

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

**BEFORE  
SHRI JUSTICE SUJOY PAUL  
SHRI JUSTICE DWARKA DHISH BANSAL**

**ON THE 16<sup>th</sup> MARCH, 2022**

**WRIT PETITION No. 3138 of 2022**

**BETWEEN :-**

Dr. Rajni Shende,  
Medical Officer, C.H.C. Katangi, Balaghat,  
W/o Mr. Hemant Meshram,  
aged 40 years,  
R/o Anand Marg, Narmada Nagar,  
Balaghat, (M.P.).

**.....Petitioner**

(By Shri Siddharth Radhe Lal Gupta, Advocate)

**AND**

1. State of Madhya Pradesh,  
Through its Principal Secretary,  
Department of Public Health and Family Welfare,  
Vallagh Bhawan, Bhopal, (M.P.),
2. State of Madhya Pradesh,  
Through its Director,  
Department of Medical Education,  
5<sup>th</sup> Floor, Satpura Bhawan, Bhopal, (M.P.),
3. Director/ Commissioner,  
Department of Medical Education,  
5<sup>th</sup> Floor, Satpura Bhawan, Bhopal, (M.P.), 462004,
4. Commissioner,  
Department of Health, 6<sup>th</sup> Floor, Satpura Bhawan,  
Bhopal, (M.P.) 462004,

**.....Respondents**

(By Smt. Janhvi Pandit, Deputy Advocate General)

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<b>Whether approved for reporting</b>	<b>YES</b>
<b>Law Laid down :-</b>	<p><b>1. M.P. Chikatsa Shiksha Pravesh Niyam 2018 (Admission Rules)-In service- candidate-</b> The regular/ contractual government employee who after obtaining NOC from employer got himself/herself registered in the portal alone can become ‘in-service candidate’.</p> <p><b>Rule-6 of Admission Rules-Registration:</b> The selected candidate needs to get herself registered within prescribed time limit by furnishing necessary information on the official portal in prescribed format.</p> <p><b>2. Interpretation of Statute:</b> If language of statute is clear and unambiguous, it has to be given effect to irrespective of the consequence.</p> <p><b>3. Interpretation of statute:</b> If statute prescribes a thing to be done in a particular manner, it has to be done in the same manner and other methods are unknown to law.</p> <p><b>4. <u>The technical defect- Proof of qualification:-</u></b> The candidate is required to submit necessary application/candidature within stipulated time and before the cut-off date prescribed. If document in support of qualification is not furnished although candidate possessed it, could have been furnished in certain circumstances as per the judgment of Supreme Court in <b>Charles K. Skaria and others (Supra)</b>. In the instant case, said judgment cannot be made applicable because candidate did not get herself registered within stipulated time and did not furnish necessary information in prescribed format.</p>

**O R D E R**

**SUJOY PAUL, J.**

The petitioner a MBBS qualified Doctor working as Medical Officer in Department of Health Services, Government of Madhya Pradesh and currently posted at Tahsil Katangi, district Balaghat has filed this petition under Article 226 of the Constitution of India seeking a direction to treat her as an ‘in service candidate’ as per **Admission Rules, 2018** and accordingly extend her the benefit of 30% reservation/source of entry with additional incentive marks to the tune of 30% as per provisions of Regulation 9 (IV) of

the **M.C.I. Regulations 2000** in the on going counselling process for admission to Post Graduate (P.G.) Course.

2. Briefly stated, relevant facts are that the petitioner was appointed as Medical Officer in April 2011 (Annexure P/1). After rendering services in District Hospital, Betul for some time, she was transferred and posted to Community Health Centre, (C.H.C.), Katangi, District Balaghat in January 2017. The certificate issued by Chief Medical & Health Officer, (C.M.H.O.) is Annexure P/2.

