ABSTRACT

Medical Education – Admission to Post Graduate Super Specialty (DM / M.Ch.) (NEET-SS) Courses – Allocation of 50% of Post Graduate Super Specialty seats in Government Medical Colleges to in-service candidates from the academic year 2020-2021 - Orders – Issued.

HEALTH AND FAMILY WELFARE (MCA-1) DEPARTMENT

G.O. (Ms.) No.462 **Dated: 07.11.2020**
சார்வரி வருடம்,
ஐப்பசி மாதம் –ம் நாள்
திருவள்ளுவர் ஆண்டு 2051

Read

1. Orders of the Hon'ble Supreme Court of India, dated 31.08.2020 in W.P.(C).No.196 of 2018.
2. Opinion of the Learned Advocate General of Tamil Nadu, High Court of Madras, Opn.No.149/AGVN/2020, dated 08.10.2020.
3. From the Director of Medical Education, letter Ref. No.57148/ME2/1/2020, dated 16.10.2020.

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ORDER:

In the letter third read above, the Director of Medical Education has stated that from the year 1993 to 2016, the selection of the students in Super Specialty (DM / M.Ch.) Course was done on the basis of marks obtained in the entrance examination conducted by the Government of Tamil Nadu and marks for total service / practice after completion of CRRI. The maximum marks for the entrance examination was 90 (Ninety) and marks awarded for each year 1(one) mark after completion of CRRI to a maximum of 10 marks out of the total marks of 100. Upto 1999-2000, the admission to Super Specialty Course had been done by following the rule of reservations. From 2000-2001 onwards, as per Supreme Court order, the said admission had done on the basis of merit only, as follows:-

> *"50% of the seats were available for open quota to which both service and non-service candidates were eligible for selection on the basis of merit. 50% of the seats in each of the specialties were allocated exclusively to service candidates. In success of the policy framed by the State of Tamil Nadu which has been in place for several years, 50% of the State quota seats in each Super Specialty of the Post Graduate Courses are allocated to doctors in Government Service. On selection, the Government Service doctors are required to serve the Government till superannuation while non-service doctors are required to serve the Government for a period of not less than two years after"*

2. The Director of Medical Education has also stated that as per the policy of the State, 50% of the State quota seats in each Super Specialty of the Post Graduate Courses are allocated to in-service Doctors. In the bond condition it is stipulated that on selection, the in-service Doctors are required to serve the Government till superannuation while the non-service Doctors are required to serve the Government for a period of not less than two years after completion of the course. This ensures the provision of quality health care to people of Tamil Nadu, particularly, those living in rural, remote and hilly areas. Upto the academic year 2015-2016, the admissions to Post Graduate Super Specialty Courses i.e. DM / M.Ch. Courses in Tamil Nadu were made with a provision of earmarking 50 percent of the seats in each specialty and in each college for the service candidates and remaining 50 percent of seats allotted to the candidates who are domicile of Tamil Nadu, based on the marks obtained by the candidate in the entrance examination conducted by the Selection Committee.

3. The Director of Medical Education has further stated that in its interim order dated 01.07.2016 in W.P. (C) No. 444 of 2015, the Hon'ble Supreme Court of India had by an interim order directed the State of Tamil Nadu to accept the application forms from the candidates who have pursued their studies outside the State or who do not belong to the State of Tamil Nadu and permit them to appear in the Entrance examination conducted by the Selection Committee. Accordingly, 38 candidates from other States were admitted in the Higher Specialty Courses during 2016-2017 sessions. As per the above interim order, from that academic year 2016-2017, 50 percent of seats were allotted to in-service candidates and remaining 50 percent allotted to open merit on All India basis without any domiciliary restrictions. In the mean time, the Government of Tamil Nadu filed a rejoinder in W.P.(C).No.444 of 2015 before the Hon'ble Supreme Court of India with a prayer to pass order for allocation of 50% of Super Specialty seats available in the Government Medical Colleges to the service candidates of Tamil Nadu. However, the Writ Petition was subsequently withdrawn by the petitioner on 09.05.2018.

