:-</p> <p>(i)that the places are not Tehsil Headquarters.</p> <p>(ii)that the places are Tehsil Headquarters but have population below 5000.</p> <p>(iii)Medical Officer/ Senior Medical Officer resides at the place as in ( i ) or (ii) above.</p>

**13.** The contention before the Division Bench was that since the proviso stood amended w.e.f. 05/04/2018, medical officers posted in dispensaries and primary health centres in rural areas who were granted Special Pay would also be entitled to the incentive for the reason the Special Pay took note of the fact that these Doctors were posted at dispensaries and primary health centres at places, which are not Tehsil Headquarters and if they were at a Tehsil Headquarter, population was below 5000 and that the medical officers reside at the said place.

**14.** Deciding D.B. Civil Special Appeal(W) No.501/2018 on 10/04/2018, the Division Bench held that in view of the amendment to the proviso w.e.f. 05/04/2018, in the State of Rajasthan, benefit could be granted to the doctors working in the rural areas as notified on 28/02/2018 but only prospectively. The appeal was disposed of issuing the following direction:-

"26. All these appeals are disposed of with the following direction:

*The admissions which are given pursuant to the notification dated 15.03.2018 up to 04.04.2018 will go on the basis of unamended Regulation 9 and from 05.04.2018 whenever post is vacant out of 688 will be governed by the amended regulation and the Government will act accordingly.*"

**15.** It is not in dispute that after the Division Bench judgment was pronounced the State of Rajasthan issued an order on 21/04/2018 giving the benefit of rural service to in-service candidates working in the rural areas, who were paid a special rural allowance. A list of 1375 candidates was prepared and benefit was granted to said in-service candidates at the second round of counselling, which took place on 21<sup>st</sup> April, 2018.

**16.** Pertaining to NEET PG, 2019, the State of Rajasthan issued an Office Order dated 07/01/2019 requiring the incentive benefit to be given to doctors working in dispensaries and primary health centres to whom rural allowance was being paid. Another round of litigation ensued and Dr. Kamlendra Singh Chaudhary and two others filed a writ petition praying as under:

*"It is, therefore, most humbly prayed that this Hon'ble Court be pleased to accept and allow this writ petition and by issuing an appropriate writ, order or/and direction*

*i. To direct the Respondents no.1 to form a committee of experts for the purpose of identifying remote and/or difficult or rural areas in tune with the various pronouncements of Hon'ble Supreme Court.*

*ii. To direct the respondent no.1 not to issue any list identifying remote and/or difficult area or rural area without constituting an expert committee which identifies the remote and/or difficult areas or rural areas in consonance with the pronouncement of the Hon'ble Supreme Court and various Hon'ble High Courts.*

*iii. Pass such other and further orders or directions, as this Hon'ble Court, may deem just and proper in the facts and circumstances of the case, in favor of the Petitioner."*

**17.** The pleadings in the writ petition rely upon the decision of the Supreme Court in Narendra Soni's case and Dr. Ajeet Bagra's case and highlight the importance of identifying remote and difficult areas as per the parameters laid down. Meaningfully read the pleadings are to the effect that an area being a rural area by itself would not entitle benefit of incentive marks unless the area is a remote or a difficult area.

**18.** Relevant would it be to further note that no prayer has been made in the writ petition that the incentive to be given, being a matter of discretion as per the amended proviso, required a conscious decision to be taken whether the incentive would be the same for rural areas as also difficult or remote areas.

**19.** Vide impugned decision dated 15/03/2019 the learned Single Judge has held that since the rural areas covered by the notification was not based on objective criteria analogous to the criteria for identifying difficult or remote areas, the inclusion of rural areas was contrary to law and to said extent direction has

been issued to notify rural areas afresh for grant of bonus marks as incentive for in-service candidates afresh.

**20.** From a perusal of the facts noted hereinabove, there can be no quarrel with the proposition that post 05/04/2018 benefit of incentive could be given to in-service candidates working in rural areas. The decision by the State of Rajasthan has consciously taken into account the fact that because incentive was based on a sacrifice i.e. the service rendered in a hard area, merely because a person was working in a rural area would not justify the grant of the incentive. That is why benefit has been restricted to officers posted in rural dispensaries and primary health centres, where place is not a Tehsil Headquarter and where place is a Tehsil Headquarter, the population being below 5000; with further condition that medical officers reside at said place. The reasoning of the learned Single Judge is that only those rural areas would be eligible for the benefit of incentive which could be equated with difficult or remote areas on principles analogous to the for identification of said two places.

**21.** We find merit in the contention advanced by the learned counsel for the appellants that if only such rural areas could be included, which were analogous to difficult or remote areas, the inclusion of a rural area would be rendered infructuous for the reason the said area would be entitled to be included on the strength of it being a difficult or a remote area itself.

**22.** The precedentiary value of the Division Bench judgment dated 10/04/2018 was also binding upon the learned Single Judge. As noted above, the said decision noted the amendment to the proviso made on 05/04/2018. The decision

noted the definition of rural areas as notified on 28/04/2017. It also took note of the notification dated 26/12/2017 concerning Special Pay (Rural Allowance). The decision clearly held that doctors serving in rural areas, who were receiving a rural allowance would be eligible for the benefit of the incentive prospectively w.e.f. 05/04/2018. The direction issued by the Division Bench was that post 05/04/2018, post which were lying vacant could be filled up in view of the notification dated 05/04/2018 and to said extent the notification issued by the State of Rajasthan on 28/02/2018 was held applicable post 05/04/2018.

**23.** We, thus terminate on this aspect of the matter by overruling the decision dated 15/03/2019 pronounced by the learned Single Judge.

**24.** Shri Rajendra Prasad, learned Senior Counsel for the writ-petitioners vehemently urged that the amended proviso to Regulation 9(IV) required a conscious application of mind to the extent of incentive marks to be given because the proviso did not mandate 10% incentive marks to be given as a matter of right. 10% incentive marks was the upper limit and within the upper limit, the State Government had to exercise its discretion. Counsel argued that same incentive for rural areas as also difficult and remote areas would amount to clubbing unequal as equal.

**25.** We, are not inclined to deal with this submission for the reason, as noted above, in the writ petition there is no prayer that giving same incentive marks was discriminatory and should be struck down. In absence of any specific pleadings, the

respondents in the writ petition being denied an opportunity to plead facts showing parity between rural, difficult and remote areas, it would violate the principles of law of pleadings.

**26.** The appeals are accordingly allowed. Impugned judgment dated 15/03/2019 is set aside. S.B. Civil Writ Petition No.4765/2019 is dismissed.

(G R MOOLCHANDANI),J. (PRADEEP NANDRAJOG), CJ

Anil Goyal/52,53,58 & 60.



सत्यमेव जयते