

**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 22nd OF SEPTEMBER, 2022

WRIT PETITION No. 16249 of 2022

BETWEEN:-

1. **DR. DIWAKAR PATEL S/O SHRI
TEEKARAM PATEL, AGED ABOUT 36
YEARS, OCCUPATION: DOCTOR
CURRENTLY POSTED AT DISTRICT
HOSPITAL, DAMOH, M.P. R/O BABJI
MANDIC DISTRICT, HARDA, PINCODE-
461331, (MADHYA PRADESH)**

2. **DR. AMIT KUMAR GUPTA, S/O SHRI RAM
SEVAK GUPTA, AGED ABOUT 40 YEARS,
OCCUPATION: DOCTOR CURRENTLY
POSTED AT COMMUNITY HEALTH
CENTER SANCHI, DISTRICT RAISEN
(MADHYA PRADESH)**

3. **DR. RAMAVTAR SINGH DHAKAD, S/O
SHRI KEDAR SINGH DHAKAD, AGED
ABOUT 34 YEARS, OCCUPATION:
DOCTOR CURRENTLY POSTED AT CIVIL
HOSPITAL, DISTRICT UJJAIN M.P., R/O
BEHIND REST HOUSE NEAR, POLICE**

**STATION MAHIDPUR, DISTRICT UJJAIN
(MADHYA PRADESH)**

- 4. DR. VIPIN PATEL S/O SHRI SURENDRA
KUMAR PATEL, AGED ABOUT 34 YEARS,
OCCUPATION: DOCTOR CURRENTLY
POSTED AT DISTRICT HOSPITAL HARDA
(MADHYA PRADESH)**

....PETITIONERS

***(BY SHRI SIDDHARTH RADHE LAL GUPTA- WITH SHRI ASHISH
GUPTA - ADVOCATE)***

AND

- 1. THE STATE OF M.P. THROUGH ITS
PRINCIPAL SECRETARY DEPARTMENT
OF PUBLIC HEALTH AND FAMILY
WELFARE, VALLABH BHAWAN, BHOPAL
(MADHYA PRADESH)**
- 2. STATE OF MADHYA PRADESH THROUGH
ITS DIRECTOR, DEPARTMENT OF
MEDICAL EDUCATION, 5TH FLOOR
SATPURA BHAWAN, BHOPAL M.P.
(MADHYA PRADESH)**
- 3. MEDICAL COUNCIL OF INDIA NATIONAL
MEDICAL COMMISSION THROUGH ITS
CHAIRMAN/MEMBER SECRETARY,
POCKET 14, SECTOR - 8, DWARKA, NEW
DELHI**
- 4. DIRECTOR/COMMISSIONER
DEPARTMENT OF HEALTH SERVICES**

**5TH FLOOR SATPURA BHAWAN, BHOPAL
(MADHYA PRADESH)**

- 5. DR. SWETANK SONI,
S/O SHRI RAMESH KUMAR SONI
AGED ABOUT 32 YEARS,
R/O NEAR MAACHIS BIDI BRANCH,
LAXMIPURA, SAGAR (M.P.)**

- 6. DR. SONU SHARMA
S/O SHRI SHIVCHARAN SHARMA,
AGED ABOUT 38 YEARS,
R/O H. NO. 114, MARUTI CHOWK, DHANI
KI KUTIYA, ADHARTAL,
JABALPUR (M.P.)**

- 7. DR. JITENDRA SINGH,
S/O. SHRI BALBHADRA SINGH,
AGED ABOUT 33 YEARS,
R/O. COMMUNITY HEALTH CENTER,
GHABADONGRI, BETUL (M.P.)**

- 8. DR. YOGENDRA SINGH THAKUR,
S/O SHRI BHOPAL SINGH THAKUR,
AGED ABOUT 32 YEARS,
R/O KRISHNA COLONY, KINGI ROAD,
BARELI, RAISEN (M.P.)**

.....RESPONDENTS

***(SMT. JANHAVI PANDIT – DEPUTY ADVOCATE
GENERAL FOR RESPONDENT NOS. 1, 2 & 4, SHRI ANOOP***

NAIR – ADVOCATE FOR RESPONDENT NO.3 AND SHRI K.C. GHILDIYAL – SENIOR ADVOCATE WITH SHRI ROHAN HARNE – ADVOCATE FOR RESPONDENTS NO. 5 TO 8/INTERVENORS)