4. The Director of Medical Education has also stated that the Government of India had inserted a new Section 10(D) by way of amending the Indian Medical Council Act, 1956 vide the Indian Medical Council (Amendment) Act, 2015, NEET-SS has been introduced as the single window entrance examination for all PG Super Specialty (DM / M.Ch.) Courses in the Country and the Clause 9A of the "Post Graduate Medical Education Regulations, 2000", states as follows:

> *"3. The counseling for all Post Graduate courses (Diploma / MD / MS /DM / M. Ch) in all Medical Educational Institutions in a State / Union Territory, including Medical Educational Institutions established by the Central government, State Government, University, Deemed University, Trust, Society or a Company / Minority Institutions / Corporations shall be conducted by the State Government. Such common counselling shall be under the overall superintendence, direction and control of the State Government."*

5. The Director of Medical Education has stated that at the time of amendment of relevant legislations and in the NEET-SS 2017 Information Bulletin, it has been mentioned that the selection and admission to Post Graduate Super Specialty Courses is based on the marks obtained from the NEET-SS 2017, subject to fulfilling the admission criteria, eligibility, medical fitness and such criteria as may be prescribed by the respective Universities, Medical Institutions, Medical Council of India, State / Central Government. It has also been stated therein that the final merit position and eligibility for Post Graduate Super Specialty Courses shall be determined at the level of concerned States / Counseling Authorities based on the NEET-SS Course.

6. The Director of Medical Education has also stated that there are 25 Government Medical Colleges functioning in the State of Tamil Nadu. For running the Colleges, the Super Specialty Medical Officers are required for giving tertiary care to the poor patients who approach the Government Hospitals. Further, for conducting the Super Specialty Courses, the faculties are also needed. For this purpose, the Government of Tamil Nadu has earmarked 50% of the Super Specialty Courses to the in-service Medical Officers. Further, in Tamil Nadu there are 25 Government Medical Colleges, 14 Self Finance Private Medical Colleges and many of them are allowed with Post Graduate and Super Specialty Courses. The quality of the Medical Education in the State of Tamil Nadu is so high when compared with any other State across the country, since the State has been creating a skilled human resource over the years. Further, as a Policy, the State has proposed to create Government Medical Colleges in all the Districts in the State. Recently, the Government of India, has sanctioned 11 new Government Medical Colleges under Centrally Sponsored Scheme. Hence, for the existing Colleges and for the future expansions, skilled faculties are an absolutely essential requirement and that as per the direction of Constitution Bench of the Hon'ble Supreme Court of India in Writ Petition (Civil) No.196 of 2018, the State of Tamil Nadu should be allowed to fill up 50% of the seats in the Super Specialty Courses as its quota from this academic year by bringing suitable instructions/directions.

7. The Director of Medical Education has also stated that the Tamil Nadu Medical Officers Association on behalf of the in-service doctors in the State of Tamil Nadu filed a Writ Petition (Civil) No.196 of 2018 before the Hon'ble Supreme Court of India with a prayer,

a) to issue direction that Regulation 9 of the Post Graduate Medical Education Regulations, 2000 (more particularly, Regulation 9 (IV) and 9(VII), List III to provide for a separate source of entry in-service candidates seeking admission to Degree courses; and

b) Alternatively, if Regulation 9 of the Post Graduate Medical Education Regulations, 2000 is understood to now allow for States to provide for a separate source of entry for in-service candidates seeking admission to Degree courses, declare, by issuance of a writ of mandamus or any other suitable writ/ order / direction, Regulation 9 (more particularly, Regulation 9 (IV) and 9 (VII) as being arbitrary, discriminatory and violative of Article 14 and 19 (1) (g) of the Constitution and also ultra vires the provisions of the Indian Medical Council Act, 1956.

Some other States, viz., Kerala, Maharashtra and Haryana are also approaching the Hon'ble Supreme Court with the same prayer.

8. After its detailed deliberations, the Constitution Bench of the (Five Judge Bench) Hon'ble Supreme Court of India, while disposing the case by its order dated 31.08.2020 in W.P.(C) No.196 of 2018, wherein among others, has passed the following orders;

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37. .....It has been observed in the judgment of Modern Dental College (supra) that except the determination of minimum standards and coordination, State's power in regulating medical education was preserved. When the said entry (i.e. Entry 11 of List II) was brought to the Concurrent List by 42nd Amendment to the Constitution of India, the form of State's power remained the same, provided of course there was no repugnancy of a State statutory instrument with any Union legislative provisions covering the same subject.

