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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 27th DAY OF JULY 2009

BEFORE :

THE HON'BLE MR.JUSTICE MOHAN SHANTANAGOUDAR

WRIT PETITION Nos. 9397 TO 9399/2009 (EDN-AD)

Between :

1. Dr.N.Ranganath
S/o R.Nagaraj
Aged about 34 years
Working as Medical Officer
Community Health Centre
Yagati
Kadur Taluk
Chikkamagalur district.
2. Dr.M.N.Lohitha
S/o M.Nagappa
Aged about 37 years
Working as Medical Officer
General Hospital Harihar
Davangere District.
3. Dr.B.G.Prabhudev
S/o B.G.Rudrappa
Aged about 34 years
Working as Medical Officer
Chigateri District Hospital
Davanagere.

.. PETITIONERS

(By Sri Raviverma Kumar, Sr.Counsel)

AND :

1. Principal Secretary,
Health and Family Welfare Department
Vikas Soudha
Bangalore.
2. Director
Medical Education Department
Ananda Rao Circle
Bangalore-560 001.
3. Commissioner
Health and Family Welfare Department
Ananda Rao Circle
Bangalore-560 001.
4. Director
Health and Family Welfare Department
Ananda Rao Circle
Bangalore-560 001.
5. Rajiv Gandhi University of Health
Sciences,
Rep.by its Registrar
Jayanagar 4th T Block,
Bangalore.
6. Dr.B.Nagaraj
S/o Late N.Basavanna
Aged about 39 years
Working as Medical Officer
Primary Health Centre
Sagarakatte
Mysore Taluk-570 001.
7. Dr.K.S.Surendra
S/o.Somashankare Gowda
Aged about 35years

Working as Medical Officer
Primary Health Centre
Sathnur
Mandya District-571 402.

8. Dr.(Mrs) B.N.Jayalaxmi
W/o Dr.R.Mahendra
Aged about 37years
Working as Medical Officer
Primary Health Centre
Kalasapura
Chikamagalur District-577 101.
9. Dr.Dayananda Babu
S/o M.Cheluve Gowda
Aged about 39 years
Working as Medical Officer
Primary Health Centre
Basavaghatta
Hassan District-573 201.
10. Dr. N. Vijayashankar
S/o N.Chandra Shekar
Aged about 37years
Working as Medical Officer
Primary Health Centre
Ballatagi
Manvi Taluk
Raichur District-584 129.
11. Dr. B. Rachappa
S/o B.Gangadharappa
Aged about 33years
Working as Medical Officer
Primary Health Centre
Maski
Lingasugur Taluk
Raichur District-584 124.

12. Dr. J. N. Raghu
S/o J. N. Ninge Gowda
Aged about 36 years
Working as Medical Officer
Primary Health Centre
Hoovinahalli Kavalu
Hassan District-573 201.
13. Dr. C. Arun Kumar
S/o K. Chinnappa Naidu
Aged about 32 years
Working as Dental Health Officer
General Hospital
Gundlupet-571 111.
14. Dr. Bayappa Reddy
S/o S. T. Veeranna
Aged about 40 years
Working as Medical Officer
Primary Health Centre
Kodigerehally
Madhugiri Taluk
Tumkur District-561 202.
15. Dr. Mohammed Afroz Ahamed
S/o Mohamed Ilyas
Aged about 33 years
Working as Medical Officer
Primary Health Centre
Kondadahalli-577 552
Channagiri taluk
Davanagere District.
16. Dr. M. C. Satheesha
S/o M. G. Chinnaiah Gowda
Aged about 33 years
Working as Dental Health Officer
General Hospital
Kunigal-572 130
Tumkur District.

17. Dr. K. R. Srinivasan
S/o K. V. Ramanatha
Aged about 40 years
Working as Medical officer
Primary Health Centre
Halayanahalli-571 1-7
Mysore District.

