



2022 INSC 1128

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No 7778 OF 2022

Nipun Tawari & Ors

... Appellants

versus

The State of Maharashtra & Ors

... Respondents

J U D G M E N T

Dr Dhananjaya Y Chandrachud, J

- 1 Leave granted.
- 2 This appeal arises from a judgment dated 14 October 2022 of a Division Bench of the High Court of Judicature at Bombay.
- 3 The issue pertains to the reservation of 20% seats for in-service candidates in post graduate medical degree courses by the State of Maharashtra.
- 4 On 15 January 2022, the National Board of Examinations released its information bulletin for the NEET PG-2022 examination. The last date for registration for the entrance test was 25 March 2022. The examination was held on 21 May 2022. Results were declared on 1 June 2022.

- 5 On 21 September 2022, the Government of Maharashtra issued a notice setting out the schedule for conducting admissions for post graduate medical courses.

The schedule is extracted below:-

S.No.	Activity	Dates	Days
1	Publication of Information Brochure for NEET PG - 2022	21/09/2022	
2	Online Registration NEET PG (MD/MS/Diploma)	21/09/2022 after 05.00 pm to 26/09/2022 upto 05.00 pm	6 days
3	Payment of Registration Fees (Non Refundable- Rs.3000/-) and Security Deposit (as applicable) through online payment gateway	21/09/2022 to 26/09/2022 upto 11.59 pm	6 days
4	Uploading of all required Colored Scan Original Documents in pdf after successful Payment	21/09/2022 to 26/09/2022 upto 11.59 pm	6 days
5	Publication of General List of Registered Candidates (Including In-service, NRI, PWD)	27/09/2022 after 05.00 pm	
6	Publication of Common Provisional State Merit List of NEET-PG-2022	28/09/2022 after 05.00 pm	
7	Publication of Seat Matrix	28/09/2022 after 12.00 pm	
8	Online Preference/Choice Form Filling Process of eligible candidates	28/09/2022 to 02/10/2022 upto 05.00 pm	5 days
9	Declaration of First Selection List	03/10/2022 after 08.00 pm	
10	Physical Joining and Filling of Status Retention form with All Original Documents & Requisite Fees by DD/Cheque.	04/10/2022 to 08/10/2022 upto 5:30 pm	5 days
The Window for Online Registration/Application Form Will be CLOSED on 26/09/2022 (upto 05.00 pm Server Time)			

NO OFFLINE Application Form will be accepted for the further CAP of admission

- 6 On 21 September 2022, the Government of Maharashtra (through its CET Cell) issued a brochure for admissions. Clause 7.2 provides as follows:

“7.2 The seats available for admission to medical postgraduate courses will be distributed as 50% to All India Quota & remaining 50% to the State Quota. From the State quota, 50% of Seats in post graduate diploma courses from State Government/Corporation Medical Colleges will be reserved for In- service candidates in the State Government services, who have served for at least 3 years in remote and/or difficult areas. For In-service quota reservation, any change made by Government from time to time will be applicable. The additional weightage for In-service candidates will be given as per clause 9 (IV) & (VII) of Post Graduate Medical Regulation 2000 of NMC / erstwhile MCI and as per Public Health Department Government Resolution No. MMO-2019/C.R.165/Service-3, dated 19th March 2019 and G.R issued in this regard from time to time. 5% of available seats in Postgraduate courses in Government and Government Aided institutions will be reserved for Person with Disability (PWD) candidates as per Annexure “D”. 1% of available postgraduate seats are reserved for Orphan category candidate. There will be constitutional reservation applicable in Available State quota seats, (after excluding All India Quota) as mentioned in Annexure “C”. The parallel (Horizontal) reservation will be applicable for In-service quota seats, PWD quota seats and Orphan quota seats in Government and Government Aided institutions.”