WRIT PETITION No. 18837 of 2022

BETWEEN:-

1. DR. AKASH GUPTA S/O SURESH CHANDRA GUPTA, AGED ABOUT 44 YEARS, OCCUPATION: DOCTOR (DEMONSTRATOR GMC BHOPAL) R/O A-203, THE BELLAIRE APARTMENT, ABBAS NAGAR ROAD, BHOPAL (M.P.)
2. DR. NARENDRA SINGH RATHORE S/O INDRA SINGH RATHORE, AGED ABOUT 34 YEARS, OCCUPATION: DOCTOR R/O KUNJ VIHAR COLONY, 60 FEET ROAD, GOLE KA MADIR, GWALIOR (MADHYA PRADESH)
3. DR. MOHIT GUPTA S/O SHRI OM PRAKASH GUPTA, AGED ABOUT 36 YEARS, OCCUPATION: DOCTOR (MO. GMC, BHOPAL) R/O F-124 / 277 NO. BUS STOP, SHIVAJI NAGAR, BHOPAL (MADHYA PRADESH)
4. DR. RAJENDRA TANTUWAY S/O SHRI TRILOCHAN PRASAD, AGED ABOUT 39 YEARS, OCCUPATION: DOCTOR (DEMONSTRATOR, GMC BHOPAL) R/O O-103 SINGNATURE RESIDENCY SHIRDIPURAM, KOLAR ROAD,

BHOPAL (MADHYA PRADESH)

5. **DR. MILI TRIPATHI D/O SHRI SHYAM BABU TRIPATHI, AGED ABOUT 42 YEARS, OCCUPATION: DOCTOR (DEMONSTRATOR GMC BHOPAL) R/O H-11, DWARKAPURI COLONY, NEAR PNT SQUARE, KOTRA ROAD, BHOPAL (MADHYA PRADESH)**
6. **DR. SHEETAL SONI W/O VIVEK SONI, AGED ABOUT 34 YEARS, OCCUPATION: DEMONSTRATOR R/O WARD NO. 3, SOHAGPUR, NEAR RAMJANKI MANDIR, SOHAGPUR SHAHDOL (MADHYA PRADESH)**

.....PETITIONERS

(BY SHRI ADITYA SANGHI – ADVOCATE WITH MS. N.J. NORIYA-ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH THROUGH THE PRINCIPAL SECRETARY MEDICAL EDUCATION DEPARTMENT VALLABH BHAWAN BHOPAL (M.P.)**
2. **THE DIRECTOR MEDICAL EDUCATION BHOPAL SATPURA BHAWAN, BHOPAL (MADHYA PRADESH)**
3. **THE PRINCIPAL SECRETARY PUBLIC HEALTH AND FAMILY WELFARE DEPARTMENT, VALLABH BHAWAN,**

BHOPAL (MADHYA PRADESH)

4. **THE BIRSA MUNDA MEDICAL COLLEGE SHAHDOL (GOVT. MEDICAL COLLEGE) KUDRI ROAD NEAR NEW BUS STAND, SHAHDOL (MADHYA PRADESH) THROUGH ITS DEAN**

.....RESPONDENTS

(BY SMT. JANHAVI PANDIT – DEPUTY ADVOCATE GENERAL)

WRIT PETITION No. 18839 of 2022

BETWEEN:-

DR. UMESH KUMAR MISHRA S/O MR. RAMKUMAR MISHRA, AGED ABOUT 35 YEARS, OCCUPATION: MEDICAL OFFICER H.NO. 5, TYPE VA, BUNDELKHAND MEDICAL COLLEGE CAMPUS, SHIVAJI WARD SAGAR DISTRICT SAGAR (MADHYA PRADESH)

.....PETITIONER

(BY SHRI ADITYA SANGHI – ADVOCATE WITH MS. N.J. NORIYA-ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH THROUGH THE PRINCIPAL SECRETARY, MEDICAL EDUCATION DEPARTMENT, VALLABH BHAWAN BHOPAL (M.P.)**

2. THE DIRECTOR MEDICAL EDUCATION, SATPURA BHAWAN BHOPAL M.P.
3. THE PRINCIPAL SECRETARY PUBLIC HEALTH AND FAMILY WELFARE DEPARTMENT, VALLABH BHAWAN BHOPAL M.P.
4. THE BUNDELKHAND MEDICAL COLLEGE (GOVERNMENT MEDICAL COLLEGE) THROUGH ITS DEAN SHIVAJI WARD TILI ROAD, SAGAR DISTRICT SAGAR M.P.