.. Respondents

(By Sri B. Manohar, AGA for R-1 to 4,
Sri N. K. Ramesh, Advocate for R-5 and
Sri P. S. Rajagopal, Advocate for R-6 to 17)

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These Writ Petitions are filed under Articles 226 & 227 of the Constitution of India praying to direct the respondent Govt. to prepare the merit list and conduct the counseling to the service quota for the post graduate medical and dental and diploma courses for the academic year 2009-10 in accordance with the Karnataka Conduct of Entrance Test for Admission to Post-Graduate Medical and Dental Degree and Diploma Courses Rules 2006 and etc.,

These Writ Petitions having been heard and reserved for orders on 15th June 2009, pronounced the order on

27th July 2009
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ORDER

Petitioners, after completion of MBBS degree, are discharging their duties as Medical Officers in the respective places of their posting in the State. The State Government has published the Rules called Karnataka Conduct of Entrance Test for Selection and Admission to Post-graduate Medical and Dental Degree and Diploma Courses Rules of 2006, (hereinafter referred to as 'the Rules of 2006' for short) for conduct of entrance test to the admission to post graduate courses. The Rules of 2006 are Gazetted on 8.12.2006. The copy of the Rules of 2006 are produced at Annexure-'B' to the writ petitions. The petitioners applied for Entrance Test as in-service candidates for admission to Post-graduate courses in Karnataka for the academic year 2009-10. The 2nd respondent - Director, Medical Education Department, Bangalore, forwarded the applications of the petitioners to the 5th respondent-Rajiv Gandhi University of Health

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Sciences and consequently, the University issued admission tickets to the petitioners allowing them to take entrance examination for admission to Post-graduate courses. Accordingly, the petitioners appeared for entrance examination. A merit list based on performance in examination was prepared and published on 23.2.2008 by the 5th respondent-University. As per the said list, the 1st petitioner has secured 2nd rank and the 2nd petitioner has secured 3rd rank and the 3rd petitioner has secured 4th rank. As could be seen from the Brochure issued by the respondent-University, 43 seats have been earmarked for the in-service candidates for the academic year 2009-10. The petitioners stated to have approached the 1st respondent-Health and Family Welfare Department for further enquiry in order to know the date of counseling. At that point of time, the petitioners were informed that they will be allowed to participate in the counseling only after exhausting the candidates who come under the first slab i.e., of those candidates who have completed 5 years

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of regular service and who have secured highest marks in the entrance test; that after exhausting the candidates of first slab, if any seats are found available, such the seats will be allotted to the candidates who have completed 4 years of service i.e., for the second slab; thereafter the candidates of third slab i.e., who have completed 3 years of service will be considered. While saying so, the 1st respondent-authorities seem to have relied upon the Government Order dated 4.4.2008, pursuant to which the seats were allotted for the academic year 2008-09. In other words, the respondent-authorities stated to have told the petitioners that the State Government will allot the seats on the basis of the criteria followed in the said Government Order dated 4-04-2008 even for the academic year 2009-10 also. Questioning the action of the respondents-State in not allowing the petitioners to appear for counseling as per single merit list, these writ petitions are filed.

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The petitioners rely upon sub-clause (2) of Rule 3 of the Rules of 2006 which stipulates that the in-service candidates who have completed 3 years of regular service and successfully completed the probationary period shall apply through the proper channel. They also rely upon Rule 10 of the Rules of 2006, which prescribes the procedure for selection of in-service candidates for admission to Post-graduate Medical and Dental courses. According to the petitioners, the inaction on the part of the respondents in not permitting the petitioners to appear for counseling is in violation of the Rules of 2006.

2. Sri Ravi Verma Kumar, learned Senior Counsel appearing on behalf of the petitioners submits that, as per Rule 2 (h) of the Rules of 2006, the merit list has to be prepared on the basis of the marks secured in the Entrance Test; that the petitioners have secured more marks in the Entrance Test and their rank is assigned based on the marks obtained in the Entrance Test; that the respondents have to conduct the counseling based on

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merit obtained in the Entrance Test; and that the respondent-Government instead of preparing merit list on the basis of the marks obtained, has now resorted to prepare three separate merit lists based on three different slabs of the in-service candidates i.e., at the first instance, the merit list is prepared in relation to the in-service candidates who have put in 5 years of regular service and the second list is prepared of those candidates who have put in 4 years of service and the third list is of the candidates who have completed 3 years of service. According to him such procedure is impermissible in law.