- 7 Clause 7.2 indicates that 50% of the seats in post graduate diploma courses in medical colleges of the State Government and Municipal Corporations were reserved for in-service candidates of the State Government who had served for at least three years in remote and/or difficult areas. The clause also envisages that for in-service quota/reservation, any change made by the government from time to time would apply. In addition, it was specified that the weightage for in-service candidates would be available in terms of Regulations (9)(IV) and (VII) of the Post Graduate Medical Regulations 2000. Clause 7.10 of the same brochure

(issued on 21 September 2022) provided as follows:

“7.10 If the seats reserved for State In-service quota in the particular Constitutional reserve category remain unfilled on account of unavailability of candidate(s) after inter-se as per rules amongst In-service candidates, the remaining seat(s) shall be included in the respective Constitutional reserve category and these seats will be distributed to Non-in-service candidates using NEET-PG 2022 merit list.”

- 8 The eligibility for in-service candidates was specified in clause 8.16 of the brochure, which is extracted below:

“8.16 Eligibility for In-Service Candidates:

8.16.1 Eligibility for in-Service candidates will be as per criteria laid down by the Public Health Department of State of Maharashtra for In-service Medical Officers. As per Public Health Department Government Resolution No. MMO-2019/C.R.165/Service-3, dated 19th March 2019 and or any Government Resolution issued from time to time (Annexure-U).

8.16.2 In-Service candidate desirous to claim In-Service quota seat shall obtain No Objection Certificate from their establishment for admission process.

8.16.3 In service quota candidate must have appeared for NEET-PG 2022, and declared eligible by Competent Authority, Government of India, New Delhi.”

- 9 Clause 8.17 of the brochure contains the following provision :

“8.17 Candidates for post-graduate medical courses shall be selected strictly on the basis of their NEET-PG merit. However as per clause 9 (IV) & (VII) of NMC/erstwhile MCIPG regulation 2000, in determining the merit of eligible In-Service candidates under Government/Public authority, weight-age in the marks may be given by Public Health Department as an incentive at the rate of upto 10% of marks obtained for each year of service in remote and/or difficult areas maximum of 30% of marks obtained in NEET-PG 2022. The remote and difficult areas shall be as notified by Government of Maharashtra from time to time. The decision in this regard taken by The Directorate, Public Health Department, Government of Maharashtra will be

final.”

- 10 Clause 8.17, *inter alia*, stipulated that while determining the eligibility of in-service candidates, a weightage of marks would be provided as an incentive at the rate of 10% of the marks obtained for each year of service in remote and/or difficult areas with a maximum of 30% marks out of the marks obtained in the NEET-PG 2022. The remote and difficult areas were to be those as notified by the State Government from time to time.
- 11 On 21 September 2022, online registration commenced for admission to post graduate medical courses in the State of Maharashtra. The registration window was to remain open between 21 and 26 September 2022. On 26 September 2022, the Government of Maharashtra issued a Government Resolution providing for in-service reservation to the extent of 20% seats in post graduate medical degree courses for officers serving in government hospitals. The rationale for the Government Resolution was explained in its foreword:

“At present, most of the seats of medical post graduate courses have been converted into post graduate degrees. Therefore, it has been pointed out that the in-service medical officers are not directly benefiting from the reservation for admissions to post graduate courses. In-service medical officers are serving in government hospitals and if they are reserved for post graduate degrees, patient care will be available to the general public of the state through the specialists available from among them. Taking the said matter into consideration, the issue of revised order regarding in-service quota for admission to Post Graduate Degree and Post Graduate Diploma courses in Government/Municipal Medical Colleges was under consideration of the Government.”

12 The Government's decision was in the following terms :

"1. From the academic year 2022-23, Government approval is being given to reserve 20% seats for in-service candidates for admission to Post Graduate Degree and Diploma courses in Government/Municipal Medical Colleges in the State.

2. Marks to be obtained for admissions in in-service quotas of post-graduate courses and details for Selection of In-service Candidates for Quota Admissions ("Read" No. 2 and 3) mentioned above in the Government decisions of the Department of Public Health or issued from time to time through that Department. Action will be taken as per the orders.

3. Government approval is being granted to reserve 20% of the state quota seats for in-service candidates for admission to post graduate and diploma courses in government/municipal medical colleges in the state subject to the following conditions:

1) In addition to the said reservation quota, in-service candidates seeking admission from the general category will not get any additional marks other than the marks in the NEET examination.