3. Indisputably, petitioner belongs to S.C. category and is a Government Employee. The petitioner pleaded that the Commissioner, Department of Medical Education through communication dated 12.11.2021, (Annexure P/4) directed all P.S.U.s., District Hospitals, C.M.H.O.s. etc. to send a list of all the 'in-service Doctors' rendering services in their respective Districts. It was the responsibility of said officers to furnish such information of Doctors to the D.H.S. and D.M.E. so that the candidates who appeared in the NEET, P.G. Examination can be given the benefit of 30% reservation.

4. The Government opened the counselling process through public notice dated 12.10.2021 (Annexure P/5). In this notice, it was specifically mentioned that concerned 'in-service Medical Officer' must get their registration done as 'open category candidate' in the registration which is to start from 11.10.2021 and to be continued till 17.10.2021. It was further made clear that post registration, prior to counselling, the status of the concerned in-service Medical Officer shall be automatically *updated* by the Counselling Authority/State Authority as '*in-service candidate*' and they shall be given intimation in this regard.

5. The D.M.E. issued another public notice dated 12.01.2022 mentioning details of all the 'in-service candidates' working with the D.H.S., M.P. and other Health Departments, which was required to be automatically updated on the website by latest on 17.1.2022. No intimation was given for any 'in-service candidate' to approach C.M.H.O. or the D.H.S. to claim the candidature for 'in-service category' reservation but primarily it was through and through the responsibility of the concerned C.M.H.O. and D.H.S, M.P., wherein concerned employee was working to furnish the details.

6. Shri Siddharth Radhelal Gupta, learned counsel for petitioner submits that the merit list was uploaded on the official website of D.M.E. in the 'in-service category' on 17.1.2022 (Annexure P/7). The petitioner's name did not find place in the merit list of 'in-service candidate'. Indeed, it is mentioned in overall merit list prepared for open category candidates ('non in-service') at sl. no. 2760. Hence, petitioner was treated as SC/reserved category candidate but not 'in-service candidate'.

7. In the previous year also, while taking NEET examination, the C.M.H.O. issued a form 8-A certificate to her for getting the benefit of incentive marks of 30%. The said form 8-A is filed as Annexure P/9.

8. In the current year, C.M.H.O. realized his fault and issued the form 8-A certificate to the petitioner belatedly on 20.1.2022 (Annexure P/10). This form contains an entry that petitioner has served in remote, difficult and rural areas.

9. When petitioner found her name missing in the merit list of 'in-service candidate' (Annexure P/8), she started representing the matter before the authorities. One such representation dated 24.1.2022 is filed as Annexure

P/11. No corrective steps were taken by the department. On the contrary, petitioner was treated as S.C. category candidate, which is evident from Annenxure P/12.

10. The contention of petitioner is that as per definition of 'in-service candidate' mentioned in the **Admission Rules of 2018**, the petitioner who is working as Medical Officer is automatically covered as 'in-service candidate'. Rule 14 (4) starts with the requirement of procuring NOC from the employer, i.e. D.H.S., M.P. It is argued that this requirement is only directory and not mandatory because no penal consequences of the absence of said NOC prior to registration with the Online Portal is provided. Thus, for want of a technical document of NOC, petitioner cannot be deprived of the fruits of an 'in-service candidate'.

11. The next contention of petitioner is based on regulation no.9(4) of **M.C.I. P.G. Regulations 2000**. It is urged that as per order dated 28.2.2019, the petitioner has worked in schedule area (Entry No. 31 in Schedule 2), and, therefore, she is entitled to get additional incentive marks. If said marks are given, she will be entitled to get seats of M.S. Obstetrics & Gynecology in M.G.M. Indore or G.M.C., Bhopal. Choice filling report (Annexure P/17) is relied upon for this purpose.

12. It is further urged that if petitioner succeeds, she would be allotted the singular reserved seat for S.C. category (Women) in the Obstetrics & Gynecology in M.G.M. Indore and Gandhi Medical College, Bhopal. This claim is based on the submission that if 30% marks which the petitioner is entitled to are added to her existing marks, i.e. 317 + 30% of 317 (95.1) is equal to 412 marks. Thus, she would be the highest scorer among all the SC

category candidates in the separately prepared merit list of 'in-service candidates', who are having a separate source of entry of 30% in M.P.

