

**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR**

**BEFORE  
HON'BLE SHRI JUSTICE RAVI MALIMATH,  
CHIEF JUSTICE**

**&**

**HON'BLE SHRI JUSTICE VISHAL MISHRA**

**ON THE 29<sup>th</sup> OF SEPTEMBER, 2023**

**WRIT PETITION No. 20298 of 2023**

**BETWEEN:-**

**UTKRISHT DWIVEDI S/O RAM NIRANJAN  
DWIVEDI, AGED ABOUT 30 YEARS,  
OCCUPATION: DOCTOR R/O B-470, SEC-3,  
NCL JAYANT DISTRICT- SINGRAULI (M.P)**

**.... PETITIONER**

***(BY SHRI SANKALP KOCHAR - ADVOCATE)***

**AND**

- 1. THE STATE OF MADHYA PRADESH  
THROUGH PRINCIPAL SECRETARY  
PUBLIC HEALTH AND FAMILY  
WELFARE VALLABH BHAWAN BHOPAL  
(M.P.)**
- 2. DIRECTORATE OF HEALTH SERVICES  
THROUGH ADDITIONAL DIRECTOR  
VIGYAPATI BHOPAL (M.P.)**

**.... RESPONDENTS**

**(BY SMT. JANHAVI PANDIT - ADDITIONAL ADVOCATE  
GENERAL)**

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*This petition coming on for admission this day, **Hon'ble Shri Justice Vishal Mishra** passed the following:*

**ORDER**

Challenging the validity of the result dated 27.07.2023 whereby the petitioner has been declared ineligible for in-service reservation quota of NEET PG 2023, the present petition has been filed.

2. It is the case of the petitioner that he appeared in NEET (Pre PG) 2023 which is an exam through which admissions are granted to the students in Post-Graduate Course. The petitioner after completing his MBBS Course from Dr. Harisingh Gour Vishwavidyalaya, Sagar in the year 2018, started rendering his services in Public Health Centre Jaitpur and District Hospital Shahdol. That, as per the Madhya Pradesh Niji Vyavsayik Shikshan Sanstha (Pravesh Ka Viniyaman Avam Shulk Na Nirdharan) Adhiniyam, 2007, 10% marks are added to the total marks obtained in NEET PG for every year of rural service. In addition to the above, Gazette Notification dated 05.10.2021 was issued whereby Section 14 of the Act was amended and 30% reservation in seats was given to in-service candidates who are serving on post of demonstrator/tutor/medical officer. Another notification dated 26.07.2021 was issued altering the previous condition that only the candidates who have served in rural/remote/difficult areas for three years shall have the benefit of Section 14 of the Act. The result of

NEET PG 2023 was declared on 27.07.2023 and the petitioner was found not eligible for in-service reservation quota.

3. Further the case of the petitioner is that he has completed three years of service i.e. 2 years 5 months and 19 days in Public Health Centre Jaithpur and 1 year and 1 day in District Hospital Shahdol. Therefore, he has rendered his service for more than three years in rural/remote/difficult areas. Therefor, the benefit of 30% reservation as in-service candidate should be extended to the petitioner. Hence, the instant petition.

4. It is further pointed out that this Court while considering the validity of Rule 14(7) of the Madhya Pradesh Chikitsa Shiksha Pravesh Niyam, 2018 in Writ Petition No.23856 of 2022 and connected petitions decided on 18.11.2022 has held that Rule 14(7) cannot be declared as unconstitutional. The matter pertains to grant of study leave and NOC from their employer for availing the benefit of 30% reservation as in-service candidates. The same was put to challenge before the Hon'ble Supreme Court in Special Leave to Appeal (C) No.21364 - 21366 of 2022 (Sheetal Soni and others vs State of Madhya Pradesh and others) wherein it was observed *inter alia* that :

*"3. The counselling process has been concluded for the ongoing academic session on 2 December 2022. On 26 July 2022, the Madhya Pradesh Medical Education Admission Rules 2018 have been amended so as to inter alia delete sub-Rule 7 of Rule 14. For the next academic session, Rule 14(7) stands deleted."*

However, the said SLPs have been dismissed vide order dated 02.01.2023.