2) In-service candidates after completion of post graduate course, apart from the service to be rendered under Public Health Department, they will also be required to render one year of social responsibility service in Government Medical College."

13 The seat matrix for the ensuing year was released by the State government on 30 September 2022. The first round of counselling commenced on 3 October 2022 and was followed by provisional admissions between 4 and 8 October 2022.

14 The appellants instituted a writ petition before the High Court of Judicature at Bombay. There was no challenge to the Government Resolution dated 26 September 2022. The submission of the appellants was that the resolution cannot be made applicable for admissions to post graduate medical degree courses for the 50% state quota in Government and Corporation run medical

colleges for the current academic year i.e., Academic Year 2022-23. This is evident from clauses (a) and (b) of the reliefs sought in paragraph 12 of the Writ Petition which are extracted below :

“(a) hold and declare that the provisions of impugned Government Resolution dated 26th September 2022 cannot be made applicable for the purposes of admission to post graduate medical degree courses from the 50% State quota in any government or corporation medical college from the current academic year 2022-2023 and for this purpose issue appropriate writ and/or order.

(b) direct the Respondent Authorities to conduct the admission process of post graduate medical degree courses in respect of 50% State Quota for the academic year 2022-2023 without applying the 20% reservation in favour of the in-service candidates as per the impugned Government Resolution dated 26th September 2022.”

- 15 The High Court dismissed the Writ Petition by its impugned judgment dated 14 October 2022.
- 16 We have heard Mr. Anand Grover, senior counsel appearing on behalf of the appellants and Mr Siddharth Dharmadhikari, counsel appearing on behalf of the State of Maharashtra. The Court has also been assisted by Mr. Sanjay Hegde, senior counsel and Mr. Sudhanshu Choudhari, counsel appearing on behalf of the intervening in-service candidates who have been provisionally admitted following the first round of counselling.
- 17 Principally, the challenge which has been addressed before this Court by Mr. Anand Grover, senior counsel is two-fold. Firstly, it has been submitted that the Government Resolution dated 26 September 2022, providing for a reservation of 20% for in-service candidates, was issued after the admission process had commenced for Academic Year 2022-23, and would hence be inapplicable for that academic year. In this context, reliance has been placed on a three-judge

bench decision of this Court in **Dr Prerit Sharma v. Dr Bilu B S**¹ in support of the submission that the underlying principles for admission cannot be altered once the admission process has commenced. Secondly, it has been submitted that the State Government while providing for in-service reservation has not collected any data which is evident from the fact that out of 1416 seats for post graduate medical degree courses in the State of Maharashtra, 282 seats were made available for the in-service quota but only 69 in-service candidates appeared for the NEET-PG held in May 2022 out of which 52 have been considered to be eligible for being granted admission. On this hypothesis, it has been submitted that it is evident that the reservation of 20% is disproportionately high as a consequence of which only 52 out of the 282 seats have been filled up in the first round.

18 On the other hand, it has been submitted by Mr Siddharth Dharmadhikari, counsel appearing on behalf of the State of Maharashtra that :

- (i) There was no change in the rules governing admission midstream since the brochure released by the State Government made it abundantly clear that the reservation for in-service candidates would abide by such resolutions as would be issued by the State Government from time to time;
- (ii) This must be considered in the backdrop of the fact that in-service reservation in post-graduate degree courses in government medical colleges was provided in the State of Maharashtra prior to 2017 but was discontinued as a result of the judgment of a three judge bench of this

Court in **State of Uttar Pradesh v. Dinesh Singh Chauhan**.² However, the reservation for in-service candidates was restored after the subsequent decision of the Constitution Bench in **Tamil Nadu Medical Officers Association v. Union of India**;³ and