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39. Clause 9(4) of the 2000 Regulations stipulates entry into the postgraduate courses from the two merit lists, one all India and the other that of the State. The same was the scheme of Clause 9(IV) in its erstwhile form. The dispute in these proceedings, however, is mainly on admission norms to postgraduate degree courses. If the State authorities provide reservation for in-service doctors from within the State's own merit list, our view is that such an exercise would be relatable to the admission process and the same would not be in breach of any prohibition flowing from the 2000 Regulations. This would entail some form of variation of the merit list of the State, but we do not find any prohibition under the 2000 Regulations against a State undertaking that exercise. Such step undertaken by the State would be relatable to the State's legislative power derived from Entry 25 of the Concurrent List and not covered by the 2000 Regulations. We do not find any repugnancy with the 2000 Regulations if the State authorities create such a distinct channel of entry.

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"...42. Because of these reasons, we hold that there is no bar in Clause 9 of the Postgraduate Medical Education Regulations, 2000 as it prevailed on 15th February 2012 and subsequently amended on 5th April, 2018 on individual States in providing for reservation of in-service doctors for admission into postgraduate medical degree courses. But to take benefit of such separate entry channel, the aspiring in-service doctors must clear the NEET examination with the minimum prescribed marks as stipulated in the 2000 Regulations. We respectfully differ from the views expressed by the Bench of three Hon'ble Judges of this Court in the case of State of Uttar Pradesh and Others vs Dinesh Singh Chauhan ((2016) 9 SCC 749) to the extent it has been held in the said decision that reservation for the said category of in-service doctors by the State would be contrary to the provisions of 2000 Regulations. In our opinion, that is not the correct view under the Constitution. The reference is answered accordingly.

43. We also expect that the statutory instruments of the respective State Governments providing for such separate channel of entry should make a minimum service in rural or remote or difficult areas for a specified period mandatory before a candidate could seek admission through such separate channel and also subsequent to obtaining the degree. On completion of the course, to ensure the successful candidates serve in such areas, the State shall formulate a policy of making the in-service doctors who obtain entry in postgraduate medical degree courses through independent in-service channel execute bonds for such sum the respective States may consider fit and proper.

44. So far as the appeals against the judgment of the Calcutta High Court are concerned, we are of the opinion that the judgment and order of the High Court at Calcutta in MAT No.1222 of 2019 (Dr. Md. Babul Akhtar and Ors. Vs. Dr. Md. Nazir Hossain and Ors.) along with the allied appeals were not founded on proper interpretation of law for the reasons we have already discussed. We accordingly set aside the judgment under appeal, delivered on 1st October, 2019. All the appeals are accordingly allowed. The memorandum dated 18th April, 2013 is restored and the writ petition filed in the High Court at Calcutta W.P. No.89990 (W) of 2019) shall stand dismissed. The writ petition filed before this Court being W.P. (Civil) No.196 of 2018, W.P.(C) No.252 of 2018, W.P.(C) No.295 of 2018 and W.P.(C) No.293 of 2018 shall stand allowed in the above terms.

45. We, however, direct that the doctors who are already undergoing the postgraduate degree courses on the basis of being successful in the original writ petition filed in the High Court at Calcutta shall not be disturbed from pursuing the said course. The same direction shall also cover successful medical students who have already undertaken admission in Post Graduate Medical Degree Course following the applicable admission process and are pursuing their post graduates studies in the States of Gujarat, Haryana, Kerala, Maharashtra and Tamil Nadu.

46. All connected application shall stand disposed of. Interim Orders, if any, shall stand dissolved.

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9. Based on the above orders of the Hon'ble Supreme Court of India, the Director of Medical Education has requested the Government issued necessary guidelines in this regard.