5. It is argued that the only requirement for getting the benefit of 30% reservation compartment is in terms of the amended notification dated 26.07.2022 wherein in terms of Rule 2, the petitioner is also entitled to get the aforesaid benefit. Rule 2 reads as under :

“2. उप-नियम (1) के स्थान पर, निम्नलिखित उप-नियम स्थापित किया जाए, अर्थात्:-

“(1) शासकीय एवं निजी चिकित्सा/दंत चिकित्सा महाविद्यालयों में उपलब्ध समस्त विधाओं की डिग्री सीटों की रिक्तियों (Vacancies) पर अर्हताधारी पंजीकृत सेवारत अभ्यर्थियों जिनके द्वारा ग्रामीण/दूरस्थ/कठिन (Rural/Remote/Difficult area) स्थानों में न्यूनतम 03 वर्ष की अवधि की सेवा प्रदान की हो, के लिये 30 प्रतिशत सीटों का कोटा रहेगा.”

6. Reliance has also been placed upon the amended Rule 14 in terms of the Notification dated 05.10.2021 which reads as under :

“14. सेवारत अभ्यर्थियों के लिये प्रोत्साहन,-

सेवारत अभ्यर्थी/चिकित्सा शिक्षा विभाग के अन्तर्गत शासकीय चिकित्सा/दंत चिकित्सा महाविद्यालयों में कार्यरत डिमोन्सट्रेटर/ट्यूटर/मेडिकल ऑफिसर अभ्यर्थियों के लिये प्रोत्साहन.

(1) शासकीय एवं निजी चिकित्सा/दंत चिकित्सा महाविद्यालयों में उपलब्ध समस्त विधाओं की डिग्री सीटों की रिक्तियों पर अर्हताधारी पंजीकृत सेवारत अभ्यर्थी/चिकित्सा शिक्षा विभाग के अन्तर्गत कार्यरत डिमोन्सट्रेटर/ट्यूटर/मेडिकल ऑफिसर हेतु 30 प्रतिशत आरक्षण रहेगा.

...”

7. On notices being issued, a detailed return has been filed by the respondents-State and its functionaries, pointing out the fact that the petitioner has not completed three years of service as an in-service candidate as per the requirement of the Adhiniyam. It is a case of the petitioner that he has rendered his services for 2 years, 5 months and 19 days in Public Health Centre, Jaithpur and 1 year and 1 day in District Hospital Shahdol. It is pointed out that the Madhya Pradesh Chikitsa

Shiksha Pravesh Niyam, 2018 governs admissions to the undergraduate and post-graduate medical courses in the State of Madhya Pradesh. The NMC guidelines provide for grant of incentive marks for consideration in PG counselling to in-service doctors with a specified number of years in rural service which are awarded as 10% for each year upto a maximum of 30% for a period of three years. 30% PG seats have been reserved for those eligible registered in-service candidates who have worked in the rural/remote/difficult areas for a minimum period of three years. The learned Additional Advocate General has drawn attention of the amended Rule 14(1) which shows that 30% seats are reserved for those eligible registered in-service candidates who have worked in rural/remote/difficult areas for a minimum period of three years. Incentive marks are awarded to in-service candidates in terms of circular dated 28.02.2019 issued by the Department of Health and Family Welfare, Govt. of Madhya Pradesh. The benefit is only extended to those in-service candidates who have worked in rural/remote/difficult areas for minimum three years and the demonstrator/tutor/medical officer working in Medical Colleges have been excluded from the aforesaid benefit.