- (iii) There has been no change of policy midstream and the State Government has aligned the in-service reservation for post graduate degree courses, as provided earlier, save and except for reducing the quantum of reservation from 30% to 20%.
- 19 Mr. Sanjay Hegde, senior counsel and Mr. Sudhanshu Choudhari, counsel appearing on behalf of the intervenors have relied on the fact that admissions have already been granted in the first round of counselling and the students who were admitted have not been impleaded as parties to these proceedings. Moreover, it has been submitted that there was no challenge to the legality and validity of the Government Resolution dated 26 September 2022. Hence, the High Court, it is urged, was justified in holding that in the absence of a challenge to the validity of the Government Resolution, it was not open to it to read down the provision so as to exclude its applicability for the current academic year.
- 20 While considering the rival submissions, it must be noted at the outset that on 16 August 2016, a three-judge bench of this Court held in **Dinesh Singh Chauhan** (supra) that reservation for in-service candidates to post graduate medical degree courses was violative of the provisions of Regulation 9 of the Regulations

2 (2016) 9 SCC 749

3 (2021) 6 SCC 568

framed by the Medical Council of India⁴ in 2000.

21 The correctness of the decision of the three-judge bench in **Dinesh Singh Chauhan** became the subject matter of a reference to a Constitution Bench. The judgment of the Constitution Bench, reported as **Tamil Nadu Medical Officers Association** (supra), was rendered on 31 August 2020. The Constitution Bench, *inter alia*, held that :

- (i) Regulation 9 of the MCI Regulations 2000 does not make provisions for or affect the competence of the States to make reservation by providing a separate source of entry for in-service candidates seeking admission to post graduate degree courses; and
- (ii) Each State was, in terms of its constitutional obligation to provide better health care facilities to its citizens, entitled to prescribe an in-service quota for the purpose of upgrading the qualifications of existing in-service doctors.

22 The conclusions which have been formulated in paragraphs 23.5 and 23.8 of the decision of the Constitution Bench in **Tamil Nadu Medical Officers Association** (supra), delivered by Justice M.R. Shah are extracted below :-

“23.5) That Regulation 9 of MCI Regulations, 2000 does not deal with and/or make provisions for reservation and/or affect the legislative competence and authority of the concerned States to make reservation and/or make special provision like the provision providing for a separate source of entry for in-service candidates seeking admission to postgraduate degree courses and therefore the States concerned to be within their authority and/or legislative competence to provide for a separate source of

⁴ “MCI”

entry for in-service candidates seeking admission to postgraduate degree courses in exercise of powers under List III Entry 25;

...

23.8) That the State has the legislative competence and/or authority to provide for a separate source of entry for in-service candidates seeking admission to postgraduate degree/diploma courses, in exercise of powers under List III Entry 25. However, it is observed that the policy must provide that subsequent to obtaining the postgraduate degree by the in-service doctors concerned obtaining entry in degree courses through such separate channel serve the State in the rural, tribal and hilly areas at least for five years after obtaining the degree/diploma and for that they will execute bonds for such sum the respective States may consider fit and proper;"

- 23 In the State of Maharashtra, there was an in-service quota for post graduate degree courses to the extent of 30% of the total seats. The validity of the in-service reservation in post graduate degree courses came under a cloud in view of the judgment of the three-judge bench in **Dinesh Singh Chauhan** (supra). However, the reservation for in-service candidates in diploma courses continued to exist since a specific provision in that regard was contained in Regulation 9(VII) of the MCI Regulations 2000.
- 24 The issue as to whether it was open to the State Government to provide in-service reservation in post graduate medical degree courses to doctors employed in government hospitals was authoritatively settled in the judgment of the Constitution Bench in **Tamil Nadu Medical Officers Association** (supra), following which the State of Maharashtra has decided to introduce an in-service reservation by its Government Resolution dated 26 September 2022.
- 25 The principal issue before us is whether the Government Resolution would have to be held not to apply to the current academic year on the ground which is urged by the appellants, namely, that there is a change in the rules governing admission after the admissions process has commenced.

