

W.P. Nos.4726/2015, 4666/2016, 5642/2016, 6316/2016,
6421/2016, 6738/2016, 7134/2016, 7182/2016

28.04.2016

**W.P. Nos.4666/2016, 5642/2016, 6316/2016 and
6738/2016**

Shri Aditya Sanghi, counsel for the petitioner in W.P. No.4666/2016.

Shri Siddharth Gupta, counsel for the petitioner in W.P. No.5642/2016.

Shri Manish Verma, counsel for the petitioner in W.P. No.6316/2016.

Shri Sanjay K. Agrawal, counsel for the petitioner in W.P. No.6738/2016.

Shri Samdarshi Tiwari, Deputy Advocate General for the respondents-State.

Shri Anoop Nair, counsel for the respondent-Medical Council of India.

Heard counsel for the parties on admission.

We have two sets of petitioners before us. One set of petitions are filed by candidates, who are from open source; whereas, other set of petitions have been filed by the candidates, who are in-service candidates.

The open category candidates have challenged the communication purported to be an order issued by the State Government dated 3.2.2016, setting apart 50% of the State quota seats for in-service candidates to be admitted to postgraduate degree courses for academic year 2016-17.

On the other hand, the petitioners, who are in-service candidates have prayed for a direction against the respondents to implement the self-same communication/order dated 3.2.2016.

In the context of the challenge to the said communication, the stand taken by the Medical Council of India is that it is not open for the State Government to set apart even State quota seats for in-service candidates in respect of postgraduate degree courses. That is permissible only in respect of postgraduate diploma courses, in terms of Regulation 9 of Medical Council of India Postgraduate Medical Education Regulations, 2000 framed by the Medical Council of India.

This issue, however, was specifically raised by the Medical Council of India even in the case of **Satyabrata Sahoo and others vs. State of Orissa and others** reported in **(2012) 8 SCC 203**. In paragraph 10 of the said decision, it is so recorded:-

“10. The learned counsel appearing for MCI

referred to the counter-affidavit filed on its behalf and submitted that the third proviso to Regulation 9(2)(d) of the Postgraduation Regulations, 2000 (as amended) does not provide for or contemplate any separate channel of entry for in-service candidates in admission to PG degree courses like that provided for PG diploma courses. The proviso only provides that a weightage may be given at the rate of 10% of the marks obtained for each year in service in remote or difficult areas upto the maximum of 30% of the marks obtained in the entrance examination and has secured minimum required percentage of marks for government service rendered in remote/difficult areas.”

(emphasis supplied)

The judgment then proceeds to analyze all other aspects in the context of Regulation 9 and, more particularly, re-states the legal position expounded in the case of **State of M.P. v. Gopal D. Tirthani, (2003) 7 SCC 83** dealing with the allocation of seats for in-service candidates. That judgment has been extensively referred to in paragraph 21 to 23 and on that basis conclusion has been reached in paragraph 24 of the reported judgment. Implicit in the reasons recorded and the view expressed by the Supreme Court in the case of **Satyabrata Sahoo** (supra), is that, the objection raised by the Medical Council of India as recorded in paragraph 10 of the decision reproduced above, which has been reiterated before us, has been negated.

Counsel for the petitioners, representing open category candidates, however, have relied on the exposition of the Supreme Court in the case of **Sudhir N. and others vs. State of Kerala and others** reported in **(2015) 6 SCC 685**. The observations in the said decision will be of no avail to the said petitioners – as the same is in the context of the provisions contained in the concerned State Act considered by the Supreme Court. In the said Act, the qualification criteria of merit alone was modulated to 'seniority criteria' in respect of in-service candidates. With reference to that provision, the Supreme Court has observed that it is not open to the State legislature to enact a law on that subject, which is in conflict with the Regulations framed under the Central enactment. It is certainly not an authority on the proposition that earmarking of some percentage of State seats for in-service candidates as a separate channel for admission to postgraduate degree courses, is impermissible.

On the other hand, Supreme Court in the case of **Gopal D. Tirthani** (supra) upheld the provision made by the State Government for grant of admission to in-service candidates as a separate channel to postgraduate degree course. That legal position has been re-stated in the case of **Satyabrata Sahoo** (Supra) and including in the case of **Sudhir N.** (supra).