**13.** To sum up, learned counsel for the petitioner urged that :-

**(A)** That if on the date of application, the petitioner was possessing eligibility and experience for being considered and selected as a 'in-service candidate', the said benefit cannot be denied for the absence of any eligibility/experience certificate. If during counselling, said certificate is produced by the petitioner, no hyper technical approach should deprive the petitioner from the fruits of consideration and selection. Reliance is placed on **(1980) 2 SCC 752 (Charles K. Skaria & Ors. Vs. Dr. C. Mathew & Ors.)**, **(2019) 5 SCC 793 (Food Corporation of India Vs. Rimjhim)**, **(2005) 9 SCC 779 (Dolly Chhanda Vs. Chairman, JEE & Ors.)** and judgment of Madras High Court in **W.P. No. 8223/2017 & WMP No.8978 of 2017 and WMP 8978/2017 (R. Vimalkanth Vs. Food Corporation of India)**.

**(B)** If all necessary requirements of any application are fulfilled by the petitioner then for want of a document like NOC from a particular authority, the intended benefit under the applicable rules must not be denied. Reference is made to **(2015) 3 M.P.L.J. 657 (Gyanjeet Sewa Mission Trust Vs. Union of India and Ors.)**, **(2014) 14 SCC 675 (Royal Medical Test (Registered Vs. Union of India & Anr.)**, **(2015) 10 SCC 80 (Ponnaiyah Ramajayam Institute of Science & Technology Trust Vs. Medical Council of India & Anr.)**, **2015 SCC OnLine, Ker. 3193 (Medical Council of India Vs. S.R. Educational and Charitable Trust, 2021 SCC OnLine**

**Del 3896 (Career Convent Educational and Charitable Trust Vs. Union of India and Another).**

14. Without prejudice to the aforesaid contentions, Shri Gupta submits that in case this court does not want to upset the process, which has already taken place, the petitioner can be permitted to participate in the mop up round as in-service SC/Women category candidate. In view of interim orders passed by this court, the respondents are bound to give appropriate seat to the petitioner.

15. Ms. Janhvi Pandit, learned Deputy Advocate General opposed the prayer of petitioner and urged that the petition is misconceived. The Public Health & Family Welfare Departments order dated 28.2.2019 (Annexure P/13) shows that as per Clause 3.3 and 3.7 of the said order all the eligible 'in-service candidates' (Medical Officers) were required to submit their applications alongwith the result of their examination to the Directorate of Health Services, but thereafter, the Directorate of Health Services was required to calculate the marks obtained by the 'in-service candidates' and prepare a complete list of the candidates.

16. Application in prescribed form 8, 8-A and Annexure C were required to be submitted to the concerned CMHO, who in turn, was required to forward the same to the Directorate of Health Services. For this reason, the letter dated 29.9.2021 (Annexure AR/1) was issued by the Directorate of Health Services addressed to all the Chief Medical & Health Officers required 'in-service candidates' to submit their details in the said prescribed forms before 4.10.2021, the last date for forwarding the list of 'in-service

candidate' to the Directorate, Health Services. A copy of letter dated 29.9.2021 is filed with additional return as (Annexure AR/1).

It is further averred that the Directorate issued a tentative list on 2.11.2021 on the basis of information of candidate received in form 8 and 8-A and called the objection from the in-service candidates whose names have been left-over/ not included in the list of in-service candidates. Petitioner despite being aware about the said list which did not contain her name, not raised any objection. The petitioner's representation dated 24.1.2022 (Annexure P/11) shows that she admittedly did not furnish necessary information to the Directorate within stipulated time.

17. Learned Deputy Advocate General strenuously contended that entire process is conducted in a centralized manner and the details of the orders issued are uploaded on the official website of Directorate of Health Services, i.e. [www.mponline.gov.in](http://www.mponline.gov.in). All candidates viewed it and acted in accordance with information contained therein. A copy of list of orders uploaded on the website is filed as Annexure AR/2. Thus, it was the duty and responsibility of the candidate concerned to be vigilant and submit her application in the prescribed format in time as prescribed by the rules, guidelines and orders issued in this regard from time to time. The petitioner was required to submit her application in form 8, 8-A and Annexure- C in time to the concerned CMHO, who in turn was required to forward the same to DHS.