.....RESPONDENTS

(BY SMT. JANHAVI PANDIT – DEPUTY ADVOCATE GENERAL)

WRIT PETITION No. 20061 of 2022

BETWEEN:-

1. DR. YATENDRA SINGH S/O SHRI A.L. AHIRWAR, AGED ABOUT 33 YEARS, OCCUPATION: MEDICAL OFFICER CURRENTLY POSTED AT DISTRICT HOSPITAL SAGAR, R/O FLAT NO. F-1 DISTRICT HOSPITAL CAMPUS, SAGAR (MADHYA PRADESH)
2. DR. RAJESH SATIJA S/O SHRI R.C. SATIJA, AGED ABOUT 45 YEARS, OCCUPATION: DOCTOR, CURRENTLY POSTED AT DISTRICT HOSPITAL, HARDA R/O 291 SHIVAM VATIKA, HARDA (MADHYA PRADESH)

3. DR. SADHNA SHARMA (PANDEY) W/O DR. ALOK PANDE, AGED ABOUT 49 YEARS, OCCUPATION: DOCTOR (MEDICAL OFFICER) R/O 63-RAM BAG COLONY, SHINDE KI CHHAWNI, LASKAR, GWALIOR (MADHYA PRADESH)

.....PETITIONERS

(BY SHRI SIDDHARTH RADHE LAL GUPTA – ADVOCATE WITH SHRI ASHISH MISHRA- ADVOCATE)

AND

1. THE STATE OF MADHYA PRADESH THROUGH ITS PRINCIPAL SECRETARY DEPARTMENT OF PUBLIC HEALTH AND FAMILY WELFARE VALLABH BHAWAN DISTRICT BHOAPL (MADHYA PRADESH)
2. STATE OF MADHYA PRADESH THROUGH ITS DIRECTOR, DEPARTMENT OF MEDICAL EDUCATION 5TH FLOOR, SATPURA BHAWAN, BHOPAL (MADHYA PRADESH)
3. MEDICAL COUNCIL OF INDIA THROUGH ITS CHAIRMAN / MEMBER SECRETARY POCKET 14, SECTOR 8, DWARKA, NEW DELHI
4. DIRECTOR/COMMISSIONER DEPARTMENT OF HEALTH SERVICES 5TH FLOOR, SATPURA

**BHAWAN, BHOPAL (MADHYA
PRADESH)**

.....RESPONDENTS

(BY SMT. JANHAVI PANDIT – DEPUTY ADVOCATE GENERAL)

WRIT PETITION No. 21034 of 2022

BETWEEN:-

**DR. AMAR MANDIL S/O MR. MAHESH
CHAND MANDIL, OCCUPATION-DOCTOR,
AGED ABOUT 40 YEARS, R/O A-501 SIDDHI
SAMRIDHHI NEAR JAIN MANDIR, KOLAR
ROAD DISTT. BHOPAL (MADHYA
PRADESH)**

.....PETITIONER

(BY SHRI LOKESH KUMAR JAIN AND SHRI AMIT GARG - ADVOCATES)

AND

- 1. THE STATE OF MADHYA PRADESH
THROUGH PRINCIPAL SECRETARY
DEPARTMENT OF PUBLIC HEALTH
AND FAMILY WELFARE VALLABH
BHAWAN BHOPAL (M.P.)**
- 2. STATE OF MADHYA PRADESH
THROUGH ITS DIRECTOR,
DEPARTMENT OF MEDICAL
EDUCATION 5TH FLOOR, SATPUDA
BHAWAN, BHOPAL (MADHYA
PRADESH)**
- 3. DIRECTOR / COMMISSIONER**

DEPARTMENT OF HEALTH
SERVICES 5TH FLOOR, SATPUDA
BHAWAN, BHOPAL (MADHYA
PRADESH)

.....RESPONDENTS

(BY SMT. JANHAVI PANDIT – DEPUTY ADVOCATE GENERAL)