10. The Learned Advocate General of Tamil Nadu has opined among others, as follows:-

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In so far as the provision of a separate source of admissions is concerned, the Supreme Court, in the above judgement, has clearly held that provision of such a source of admission has no relationship with norms and standards of

higher education, which comes within Entry 66 of List I of the Seventh Schedule to the Constitution of India and the Supreme Court has further held that an order or legislation providing for quotas and reservations will fall within Entry 25 of List III of the Constitution of India.

At present, there is no law or on the subject enacted by the Central Government, and therefore, it would be open to the State to enact such a law. Pending such enactment, an executive order may be issued under Article 162 of the Constitution by way of Government Order, specifying the separate source of admission for Post Graduate Courses as well as the quota and methodology that is to be adopted for the selection of the candidates from among the in-service candidates.

I am therefore of the view that the observation of the Honourable Supreme Court in the judgements cited by MCI in their reply to your letters, were all made in the context of the constitutional scheme of reservation for socially and economically backward classes of citizens as well as for scheduled caste and schedule tribe citizens and hence will not apply in a case where a State, in exercise of its powers under Entry 25 of List III of the Constitution of India, specifies a separate source of entry from among in-service doctors, serving in the Government of Tamil Nadu.

The further question that arises is regarding the method that ought to be adopted for bringing the above proposal into force. In Tamil Nadu, there is already an enactment regarding admission to professional colleges. An appropriate amendment may be brought in to give effect to the above proposal. Pending such amendment, an executive order may be issued, specifying the separate source of admission for Super Specialty courses as well as the methodology that is to be adopted for the selection of candidates from among the in-service candidates. It may be borne in mind that the constitutional scheme of reservation would not be applicable to such selections. "

11. The Government have examined the proposal of the Director of Medical Education based on the orders of the Hon'ble Supreme Court of India in Writ Petition (Civil) No.196 of 2018 and also based on the considered opinion of the Learned Advocate General of Tamil Nadu and in order to protect the larger interest of the students hailing from Tamil Nadu, decided to agree the same. Accordingly, the Government hereby issue following orders:-

i) 50% of the Super Specialty seats (DM / M.Ch.) in Government Medical Colleges are allocated to in-service candidates of Tamil Nadu and the remaining 50% seats are allocated to the Government of India / Director General of Health Services from the academic year 2020-2021;

ii) 50% of the in-service Super Specialty seats would be filled up based on the marks obtained in the NEET-SS;

iii) The Secretary, Selection Committee, be designated as the authority to prepare a merit list, to conduct counselling, to fill the 50% of the Super Specialty (DM / M.Ch.) seats in Government Medical Colleges by in-service candidates in the State of Tamil Nadu and other related admission works;

iv) The Director of Medical Education is directed to obtain a bond from the in-service candidate after completion of their Super Specialty (DM / M.Ch.) courses in Tamil Nadu with the condition to serve in the Government till their retirement; and

v) The Director of Medical Education, the Director of Medical and Rural Health Services and the Director of Public Health and Preventive Medicine are directed to post the above said in-service candidates in hospitals located in rural or remote or difficult areas already defined or such criteria to be defined by the Government from time to time to access specialist care for treatment for a minimum of two years or the conditions to be fixed by the Government, subject to the availability of vacancies in the respective specialties.

12. The Director of Medical Education, Additional Director of Medical Education / Secretary Selection Committee, Director of Medical and Rural Health Services and Director of Public Health and Preventive Medicine are also directed to take necessary action accordingly.

(BY ORDER OF THE GOVERNOR)

J. RADHAKRISHNAN
PRINCIPAL SECRETARY TO GOVERNMENT.

To
The Director of Medical Education, Chennai – 10.
The Additional Director of Medical Education / Secretary,
Selection Committee, Chennai-600 010.
The Director of Medical and Rural Health Services, Chennai- 600 006.
The Director of Public Health and Preventive Medicine, Chennai-600 006.

Copy to:
The Special Personal Assistant to Hon'ble Minister for Health and Family Welfare, Chennai – 600 009.
The Health and Family Welfare (Data Cell) Department, Chennai – 600 009.
Stock file / Spare copy

// FORWARDED / BY ORDER //

9/11/20

SECTION OFFICER

9/11/2020