18. Ms. Janhvi Pandit, learned Deputy Advocate General placed heavy reliance on the language employed in definition of 'in-service candidate' as per **Admission Rules** as well as on Rule 14 (4). She submits that a conjoint reading of the definition and letter dated 29.9.2021 (Annexure AR/1)



aforesaid, the methodology prescribed for registration and cut-off date upto which petitioner was required to submit her candidature clearly shows that if petitioner failed to do so, she cannot take advantage of her own wrong and claim status of 'in-service candidate'.

19. Based on the judgments of Supreme Court reported in **AIR 1999 SC 3558 (Chandra Kishore Jha Vs. Mahavir Prasad and others)**, **AIR 2001 SC 1512 (Dhanajaya Reddy Vs. State of Karnataka)**, it is argued that if statute provides that a thing is to be done in a particular manner, then it has to be done in the same manner and in no other manner than the manner prescribed. Since, petitioner has not followed the said manner, the petitioner does not deserve any relief.

20. **AIR 1997 M.P. 56 (State of M.P. Vs. Jitendra Kishore Bhargava)** is pressed into service by contending that in the mid way when selection/counselling process is in full swing, interference is not warranted. For the same purpose **2002 (7) SCC 252 (M.C.I. Vs. Madhu Singh)** is relied upon.

21. Lastly, Ms. Pandit submits that in **W.P. No. 14736/2019 (Ayushi Sarogi Vs. State of M.P.)** it was clearly held that sanctity of admission process must be maintained. If candidature is not in consonance with the prescribed procedure, no relief is due to the candidate.

22. Shri Gupta and Ms. Janhvi Pandit filed brief synopsis in support of aforesaid submissions.

23. The parties confined their arguments to the extent indicated above.

24. We have heard the learned counsel for the parties at length and perused the record.

25. Before dealing with the rival contentions advanced at the Bar, it is apposite to reproduce the notice dated 12.10.2021, which reads as under :-

दिनांक 12 / 10 / 2021

// सेवारत अभ्यर्थियों हेतु आवश्यक सूचना //

समस्त पात्र सेवारत अभ्यर्थियों (स्वास्थ्य सेवायें एवं चिकित्सा शिक्षा के अन्तर्गत शासकीय महाविद्यालय में कार्यरत प्रदर्शक, ट्यूटर एवं चिकित्सा अधिकारी) को सूचित किया जाता है कि मध्यप्रदेश राज्य स्तरीय संयुक्त काउंसिलिंग नीट पी.जी. 2021 के लिए निर्धारित समय सारणी अनुसार पंजीकरण की प्रक्रिया (Registration) दिनांक 11/10/2021 से दिनांक 17/10/2021 तक की जानी है, अतः वे अपना रजिस्ट्रेशन ओपन अभ्यर्थी की श्रेणी में उपरोक्त समयावधि में अनिवार्य रूप से कर लें।

पात्र पंजीकृत अभ्यर्थी की ओपन श्रेणी को पंजीकृत अभ्यर्थियों की मेरिट सूची प्रदर्शित करने से पूर्व सेवारत में अपडेट (Update) कर दिया जायेगा। अपडेट करने के उपरान्त सेवारत अभ्यर्थी के रजिस्टर्ड मोबाईल नंबर पर पुनः अपडेटेड रजिस्ट्रेशन स्लिप प्राप्त करने संबंधी सूचना दी जायेगी। ऐसे सेवारत अभ्यर्थी अपने Candidate login के माध्यम से अपना अपडेटेड रजिस्ट्रेशन स्लिप जनरेट कर लें।