WRIT PETITION No. 17397 of 2022

BETWEEN:-

DR. ASHOK KUMAR CHAUKSEY S/O MR.
BABOO LAL CHAUKSEY, AGED ABOUT 43
YEARS, R/O 35, PHASE-1, D.K. DEVSTHALI,
BAWADIYA KALAN, NEAR DANA PANI,
RESTRUANT, BAWADIYA KALAN, DISTT.
BHOPAL (MP)

.....PETITIONER

*(BY SHRI LOKESH KUMAR JAIN AND SHRI AMIT GARG -
ADVOCATES)*

AND

1. THE STATE OF MADHYA PRADESH
THROUGH PRINCIPAL SECRETARY,
DEPARTMENT OF PUBLIC HEALTH
AND FAMILY WELFARE VALLABH
BHAWAN, BHOPAL (M.P.)
2. STATE OF MADHYA PRADESH
THROUGH ITS DIRECTOR,
DEPARTMENT OF MEDICAL

EDUCATION 5TH FLOOR, SATPUDA
BHAWAN, BHOPAL (MADHYA
PRADESH)

3. DIRECTOR / COMMISSIONER
DEPARTMENT OF HEALTH
SERVICES 5TH FLOOR, SATPUDA
BHAWAN, BHOPAL (MADHYA
PRADESH)

.....RESPONDENTS

(BY SMT. JANHAVI PANDIT – DEPUTY ADVOCATE GENERAL)

*This petition coming on for admission this day, Hon'ble Shri
Justice Ravi Malimath, Chief Justice passed the following:*

ORDER

The facts and circumstances involved in all these writ petitions being one and the same, at the request of learned counsel for the parties the matters are heard together.

2. IA Nos.12363 and 12385 of 2022 are applications filed seeking to vacate an interim order granted by this Court on 26.8.2022. In terms whereof the petitioners were permitted to participate in the counseling process as in-service candidates on the 30% reservations for in-service doctors.

3. Various grounds have been urged in support of the application seeking vacating stay. On considering the same, we are of the view

that hearing the applications is as good as hearing the main writ petitions. Therefore, at request of learned counsels, the matters are taken up for final disposal. The facts as narrated in Writ Petition No. 16249 of 2022, are stated herein for the sake of convenience.

4.(a) The case of the petitioners is that they are all in-service doctors, who have been serving the State of Madhya Pradesh for many years. They appeared in the NEET- PG examination which was held on 22.05.2022 and have qualified for the same. The State had to prepare a list of Medical Officers who are eligible to get the advantage of 30% reservation for in-service candidates in terms of the Gazette notification dated 9th March 2018 as amended by the Gazette notification dated 5.10.2021. In terms whereof, Rule 14 of the Madhya Pradesh Chikitsa Shiksha Pravesh Niyam, 2018 (For short “Rules of 2018”) clarifies to the effect that in-service candidates which include demonstrators/tutors/medical officers are eligible for the reservation of 30% as in-service doctors. Since the petitioners were in-service doctors they were eligible for the same. However, the State brought about a provisional list vide Annexure-P/13 which contained the list of various doctors who are eligible as well as ineligible to obtain the 30% reservation. The petitioners’ name were found at serial No.95, 27 and 33 respectively. They were not a part of the successful list of candidates who were eligible to get 30% reservation for in-service candidates. Hence, the instant writ petition was filed seeking to quash the same so far as it relates to the

petitioners and for a direction to the respondents to include their names in the list of medical officers eligible for 30% reservation.

(b) It is further contended that similar facts arose for consideration on an earlier occasion where the doctors were denied the benefit of 30% reservation. The same was challenged in Writ Petition No.25819 of 2021 (Dr. Vijendra Dhanware and another Vs. The State of M.P. and others). A Division Bench of this Court by the order dated 14.01.2022 considered the said contentions which are similar to the one that are raised herein and held that the State have erred in not treating the petitioners therein as in-service candidates and therefore directed that the petitioners be treated as in-service candidates for the Postgraduate Degree Course and to consider their claim for the same in accordance with law. Hence, it is pleaded that the similar relief be granted to the petitioners.