3. Per contra, the writ petitions are opposed by Shri P.S.Rajgopal learned Sr. advocate appearing on behalf of respondents on the ground that, the order dated 8.4.2009 is issued by the State Government for the purpose of conducting counseling for the year 2009 also and the same is communicated to the Commissioner, Health and Family Welfare Services and the Director of Health and Family Welfare Services, to the effect that the three merit

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lists should be prepared based on the length of service of the in-service candidates i.e., preference should be given to the first slab (i.e., the persons who have completed 5 years of regular service), then to the second slab (i.e., the persons who have completed 4 years of service) and to the third slab (i.e., the persons who completed in 3 years of service); that the State Government's order dated 8.4.2009 is issued pursuant to Rule 61(1)(a) r/w. Appendix-II-A of the Karnataka Civil Services Rules (hereinafter referred to 'the KCSRs' for short); that the KCSRs have classified the Government servants in two classes i.e., (a) the government servants who have rendered not less than 5 years of regular service and are below the age of 48 years, are eligible for deputation for higher studies/specialised training and also entitled to study leave, and (b) those government servants who have not rendered atleast 5 years of service, but have completed the period of probation, are not entitled to deputation, but may be granted study leave at the

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discretion of the Government; that the Government of Karnataka has been deputing in-service doctors who have completed not less than 5 years of regular service and who are below 48 years of age for Post-Graduate courses strictly in accordance with their seniority; that in view of the dictum laid down by the Apex Court in the case of **STATE OF MADHYA PRADESH -vs- GOPAL D. TIRTHANI (2003) 7 SCC 83**), the Government Order dated 18.1.2005 is issued making the entrance test compulsory for in-service candidates; that in view of entrance test for in-service candidates, being of the apprehension that in-service quota seats may go vacant if only those who are eligible to be deputed under the KSCRs are made eligible, the Government order dated 8.4.2009 is issued making eligible also those candidates who have completed 3 years of regular service, subject to the condition that only after exhausting the rank lists of such of the in-service candidates who have completed 5 years & 4 years of regular service, the rank list of in-service candidates who

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have completed 3 years of regular service shall be operated; that for the academic year 2007-08, the Government has decided to continue with the procedure followed in the earlier years and accordingly issued order dated 23.4.2007 and the selections and admissions of in-service candidates were made accordingly; and that even for the academic year 2008-09, same norms were followed, inasmuch as, the State Government has issued the communication dated 4.4.2008. Thus, according to the respondents, what has been done for the academic year 2009-10 is the reiteration and continuation of the same old established procedure.

Sri P.S.Rajagopal, learned counsel further submits that the Rules of 2006 could not have been issued under the provisions of Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984, which is merely meant for curbing the evil practice of collecting capitation fees for admitting the students in educational institutions



and that the Rules of 2006 cannot be correlated with the object for which the Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984 is enacted. Therefore, the said Rules of 2006 are liable to be struck down. According to him, the Rules of 2006 are plainly in excess of the rule making power conferred by Section 14 and ultra vires the provisions of Section 4 of the Capitation Fee Act; That, Rules of 2006 can neither override the provisions of the KCSRs nor can have the effect, in so far as they are inconsistent with the Government Order dated 4.4.2008. That apart, leave and deputation being part of service conditions, the Rules made under the proviso to Article 309 viz., the KCSRs being legislative in character are deemed to be legislative measures enacted under the provisions of the Karnataka State Civil Services Act, 1978. He further submitted that the Government has issued the order dated 8.4.2009 reiterating the norms stipulated in the Government Order dated 4.4.2008 to be followed for the academic year 2009-10 also and

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accordingly, the authorities have published the eligibility list of in-service candidates of Post-graduate courses for the academic year 2009-10; that since three merit lists are prepared based on the service of 5 years, 4 years, 3 years etc., in the light of Rule 61 of the KCSRs, the same cannot be said to be erroneous and that the selection will have to be done based on such merit lists only. On these among other grounds, learned advocates appearing on behalf of respondents and the Government advocate prayed for dismissal of the writ petitions.

4. The contention of the petitioners is that, as on the date of passing of the interim order by this Court i.e., on 13.4.2009, no government order giving preference to the in-service candidates who have completed 5 years was issued and the order dated 8.4.2009 is subsequently generated. To verify the said aspect of the matter, the original records maintained by the State Government are summoned. From the records it is clear that the order

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dated 8.4.2009 was issued on 8.4.2009 itself and was not subsequently issued antidating it as alleged.

5. It is not in dispute that the petitioners as well as respondents 6 to 17 are working as Medical Officers under the State Government. Respondents 6 to 17 have already completed 5 years of service in the department and whereas, the petitioners have completed 4 years of service and they have not completed 5 years of service as on the date of filing of the writ petitions. It is also not in dispute that the petitioners and respondents 6 to 17 have appeared for entrance examination and are admitted to the post graduation course. All of them have got through in the entrance examination. However, the only dispute is with regard to giving preference of the candidates. According to the petitioners, the selection should be based strictly on the single merit list prepared by the respondents. Whereas, the case of the respondents in nutshell is that preference should be given to the in-service candidates who have completed 5 years of service

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in the department and thereafter to the candidates who have completed 4 years of service. Only if the seats are left over, then the candidates who have completed 3 years of service should be selected.