Counsel for the petitioners, belonging to open category invited our attention to the decision of Allahabad High Court in the case of **Dr. Surya Kant Ojha and 6 others v. State of U.P. and 2 others in Writ (C) No.1380/2015** and companion matters and decision of Jharkhand High Court in the case of **Rohit Keshav v. State of Jharkhand in W.P. (C) No.85/2016**. These two decisions have not noticed the factual position about the plea taken by the Medical Council of India in paragraph 10 of the judgment of Supreme Court **Satyabrata Sahoo** (supra). In any case, we are bound by the decisions of the Supreme Court adverted to above.

In our opinion, therefore, the petitions filed by the candidates belonging to the open category do not merit any interference particularly when the decision has been taken by the State Government at the highest level by the Cabinet of the State. In the case of **Gopal D. Tirthani** (supra), in paragraph 10, the Supreme Court has noticed that it is open to the State Government to provide for separate channel for in-service candidates even by way of instructions or guidelines and need not be statutory Rules.

Taking overall view of the matter, therefore, petitions filed by the candidates belonging to the open category deserve to be **dismissed**.

Since the State Government is keen to implement its

decision noted in the communication dated 2.3.2016, taken at the highest level by the Cabinet on 19.1.2016, the relief claimed by the petitioners, who belong to in-service category, need not be considered further on accepting the assurance given by the State Government through counsel that the selection process for admission to the postgraduate degree courses will be proceeded on that basis in right earnest.

Accordingly, writ petitions filed by in-service candidates are **allowed** to that extent and **disposed of**.

W.P. No. 7134/2016

Shri A.P. Shrotri, counsel for the petitioner.

Shri Samdarshi Tiwari, Deputy Advocate General for the respondents-State.

Shri Anoop Nair, counsel for the respondent No.3.

Heard counsel for the parties on admission.

The grievance in this petition is, essentially, about the circular-cum-notice (Annexure P-7) dated 7.4.2016. The said circular refers to order passed in Review Petition No.247/2016 in W.P. No.4666/2016.

It is not in dispute that the review petition has been disposed of long back. Even the said writ petition has been disposed of by a separate order passed today. As such, the

issue raised in the said proceedings has been resolved and answered appropriately. In that case, the State Government must distribute the State seats in private medical colleges keeping in mind the Rules, named as M.P. Private Medical and Dental Postgraduate Course Admission Rules, 2016; and the directions given by the Supreme Court in the decision dated 17.03.2016 as also in subsequent decision dated 07.04.2016 or any other subsequent direction, as may be applicable to the subject matter and proceed accordingly. The chart of allocation of seats released by the State Government at pages 81 to 83, if necessary may have to be modified to bring it in conformity with the Rules and the directions given by the Supreme Court. Besides this, nothing more is required to be said in this petition. The same is **disposed of** accordingly.

W.P. Nos. 6421/2016 and 7182/2016

Shri Aditya Sanghi, counsel for the petitioners.

Shri Samdarshi Tiwari, Deputy Advocate General for the respondents-State.

Shri Siddharth Gulati, counsel for the Intervener.

De-linked from this Group, by consent. For, these petitions involve different issues.

Counsel for the respondent-State prays for time to file reply.

By way of indulgence, list on **04.05.2016**.

Intervention application is **allowed**. Intervention be carried in terms of this order by tomorrow (29.04.2016).

W.P. No. 4726/2015

Shri Aditya Sanghi, counsel for the petitioner.

Shri Samdarshi Tiwari, Deputy Advocate General for the respondents-State.

The issue raised in this petition is different than the issue raised in the petitions disposed of today. Hence, **de-linked**.

To proceed for final hearing being admitted matter. To be listed under category **Writ (Civil): Education – Professional – Admission Matters (16.i.a)**.

We place on record the submission made by counsel for the State that this petition has become *infructuous*. That contention can be considered at the appropriate stage.

(A. M. Khanwilkar)
Chief Justice

(J. P. Gupta)
Judge