5.(a) The State have filed their reply. They have stated therein that none of the contentions of the petitioners are required to be accepted. That Rule 14 of the Rules of 2018 has been amended and the amendment has come into force from the date of publication of Gazette on 26.7.2022 wherein Rule 14 dealing with the in-service candidates has been amended to the extent of granting benefit of 30% quota on the degree seats in all Government and Private Medical/Dental Colleges to only those in-service candidates, who have served in rural/remote/difficult areas for a minimum period of

three years. That so far as the petitioners are concerned, they have not rendered their services in the rural/remote/difficult areas and therefore, they are not entitled for 30% quota. That the said rules were amended in view of the judgment of the Hon'ble Supreme Court in the case of Tamil Nadu Medical Officers Association and others Vs. Union of India and others reported in (2021) 6 SCC 568. Therefore, in consonance with the orders passed by the Hon'ble Supreme Court, the amendment has taken place. That the said amendment having come into force with effect from 26.7.2022, is applicable to the petitioners, as the amendment has come into force much prior to the counseling process. Therefore, if at all the petitioners are aggrieved, they require to challenge the said amendment. That admittedly there is no challenge to the said amendment even as on date.

(b) I.A. No. 12363 of 2022 is an application filed by the newly added respondents seeking to vacate the stay. They have contended that they have supported the plea of the State and have stated that the amendment has been brought about much prior to the counseling process and therefore the petitioners are bound by the same and cannot take the benefit outside the amendment.

6. An additional submission is also filed by the State on 15.09.2022. They have placed reliance on the judgment of the Hon'ble Supreme Court referred to hereinabove in order to justify

their action in bringing about the amendment to the Rules. That earlier, Rule 14 of the Rules of 2018 provided for 30% quota reservation for all registered Demonstrator/Tutor/Medical officers/. By virtue of the instant amendment, the same has been restricted only for those in-service candidates who have put in service in rural/remote and difficult areas. The same is in tune with the order of the Hon'ble Supreme Court as referred to hereinabove. That the Medical Officers working in the rural/remote and difficult areas should necessarily get an advantage over those doctors who have not rendered their services in these areas. Reference is also made to Section 2 (Dha) of the Rules of 2018. That the list filed by the petitioners vide Annexure P-11 is only a tentative list prepared by the State after calling for the application in the requisite form from the concerned Medical Officers. It is only after inviting objections that a final list would be prepared and forwarded to the Department of Medical Education for consideration at the time of counseling and admission process. The Director of Health Services while preparing the final list grants the incentive marks depending on the number of years of service rendered by the Medical Officers. The incentive marks coupled with NEET PG score forms the total score of the candidate. Thereafter the final list is sent to the Director, Medical Education. It is only after the final list is received by the Director, Medical Education that the admission process begins by registration of candidates on the online portal. It is only after the name of the

candidate is sent to the Director, Medical Education in the final list and the candidate registers himself on the online portal for counseling that he becomes an in-service candidate.

7. The contention of the petitioners that the amendment cannot be applied retrospectively to them, is misconceived since the admission process begins only after the counseling schedule is declared and the candidates register themselves on the portal. Hence, it is submitted that there is no illegality or infirmity in the action taken by the respondents.

8. Certain additional documents are sought to be filed by the newly added respondents in terms of I.A. No.12499 of 2022 which is allowed and the same are taken on record.

9. The State has filed an application seeking to take additional documents on record in the court today. The same is accepted. The additional documents are taken on record.

10.(a) Based on the pleadings as well as the contentions advanced, learned counsel for the petitioners by placing reliance on Rule 14 of the Rules of 2018 pleads that the petitioners belong to the category of Medical Officers and as such they are entitled for 30% reservation. That the list prepared by the State in terms of Annexure P-13 is erroneous. That they have been wrongly denied the opportunity. That the so called amendment of the circular issued

by the State Government dated 04.07.2022 would have no bearing so far as the petitioners are concerned. That the entire process started with the NEET examination which was held in May, 2022. Therefore, if at all, the State would have to bring about any amendment, the same would have to be done much prior to that. In terms of the circular as well as the amendment the petitioners have been denied an opportunity to participate as in-service candidates. Such an action of the State is arbitrary. The very question came up for consideration before this Court in Dr. Vijendra Dhanware (supra) wherein the contentions of the petitioners were upheld and it was directed that the petitioners be granted an opportunity to participate in the 30% quota.