6. The State Government has promulgated the Rules of 2006 in exercise of the powers conferred by subsection (1) of Section 13 of the Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984. Rule 2 (h) of Rules of 2006 defines "Merit" as the merit determined on the basis of marks secured in the Entrance Test. Rule 3 deals with the Entrance Test. Sub-rule (2) of Rule 3 of Rules of 2006 clarifies that in-service candidates, who have completed 3 years of regular service and successfully completed the probationary period as on the last date of receipt of applications for the Entrance Test, shall apply through the proper channel. Rule 5 deals with the Entrance Test Committee. Sub-rule (3) of Rule 5 reveals that the Committee shall send the merit

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list prepared in accordance with the Ordinance to the Selection Committee. Rule 10 prescribes the procedure for selection of in-service candidates for admission to Post-graduate Medical and Dental courses. Sub-rule (1) of Rule 10 states that no in-service candidate shall be eligible for admission under these rules unless he has put in not less than three years of regular service and unless he has satisfactorily completed the prescribed period of probation. Thus, it is clear from the Rules of 2006 that completion of minimum of 3 years of regular service is mandatory to be eligible for admission to Post-graduate courses under Rules of 2006. Thus, according to the petitioners they are also entitled to be considered for admission to Post-graduate courses as they have completed 3 years of regular service. In this context it is relevant to note Rule 61 of the Karnataka Civil Services Rules, which deals with deputation for training or study within India. There cannot be any dispute that the Governor of Karnataka in exercise of powers conferred on him by the proviso to



Article 309 of the Constitution of India, made the Karnataka Civil Services Rules, which have come into force on 1st April 1958.

The reading of the Rule 61 (1) alongwith Appendix II-A of KCSRs clearly discloses that the Government servants have been classified into two distinct classes i.e., (a) the government servants who have rendered not less than 5 years of service and who are below the age of 48 years are eligible for deputation for higher studies/specialized training and also entitled to study leave and (b) those government servants who have not rendered atleast 5 years of service, but who have completed the period of probation are not entitled to deputation, but may be granted study leave at the discretion of the Government.

The Hon'ble Supreme Court in the case of *State of Madhya Pradesh -vs- Gopal D. Tirthani* ((2003) 7 SCC 83), has held that having regard to the Post Graduate Medical

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Education Regulations, 2000, made by the Medical Council of India, where there is more than one University in a State awarding MBBS degrees, it is necessary that eligibility for admission to Post Graduate courses in Medical Sciences should be decided on the basis of an Entrance Test and even for in-service quota of seats, it is necessary that the candidates should pass common entrance test. Under those circumstances, the Government by the order dated 18.1.2005 made the entrance test compulsory for in-service candidates also. The State Government in its statement of objections has pleaded that it was on the apprehension that the in-service quota seats may go vacant by virtue of the introduction of Entrance Test for in-service candidates if only those who are eligible to be deputed under KCSRs are made eligible, it has issued the Rules of 2006 making eligible the in-service candidates who have completed 3 years of regular service. However, year after year i.e., repeatedly the State Government has been issuing

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orders/notifications clarifying that the persons who have completed 3 years of regular service would be eligible to be admitted, subject to the condition that only after exhausting rank lists of in-service candidates who have completed 5 & 4 years of regular service, the rank list of in-service candidates who have completed 3 years of regular service shall be made operative. Those Government Orders/Notifications are issued time and again pursuant to Rule 61(1)(a) read with Appendix II-A of KCSRs. and are acted upon. Since both the Rules i.e., Rules 2006 and Rule 61(1) read with Appendix II-A of the KCSRs operate in the same field, they will have to be read harmoniously. Rules of 2006 make it clear that the persons who have completed 3 years of regular service are eligible to Post-graduate courses as in-service candidates, which means, 3 years of completion of regular service is the minimum requirement. Such a position is sought to be clarified by the State Government by issuing Notifications/Orders every year providing three slabs.