संचालक चिकित्सा शिक्षा  
मध्य प्रदेश

26. The definition of 'in-service candidate' as per Admission Rules is reproduced as under :-

(घ) 'सेवारत अभ्यर्थी' से अभिप्रेत है, मध्यप्रदेश सरकार के अधीन किसी विभाग अथवा संस्था में नियमित अथवा संविदा सेवा में कार्यरत अभ्यर्थी जिसने नियोक्ता से अनापत्ति प्राप्त करने के पश्चात् प्रवेश हेतु पोर्टल पर पंजीयन कराया हो :

27. Rules 6 relates to registration, which reads thus :

6. **पंजीयन**,— चयन परीक्षा में उत्तीर्ण अभ्यर्थी को पोर्टल पर आवश्यक जानकारी देते हुए विनिर्दिष्ट समय-सीमा के भीतर पंजीयन कराना होगा। अभ्यर्थी को पंजीयन के लिए आवश्यक समस्त जानकारी पोर्टल पर, पंजीयन के प्रपत्र में उपलब्ध कराना होगी। जानकारी अपूर्ण होने की दशा में पंजीयन नहीं हो सकेगा। पंजीयन पश्चात् पंजीयन में दी गई जानकारी में परिवर्तन, संशोधन अथवा अतिरिक्त जानकारी प्रदाय अथवा स्वीकार नहीं की जाएगी।

28. The relevant portion of Rule 14 of **Admission Rules** on which both the parties placed reliance is as under :-

14. **सेवारत अभ्यर्थी के लिए प्रोत्साहन**,—

- (1) .....
- (2) .....
- (3) .....
- (4) **नियोक्ता से अनापत्ति प्राप्त करने के पश्चात् पोर्टल पर पंजीयन करने वाले सेवारत अभ्यर्थी को मेडिकल काउंसिल ऑफ इण्डिया (MCI)/ डेन्टल काउंसिल ऑफ इण्डिया (DCI) द्वारा समय-समय पर विनिर्दिष्ट अधिमान्य अंक देते हुए प्रवेश हेतु आबंटन के लिए उनका परस्पर वरीयता क्रम नियत किया जाएगा।**
- (5) सेवारत चिकित्सों को अनापत्ति प्रमाण-पत्र जारी करने की शर्त, पात्रता एवं चयन आदि के मापदण्ड मध्यप्रदेश शासन का लोक स्वास्थ्य एवं परिवार कल्याण विभाग समय-समय पर निर्धारित कर सकेगा जिसे पोर्टल पर प्रदर्शित किया जाएगा।

29. The plain reading of notice dated 12.10.2021 shows that in-service candidates were required to get themselves registered between 11.10.2021 to

17.10.2021. In the pleadings of the writ petition, petitioner has nowhere pleaded that she got herself registered within the said period mentioned in the notice dated 12.10.2021. On the contrary, petitioner's representation dated 20.1.2022 (Annexure P/22) and another representation dated 24.1.2022 filed along with I.A. No.1575/2022 shows that she got herself registered for DME Counselling on 18<sup>th</sup> October, 2021 and sent her form 8 and 8-A on 20.1.2022 only. It is thus, crystal clear that petitioner did not get herself registered even as per 'open category' candidate as per notice dated 12.10.2021 between 11.10.2021 to 17.10.2021. She did not raise any objection when the tentative list of 'in-service candidates' was issued which did not contain her name.

**30.** The petitioner preferred a representation on 20.1.2022 for inclusion of her name. The requisite form 8 and 8-A were also submitted on 20.1.2022. The letter dated 29.9.2021 (Annexure AR/1) makes it clear that the medical officers who have furnished requisite information in form 8 and 8-A within stipulated time would be entitled for incentive marks. The petitioner, admittedly did not get herself registered and furnished form 8 and 8-A within stipulated time.