(b) It is further contended that in similar circumstances the High Court of Orissa in Writ Petition No. 12740 of 2013 (Himansu Sekhar Sahoo and others Vs. State of Odisha and others) decided on 24.07.2013 while considering the very question that arises for consideration herein as to whether the rules of the game could change midway, held in para 18 as follows:-

“18. Taking into consideration of the judgments of the Hon'ble Supreme Court in the case of Secretary, A.P. Public Service Commission (supra), K.Manjusree (supra) and Mohd. Raisul Islam and others (supra), it is well settled principle of law that once the process of selection has started, the prescribed selection criteria cannot be changed and further that, introducing of any change into eligibility

criteria after the selection process has commenced, would amount to changing the game after the game has been played. It is also further well settled that in the present case, the selection process commenced from 12th November, 2012 (i.e. the last date of making online application) and therefore, any requirement/selection has to be made on the basis of the process/ policy/law existing on the said date. We are of the further considered view that while the State is at liberty to change its policy and we are not required to comment upon the justifiability and reasonability of such a change of policy. We are of the view that the impugned guidelines/policy would operate only prospectively i.e. from 27.5.2013 for future examinations that may be conducted but insofar as admission of P.G. (Medical) Course for "in- service candidates are concerned for the year 2013, Clause-F-2 of the impugned guidelines cannot be made to apply to such admissions into the seats reserved for "in-service candidates" for the year 2013-14."

(c) The said judgment was challenged in SLP No.24238 of 2013 (State of Odisha and others Vs. Dr. Himansu Sekhar Sahoo and others) before the Hon'ble Supreme Court wherein vide order dated 30.07.2013 the SLP was dismissed.

(d) So also the Hon'ble High Court of Rajasthan in the case of Abhishek Vyas (Dr.) Vs. State of Rajasthan and others in Civil Writs No. 5995 of 2019 decided on April, 2, 2019 held in para 11 to 14 as follows:-

“11. Question as to what reservation is to be applied in State of Rajasthan for admission to PG Courses is the only aspect which needs to be addressed too. Admittedly the last date of application was 22.11.2018 and on that date the reservation policy as existing in the State of Rajasthan did not provide for additional 5% reservation for More Backward Classes. The seats which were determined for admission in the colleges for State of Rajasthan had to be bifurcated according to the reservation policy as existing on the last date of application. In my considered view therefore, the new reservation policy as substituted vide notification dated 13.02.2019 providing for 5% More Backward Classes could not be applied retrospectively on the selection process which had already commenced in November 2018 in terms of the NEET notification issued by the National Board of Examination. The reservation policy as existing on the last date of application in the State of Rajasthan would therefore remain in force for the selection and the State Government and its authorities are bound to make admissions accordingly.

12. The aspect relating to Manish Kumar Nagda as pointed out by learned Advocate General was distinguishable in the said case. The TSP area notification issued under the constitutional scheme provided the candidates of the said area to be given additional benefit and for the said purpose a corrigendum was issued by the RPSC on 04.06.2018 extending the last date of application. In the case of Lalit Kumar the UGC Regulations already provided relaxation of 5% marks under the Regulations of 2010 at UG Level by clarification the same was also made applicable at PG Level but the advertisement dated 12.01.2015 did not provide regulations of 5%

in good academic record at the graduate level taking into consideration the provisions of 2010 regulations to be mandatory the Coordinate Bench directed that the same would be applicable to the State of Rajasthan and on the advertisement itself in both the cases whether the amendment has been introduced during the selection process and hence both the judgments are not applicable in the present case.

13. My view is further fortified in view of the law as laid down in the judgments as cited above by counsel for the petitioner.

14. Therefore the respondents are restrained from providing reservation in terms of notification dated 13.02.2019 on the on going counseling admission process NEET PG Examination 2019 and the reservation policy as existing on the last date of application shall be followed for admission.”

(e) Therefore, the learned counsel pleads that such an action of the State requires to be set aside and the petitioners be granted an opportunity to participate and get relief under the 30% quota.