8. She has further pointed out that the amendment has been incorporated in pursuance to the judgment passed by the Hon'ble Supreme Court in the case of T.N. Medical Officers Assn. vs Union of India reported in (2018) 17 SCC 426 wherein it was observed that the State Government provides a separate channel of entry making a minimum service in rural/remote/difficult areas for specified period as

mandatory. Thus, from the circular dated 28.02.2019, it is clearly reflected that the incentive marks are awarded only to the doctors working in the Public Health and Family Welfare Department. The incentive marks are awarded as 10% for each year of working in the rural/remote/difficult areas upto a maximum of 30% incentive marks for a period of three years. Admittedly, the petitioner was appointed by the Medical Education Department in terms of the power exercised under Clause 19 of the MOU dated 20.12.2018 by the Dean itself who was directed to work for a short period in District Hospital Shahdol. The same does not entitle the petitioner for taking benefit of the Circular of the government dated 28.02.2019.

9. It is pointed out that the petitioner has already been awarded 20% weightage marks as he has worked in the Public Health Centre, Jaitpur for 2 years, 5 months and 19 days but the benefit of 30% reservation as in-service candidate cannot be granted to him because he belongs to the Department of Medical Education. The distinction has been carved out by this Court in the case of Dr. Shweta Soorauthiya vs State of M.P. : Writ Petition No.23856 of 2022 decided on 18.11.2022 wherein while considering the similar aspect regarding distinction between the doctors who are rendering their services in the Medical Education Department from those who are rendering their services in the Public Health and Family Welfare Department. The same is applicable in the present case also. Hence, she has prayed for dismissal of the petition.

10. Heard learned counsels for the parties and perused the record.

11. It is not in dispute that the benefit in terms of the circular dated 28.02.2019 has to be extended to the doctors working in the Public Health and Family Welfare Department and not to those who are working in the Medical Education Department. It is further not in dispute that 20% weightage marks have already been extended to the petitioner as he worked in the Public Health and Family Welfare Department for 2 years, 5 months and 19 days but the benefit of 30% reservation as in-service candidate cannot be extended to him because he does not belong to the Public Health and Family Welfare Department. It was only a stopgap arrangement which was made by the authorities owing to the fact that the petitioner was posted at District Hospital Shahdol in terms of the MOU executed on 20.12.2018 amongst Chief Medical Health Officer, Civil Surgeon and Dean of Govt. Medical College, Shahdol. Clause 19 thereof is relevant and reads as under :

‘19. जिला चिकित्सालय के संचालन में आवश्यक उपकरण, सामग्री, दवाईयों हेतु पूर्वानुसार लोक स्वास्थ्य एवं परिवार कल्याण विभाग के बजट से व्यवस्था रहेगी। चिकित्सा महाविद्यालय के लिये यदि कोई विशेष उपकरण/फर्नीचर, दवाइयां अथवा अन्य सामग्री की आवश्यकता है तो उसकी वित्तीय व्यवस्था चिकित्सा शिक्षा विभाग द्वारा की जायेगी तथा ऐसे उपकरणों/फर्नीचरों का लेखा जोखा दोनों अधीक्षकों के संयुक्त हस्ताक्षर से संधारित किया जावेगा। मेडिकल कॉलेज का स्वयं का अस्पताल आरंभ होने पर ऐसे उपकरण जिला चिकित्सालय से मेडिकल कॉलेज चिकित्सालय में स्थानांतरित किये जा सकेंगे। किसी भी स्थिति में दवाई/सामग्री क्रय में दोहराव की स्थिति न बनें इसके लिये दोनों अधीक्षक संयुक्त रूप से जिम्मेदार होंगे।’

12. In terms of Clause 19, it is clear that the Dean of Medical College is having power for posting of the candidates under exceptional

circumstances. As the building of teaching hospital was under construction, therefore, the petitioner was asked to render his services in District Hospital Shahdol but that does not entitle him to take advantage of the Circular dated 28.02.2019 which only includes the doctors working in the Public Health and Family Welfare Department. As pointed out already, this Court had an occasion to deal with a similar issue and carved out distinction between the doctors working in Public Health and Family Welfare Department from those who are working under the Medical Education Department in the case of Dr. Shweta Soorauthiya (supra). Paras 12 and 14 are relevant and read as follows :