**31.** The definition of 'in-service candidate' is clear and unambiguous. Only such working employee who has obtained no objection from the employer and thereafter got himself/ herself registered in the portal can be treated as 'in-service candidate'. This is trite that when language of statute is clear and unambiguous, it has to be given effect to irrespective of consequences. [See: **Nelson Motis Vs. Union Of India and another 1992 (4) SCC 711** which is recently followed in **P. Gopalkrishnan alias Dileep**

**Vs. State of Kerala and another 2020 (9) SCC 161].**

**32.** The procedure of registration finds place in rule 6 of the Admission Rules. For the purpose of registration, the passed candidate needs to get herself registered within *prescribed time limit*. The necessary information for registration in proper format needs to be furnished failing which registration is impermissible. A conjoint reading of definition of ‘in-service candidate’ and Rule 6 i.e. ‘registration’ leaves no room for any doubt that in absence of registration after obtaining NOC and without furnishing requisite information in proper format petitioner cannot treat herself to be ‘in-service candidate’. The petitioner having failed to register herself as ‘in-service candidate’ within stipulated time with correct information, cannot take advantage of her own wrong. It will not be proper to upset a selection process midway and put the clock back for a candidate who did not comply with the requirement of **admission rules**.

**33.** So far the proposition ‘A’ and ‘B’ raised by petitioner are concerned, it is apposite to note that in **Charles K. Skaria and others (Supra)** on which mainly propositions are based, a notification inviting application was published by State of Kerala in the Gazette on 2<sup>nd</sup> February, 1979 wherein the last date for receipt of application was set down as 31<sup>st</sup> March, 1979. The candidate therein preferred the requisite application within the stipulated time mentioned hereinabove but did not provide the proof of having obtained a diploma along with the candidature. In this backdrop, the Apex Court opined that if candidates secured a diploma before the last date of submission of candidature, it is prudent to produce evidence of diploma along with the application but i.e. secondary. Relaxation of the date on the

first, is impermissible and illegal but diploma certificate can be produced later-on i.e. before the date of actual selection.

**34.** In our consider opinion, even as per judgment of **Charles K. Skaria and others (Supra)**, the application/candidature was required to be submitted before the cut-off date. The said judgment is not an authority on the proposition that registration not made as per admission rules within the stipulated time will bestow any right to the candidate to get herself registered as 'in-service candidate' at a later point of time after the cut-off date. Needless to emphasize that both the propositions based on the judgment of **Charles K. Skaria and others (Supra)** and other judgments will not cut any ice because no judgment cited by Shri Siddharth Radhe Lal Gupta, Advocate lays down the principle that candidature should be accepted even when it was not submitted within stipulated time before cut-off date with requisite documents as per the rules. Thus, judgments cited by the Siddharth Radhe Lal Gupta, Advocate cannot be pressed into service in the factual matrix of this matter.

**35.** We find substance in the argument of Smt. Janhvi Pandit, Deputy Advocate General that if statute prescribes a thing to be done in a particular manner, it has to be done in the same manner and other methods are unknown to law. A Division Bench of this Court has recently followed the *ratio decidendi* of the judgments cited by the State in **2021 (3) MPLJ (Cri), 93 (Vishal D. Remeteke Vs. State of M.P. and others)**. For this reason also, no relief is due to the petitioner who did not register herself within stipulated time and did not furnish requisite information in prescribed formats as per Admission Rules within the said time limit.

**36.** In view of the foregoing analysis, no case is made for interference in this petition under Article 226 of the constitution. The administration has acted in consonance with the **Admission Rules**.

**37.** Thus, interference is declined and this petition is **dismissed**. No cost.

**(SUJOY PAUL)**  
**JUDGE**

**(DWARKA DHISH BANSAL)**  
**JUDGE**

bks/Ahd

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

**WRIT PETITION No. 3138 of 2022**

*Dr. Rajni Shende,*

*-Versus-*

*State of Madhya Pradesh & others*

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**ORDER FOR CONSIDERATION**

**(SUJOY PAUL)  
JUDGE  
\_\_\_\_\_/03/2022**

**( DWARKA DHISH BANSAL)  
JUDGE  
\_\_\_\_\_03/2022**

**POST FOR: \_\_\_\_/03/2022**

**(SUJOY PAUL)  
JUDGE  
\_\_\_\_\_/03/2022**