11. So far as the question of changing of rule of game is concerned, it is undisputed that the NEET examination was held in the month of May, 2022. The results were declared on 08.06.2022. Thereafter, the counseling was scheduled to be held in September, 2022. The circular (Annexure P/1) was issued by the State on 04.07.2022. The State circular would narrate that it is issued by the State Government in pursuance to the recommendation made by a committee constituted on 06.05.2022 for the purposes of implementing the judgment of the High Court in Dr. Vijendra

Dhanware (supra). It is further pleaded that the committee having recommended so, the circular dated 04.07.2022 was issued. Admittedly, the same has been issued much after the declaration of the results of the NEET examination. The communication dated 04.07.2022 was addressed by the Additional Director, Directorate of Health Services to the Chief Medical and Health Officers and the Civil Surgeons intimating them the list of doctors who were called for by 24.06.2022 and, therefore, the objections were sought for so far as the said list is concerned. The said list, therefore, prepared is said to be a provisional list as is produced in terms of Annexure P-13. Apparently, the names of the petitioners did not find place therein. On the same day, the Government issued yet another circular restricting the 30% reservation only to those doctors who are rendering services in rural/remote and difficult areas. The communication addressed in terms of Annexure P-1 does not indicate that the Government have taken a decision under circular issued to that extent. Apparently, that was the view of the Government as on 04.07.2022 to the effect that the relief should be restricted only to those doctors who are rendering services in rural/remote and difficult areas. Therefore, at least when the objections were called for, the list that is to be prepared, the candidates should have been made aware that such is the circular of the Government which restricts the quota to only those doctors who are putting in services in rural/remote and difficult areas. That is not

to be found. The said circular has been placed for consideration before this Court only in this petition not even by the State but by the interveners. That even so far as the list is concerned with regard to the petitioners, their names have been shown that they are not eligible for getting the benefit of the 30% quota. So far as the contention with regard to the circular and the subsequent amendment is concerned, we are of the considered view that the same has been issued much after the selection process has commenced. Therefore, it would not be appropriate to apply the said amendment so far as the writ petitioners are concerned.

12. Much is being argued by the State to the effect that a Committee was formed subsequent to the order of the Hon'ble Supreme Court with regard to the amendment and that the said amendment is intended to help those doctors who have put in services in rural/remote and difficult areas. Be that as it may, the stage at which such an amendment has been brought about by the State, in our considered view, may not be applicable in so far as the writ petitioners are concerned.

13. The judgment of the Hon'ble Supreme Court was rendered on 31st August, 2020. Much thereafter, various orders have been passed by the Government including the Gazette notification dated 05.10.2021 wherein they state that in terms of Rule 14 of the Rules of 2018, the doctors shall include Demonstrators/Tutors/Medical

Officers. Therefore, if really the intention of the State were to comply with the order of the Hon'ble Supreme Court in carrying out the amendment, the said circular has no nexus with the same. Even after the order of the Hon'ble Supreme Court such an order has been passed by the State.

14. So far as writ petitioners are concerned, we are of the considered view that the denial of the petitioners' right to apply as in-service candidates has been grossly affected. That they are entitled to be considered as in-service candidates in terms of Rules 2 and 14 of the Rules of 2018. Not including their names in the list of candidates who were entitled for such a relief, in our considered view, is inappropriate.

15. Furthermore, in almost identical circumstances, the said issue came up for consideration before this Court in the case of Dr. Vijendra Dhanware (supra). The question the Court therein was concerned with, was as to whether the writ petitioners therein who were presently posted at the District Hospitals at Harda and Indore which are not rural, remote and difficult areas, are entitled for 30% incentive marks. The Court held that they are entitled for such a relief and they cannot be denied the same only because they were not working in any rural/remote and difficult areas. This was primarily due to the fact that the definition of rural/remote/difficult was not found in the rules that were prevailing at that time or in the

rules that are applicable to the writ petitioners presently. The same has been brought about only by the amendment with effect from 26.07.2022. Therefore, the petitioners would be entitled for the said relief.

16.(a) A similar question came up for consideration before the Hon'ble Supreme Court in the judgment reported in (2012) 1 SCC 177 in the case of Parmender Kumar and others vs. State of Haryana and others. The question that arose for consideration before the Hon'ble Supreme Court, as stated therein, in para 26, reads as follows:-

“(26). From the facts as disclosed, the only question which emerges for decision in these appeals is whether the State Government had any jurisdiction and/or authority to alter the conditions relating to admission in the Post-Graduate or Diploma Courses in the different disciplines in medicine which had earlier been indicated in the prospectus, once the examination for such admission had been conducted and the results had been declared and a select list had also been prepared on the basis thereof. In other words, once the process of selection had started on the basis of the terms and conditions included in the prospectus, was it within the competence of the State Government to effect changes in the criterion relating to eligibility for admission, when not only had the process in terms of the prospectus been started, but also when counselling was to be held on the very next day, which had the effect of eliminating many of the candidates from getting an opportunity of pursuing

the Post-Graduate or Diploma Courses in the reserved HCMS category.”