26 Before considering the relevant clauses of the brochure governing admissions, it would be necessary to advert to the decision of a three-judge bench of this Court in **Dr. Prerit Sharma** (supra) upon which the appellants have placed reliance. In that case, the issue pertained to reservation of 50% seats by the State of Tamil Nadu for in-service candidates in super-speciality courses offered by government medical colleges. The information bulletin for the NEET-SS 2020 was issued on 3 August 2020. The examinations were scheduled for 15 September 2020 and the results were declared on 25 September, 2020. The bulletin governing the admission process clearly specified that there shall be **no** reservation of seats for super-speciality DM/MCH courses. This is emphasised in the following extract of the decision of this Court:

“15. ... It was made clear in Point 5.16 of the bulletin that there shall be no reservations of seats for superspeciality DM/MCH courses.”

The Court noted that the counselling for admissions to super-speciality medical courses was postponed at which stage, the Government of Tamil Nadu issued a resolution on 7 November 2020 reserving 50% of super-speciality seats in government medical colleges to in-service candidates. It was in this backdrop that the Court observed:

“18. The process for admissions to superspeciality medical courses started on 3-8-2020 and it was made clear to all the competing candidates that there shall be no reservation to superspeciality medical courses. The Government Order issued by the State of Tamil Nadu on 7-11-2020 reserving 50% seats for in-service doctors would be detrimental to the interests of the meritorious doctors as 50% of the available seats in the State of Tamil Nadu in superspeciality medical courses will not be available to them.”

Apart from this, the Court noted that admittedly no reservation for in-service doctors was implemented since 2016 and since the admissions process was “at the final stages”, reservation for in-service doctors could not be permitted for that year.

27 The facts pertaining to the reservation for in-service doctors in the State of Maharashtra for post graduate medical courses would now have to be noticed.

28 Clause 7.2 of the brochure issued by the State Government provides that 50% of seats in post graduate diploma courses would be reserved for in-service candidates. Clause 7.2 also provides that “for in-service quota reservation, any change made by Government from time to time will be applicable”. An additional weightage for in-service candidates was also prescribed by Clause 7.2 in terms of clauses 9(IV) and (VII) of the MCI Regulations. Clause 8.16.1 prescribes that the eligibility for in-service candidates would be in terms of the Government Resolution dated 19 March 2019 or any other Government Resolution issued from time to time. Incentive marks of up to 10% marks for each year of service in remote and/or difficult areas subject to a maximum of 30% of the marks obtained in the NEET-PG 2022 was prescribed in Clause 8.17 of the brochure.

29 Clause 3 of the Government Resolution dated 26 September 2022 which prescribes a reservation of 20% of the State quota seats for in-service candidates also makes it clear that an in-service candidate seeking admission to the general category will not get any additional marks other than the marks obtained in the NEET Examination. In other words, an in-service candidate who opts for a seat in the general category would not be entitled to any weightage of marks. The weightage of marks is, therefore, prescribed in relation to those candidates who aspire for a seat in the 20% quota which is set apart for in-

service candidates.

30 It is difficult to accept the submission of the appellants that the Government Resolution dated 26 September 2022 ought not to apply for the current academic year on the ground that it has altered the 'rules of the game' midstream. The High Court has principally rejected the submission of the appellants on the ground that there was no challenge to the validity of the Government Resolution dated 26 September 2022 in which event, it is not permissible for the court to read it down so as to exclude its applicability for the current academic year.

31 Apart from the above reasoning of the High Court, it is evident that unlike the situation which resulted in the decision of this Court in **Dr. Prerit Sharma** (supra), there was no specific prohibition in the brochure in the matter of reservation for in-service candidates in the present case. On the contrary, Clause 7.2 of the brochure issued by the State of Maharashtra clearly specified that in quota reservations would abide by Government Resolutions as may be issued from time to time. Following the decision of the Constitution Bench which has been noted above, a writ petition was filed before the High Court of Judicature at Bombay⁵ seeking reservation for in-service candidates. In an order dated 24 January 2022, the High Court noted that there was a difference of perspective between the Public Health Department and Medical Education Department of the state. In this backdrop, the Division Bench, while noting the view which was taken by the Constitution Bench of this Court, adjourned the proceedings to 1 February 2022. Evidently, the State Government was in the process of taking a final decision which was ultimately reflected in the Government Resolution dated 26 September 2022. Thus, the background of the facts indicated in the earlier