*“12. It is further contended that there are two classes of Medical Officers working in the State of Madhya Pradesh. One under the Department of Public Health and Family Welfare who are mostly working in the rural areas and some District Hospitals in non-rural area dealing regularly in day and day out patients and on the contrary the Demonstrators, Tutors like petitioners are appointed under the Directorate of Medical Education by a different recruitment process under the different set of rules by Government Autonomous Medical Colleges of the State and are engaged in teaching work. There are no posts of Tutors and Demonstrators in Public Health Department. There is a vast difference in the mode of recruitment, appointing authority, place of working, the nature of work etc. in these two categories of Medical Officers. The post of Tutors and Demonstrators exists only in Medical Colleges of the State and they are being recruited by autonomous committee of the Medical College, which is headed by the Divisional Commissioner against the vacancies on the basis of interviews. They work in non-clinical Department of Medical Colleges and are engaged in teaching work. On the other hand, the Medical Officers working under the Department of Public Health and Family Welfare are engaged through Public Service Commission Recruitment process. They are being governed by*



*the different set of rules. The services of Demonstrators, Tutors and Medical Officers working under the Directorate of Medical Education are governed by the rules framed under the Rules of 2018 wherein it is specifically provided for grant of study leave on completion of 5 years of service. The Medical Officers like the petitioners are bound by the terms and conditions of the appointment orders which provide that the eligibility of grant of study leave would be governed by Rule 12 of the Rules of 2018.*

...

*14. It is not a case where the petitioners are debarred from participating. If they are not entitled for participating as in-service candidates or found not entitled for extension of benefit of 30% reservation compartment as in-service candidates, they are free to participate under the open category. Thus, they are not being precluded from participating in the NEET PG Examination, 2022 but they cannot be extended the benefit of 30% reservation compartment as in-service category candidates. In absence of fulfillment of the terms and conditions of Rule 14(7) of the Rules of 2018 and Rule 12(1) (vi) of the amended Rules governing their services, no benefit can be extended to the petitioners. ...”*

**13.** As per the petitioner himself, he has not completed three years of service in District Hospital Shahdol as he was working under the Medical Education Department.

**14.** Clause 2 of the Policy dated 28.02.2019 is relevant and reads as under :

*(A) All health centres situated in 89 tribal blocks mentioned in the Schedule – I.*

*(B) All the Civil Hospital, Community Health Centre and Primary Health Centres situated in blocks in general area, which -*

*(i) are not situated within the limits of a Municipal Corporation or Municipality.*

*(ii) which are not situated within 25 kms of the Municipal Corporation Head Quarters.*

(iii) which are not situated within 10 km of the Municipality Head Quarter.

15. Thus, it is clear that the incentive marks/weightage marks are awarded to candidates who are appointed and those who have worked in the Public Health and Family Welfare Department in rural/remote/difficult and not anywhere else. Prior to working of the petitioner at the Public Health and Family Welfare Department, he was posted as Causality Medical Officer at Medical College Shahdol under the Medical Education Department in terms of MOU Clause 19 under exceptional circumstances. Therefore, the argument that the petitioner was appointed as Causality Medical Officer at Medical College Shahdol is misconceived.

16. Under these circumstances, it is apparently clear that the petitioner cannot be extended the benefit of 30% reservation as in-service candidate as he has not completed the requirements in terms of the policy dated 28.02.2019. No relief can be extended to the petitioner.

17. The petition *sans* merit and is accordingly dismissed. No order as to costs.

**(RAVI MALIMATH)**  
**CHIEF JUSTICE**

**(VISHAL MISHRA)**  
**JUDGE**

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