In answering the said question, the Hon’ble Supreme Court has held in para 29 as follows:-

“29. As has also been pointed out hereinbefore, this Court in Rajiv Kapoor case took notice of the fact that the Full Bench, on whose decision the High Court had relied, ultimately directed that the selections for admission should be finalised in the light of the criteria specified in the Government Orders already in force and the prospectus, "after ignoring the offending notification introducing a change at a later stage." (emphasis supplied) In fact, this is what has been contended on behalf of the Appellants that once the process of selection of candidates for admission to the Post-Graduate and Diploma Courses had been commenced on the basis of the prospectus, no change could, thereafter, be effected by Government Orders to alter the provisions contained in the prospectus. If such Government Orders were already in force when the prospectus was published, they would certainly have a bearing on the admission process, but once the results had been declared and a select list had been prepared, it was not open to the State Government to alter the terms and conditions just a day before counselling was to begin, so as to deny the candidates, who had already been selected, an opportunity of admission in the aforesaid courses.”

(b) The Hon’ble Supreme Court came to the view that it was not open to the State to alter the terms and conditions just a day before

the counseling was to begin so as to deny the candidates who had already been selected, an opportunity of admission in the aforesaid courses. However, in the present case the NEET Exam results were announced on 08.06.2022. The amendment was brought about with effect from 26.07.2022. So far as the amendment is concerned, the petitioners would not be affected by such an amendment. That the amendment will act prospectively for the next batch of students and not the petitioners.

17. Having considered the contentions and considering the judgments of the Hon'ble Supreme Court and other Courts, we are of the view that the petitioners are entitled for appropriate relief. Firstly, is the fact that the NEET Exam was held in the month of May 2022 and the results were declared on 08.06.2022. The amendment has been brought about with effect from 26.07.2022. Therefore, the said amendment would not have a bearing so far as this batch of doctors is concerned. As stated by the Hon'ble Supreme Court in the aforesaid judgment that the rules of the game cannot change once the game starts. If at all the State were interested to bring about the amendment they should have brought it about in an appropriate time. The judgment relied upon by the State was delivered by the Hon'ble Supreme Court on 31st of August, 2020. The Gazette notification was issued on 05.10.2021 to the effect that in terms of Rule 14 of the Rules of 2018, the doctors shall include Demonstrator/Tutor/Medical Officer. Therefore, the intended

applicability of the judgment of the Hon'ble Supreme Court is belied by the notification dated 05.10.2021. Almost two years after the judgment of the Hon'ble Supreme Court was rendered, the instant amendment has taken place. Even though the State is at liberty to bring about the amendment on such a day if so chooses, its applicability is a question of law. The applicability of the amendment is necessarily from the date of amendment for all those candidates for whom the selection process has not commenced. It cannot be made applicable to an ongoing selection process. The selection process has commenced on holding the examination in the month of May, 2022. Therefore, any change of law or rules should have been brought into effect prior to that date and not subsequently. The same is the view as expressed by the Hon'ble Supreme Court in the aforesaid judgments. Therefore, we are of the view that the said amendment would not have applicability to the present batch of students. A new list of doctors would have to be prepared without reference to the Amendment Act dated 26.07.2022.

18. At this stage, learned Deputy Advocate General submits that this order may be restricted only so far as the writ petitioners are concerned. However, we do not think that complete justice would be done in case such a contention is accepted.

19. We have concluded that the impugned amendment is prospective and cannot affect the present batch of doctors.

Therefore, this would apply to every candidate in the present batch of doctors. In our considered view, it cannot stand restricted only to the petitioners before us. Since the amendment is held to be prospective it would not affect the present batch of doctors. Hence all the existing doctors would be entitled to the similar relief as the writ petitioners.

20. Consequently, the writ petitions are partly allowed. The list vide annexure P-13 in Writ Petition No.16249 of 2022, and the lists in the other writ petitions are set aside. The respondents are directed to redo the list in accordance with the Rules of 2018 (5th October, 2021 Amendment). The Amendment Act No. F.-14-17-2007-42-1 dated 26.07.2022 will have no bearing on the preparation of the new list.

(RAVI MALIMATH)
CHIEF JUSTICE

(VISHAL MISHRA)
JUDGE

msh