⁵ Civil Writ Petition No. 7855 of 2021 Dr Suryakant Tejrao Lodhe v. State of Maharashtra

part of the judgment would show that there was a reservation for in-service candidates in post graduate degree courses in the State of Maharashtra until the situation came to be altered as a result of the decision of the three-judge bench in **Dinesh Singh Chauhan** (supra). The validity of reservation for in-service candidates in degree courses has since been restored following the decision of the Constitution Bench in **Tamil Nadu Medical Officers Association** (supra). The provisions in the brochure that in-service quota reservations would abide by any change made by government from time to time must be understood in the context of the above facts.

32 The provisions of the brochure specifically placed students on notice that in-service reservations would abide by such resolutions as may be issued by the government from time to time. The issue before us, therefore, has to be construed in the specific background of the facts as they pertained to reservation in the State of Maharashtra for in-service candidates in post graduate degree courses.

33 In **Neil Aurelio Nunes (OBC Reservation) v. Union of India**,⁶ this Court was faced with a similar set of facts. In that case, the registration for the examination closed on 18 April 2021. A notice providing reservation for OBC and EWS candidates was issued on 29 July 2021. This notice was challenged on the ground that the rules of the examination could only be changed before the last date of registration for the examination. A two-judge bench of this Court (of which one of us, Justice DY Chandrachud, was a part) ruled that the impugned notice did not alter the rules of the game after the game had begun because the Information Bulletin in that case specified that the details of the applicable

⁶ (2022) 4 SCC 1

reservation would be notified by the counselling authority through a separate handbook. This being the case, the candidates who wished to register for the examination were aware that details regarding the seat matrix / reservation would be made available at a later stage. Similarly, in the present case, Clause 7.2 of the brochure issued by the State of Maharashtra clearly specifies that the reservation policy for in-service candidates is subject to any changes made by the government from time to time. Hence, the brochure envisages that there may be a change in the reservation policy for in-service candidates and accounts for the same. The rules of the examination have remained constant and the Government Resolution dated 26 September 2022 did not change the rules of the game after the admission process had commenced.

34 The appellants have also relied upon the decisions of this Court in **A.P. Public Service Commission v. B. Swapna**⁷ and **Maharashtra SRTC v. Rajendra Bhimrao Mandve**⁸ for the proposition that the prescribed selection criteria cannot be changed once the selection process has started. However, for the reasons discussed above, we find that the selection criteria were not changed after the selection process commenced. To the contrary, the Government Resolution dated 26 September 2022 is in consonance with the brochure issued by the Government of Maharashtra. Hence, neither of the decisions cited by the appellants is of any assistance to their case.

35 The facts which have been set out in the judgment of the High Court and which have been placed on the record of this Court by the interveners indicate that out of 1416 post graduate medical degree seats in the State of Maharashtra, 282

⁷ (2005) 4 SCC 154

⁸ (2001) 10 SCC 51

have been reserved for in-service candidates. It would appear that 268 candidates obtained No Objection Certificates from their departments to apply for the in-service reservation. In the first round of counselling, 69 students were held to be eligible, having received marks above the cut off. 52 candidates have been granted admission in a post graduate medical program.

- 36 The Government of India, through the Ministry of Health and Family Welfare, has issued a communication on 17 October 2022 providing for a reduction in the cut-off marks in the NEET-PG 2022 by 25 percentile across all categories. Following the above decision, it is likely that additional candidates would become eligible to participate in the subsequent rounds of counselling. Moreover, from a reading of Clause 7.10 of the brochure, it is apparent that if any seats which have been provided for the in-service quota remain unfilled, they shall be distributed to the 'non-in-service' category of candidates using the NEET-PG 2022 merit list.
- 37 For the above reasons, we are of the considered view that the judgment of the High Court does not call for interference, though for the reasons which have been indicated above.
- 38 The appeal is accordingly dismissed.
- 39 Pending applications, if any, stand disposed of.

.....J.
[Dr Dhananjaya Y Chandrachud]

.....J.
[Hima Kohli]