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This Court is of the clear opinion that Rules of 2006 and Rule 61 of KCSRs do not contradict with each other. On the other hand, Rule 61 read with Appendix-II-A of the KCSRs is supplementary to Rules of 2006. The State Government in its wisdom thought that from among the candidates who have passed in the entrance examination, the doctors who have completed 5 years of service should be given preference to the persons who have completed 4 years of service and the persons who have completed 4 years, should be given preference to the persons who have completed 3 years of service. This Court does not find any illegality in such Government Orders. On the other hand, as aforementioned, this has been the practice of the State Government to issue such Government Orders since 2005 for following uniform procedure of giving preference to the candidates who have completed 5 years of regular service, then to 4 years and thereafter 3 years. Therefore, it cannot be said that the Government Order dated 8.4.2009 runs contrary to 2006 Rules. On the other hand, the said

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government order having been issued pursuant to Rule 61 read with Appendix II-A of the KCSRs is supplementary to Rules of 2006. They will have to be read harmoniously.

7. In selecting from among different interpretations, the Court will adopt that which is just, reasonable and sensible rather than that which is none of those things. Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words and even the structure of the sentence. In any case of ambiguity, the construction which serves better the ends of fairness and justice will be accepted. The function of the court is to find out what is legal and what is right. The Courts should as far as possible avoid a construction which result in anomalies. It is the duty of the Court to avoid “a

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head on clash” between two sections of the same Act or between the two provisions of two different enactments covering the same field and whenever it is possible to do so, to construct the provisions which appear to conflict so that they harmonise. It should not be lightly assumed that the State has given with one hand and it took away with the other. The provisions of one statute/rule/regulation cannot be used to defeat those of another unless it is impossible to effect reconciliation between them. As has been held by the Apex Court in the case of **VENKATARAMANA DEVARU -vs- STATE OF MYSORE (AIR 1958 SC 255)**, the rule of construction is well settled that two provisions of an enactment which cannot be reconciled with each other, they should be so interpreted that, if possible, effect should be given to both. This is what is known as the rule of harmonious construction. Thus, a construction that reduces one of the provisions to a useless lumber or dead letter is not harmonious construction. To harmonise is not to destroy. A familiar

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approach in all such cases is to find out which of the two apparently conflicting provisions is more general and which is more specific and to construe the more general one and to exclude the more specific. When two or more laws operate in the same field and each contains a non-obstante clause stating that its provisions will override those of any other law, stimulating and incisive problems of interpretation arise. Since statutory interpretation has no conventional protocol, the cases of such conflicts have to be decided in reference to the object and purpose of the laws under consideration (***see the judgment reported in the case of Shri Sarwan Singh and another -vs- Shri Kasturi Lal (AIR 1977 SC 265)***). Thus, it is clear that the endeavour of the Court would however always be to adopt a rule of harmonious construction with a view to give effect to the clear intention of the rule makers.

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8. As aforementioned, in these matters, Rules of 2006 and Rule 61 r/w. Appendix II-A of the KCSRs operate simultaneously in such matters. Therefore, they will have to be harmoniously construed. One cannot be ignored in preference to the other. The object of the State appears to give preference to the seniors in service who have passed the Common Entrance Test examination along with the juniors. By this process, juniors will also not get effected, inasmuch as, they may get seat under in-service quota in the coming years. Such a procedure will not violate the principles of law down by the Apex Court in the case of *State of Madhya Pradesh -vs- Gopal.d.thirthani (cited supra)*, inasmuch as , the seniors in service also will have to get through the entrance examination for getting the Post-graduate seat.

9. In view of the above, this Court does not find any error in the Government order dated 8.4.2009 giving

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preference to the candidates who have completed 5 years of service in the department. As aforementioned, Rules of 2006 will have to be read harmoniously with Rule 61(1) r/w. Appendix II-A of the KCSRs. Accordingly, the State Government is justified in issuing the Government Order dated 8.4.2009.

10. In the matter on hand, however the petitioners are selected and are already admitted to the Post-graduation courses as in-service candidates by virtue of the interim order granted by this Court. They are continuing their course of study. It is also brought to the notice of the Court by learned counsel for the petitioners that the petitioners herein have also completed 5 years of service in the department by now. Respondents 6 to 17 are also admitted to Post-graduation course as in-service candidates. In view of the above, this Court does not propose to disturb the academic career of the petitioners as well as respondents 6 to 17, more so, when the period

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prescribed for counseling is already over. Accordingly, the following order is made :

- (a) The prayers as sought for in the writ petitions cannot be granted.
- (b) The Government order dated 8.4.2009 bearing No. Aakuka 86 HSH 2009, is declared valid. However, the petitioners who are already selected and admitted to the Post-graduation course shall not be disturbed in view of the peculiar facts and circumstances of this case.

Writ petitions are accordingly dismissed with the said observations.

Sd/-
Judge

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